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# Presidential Documents

**Title 3—**

## The President

**Proclamation 9189 of October 8, 2014**

## Leif Erikson Day, 2014

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

**A Proclamation**

At a time when much of the world remained unknown, Leif Erikson—a son of Iceland and grandson of Norway—left his Nordic homeland and sailed westward across an unrelenting ocean. Landing in present-day Canada more than 1,000 years ago, Erikson and his crew became the first Europeans known to reach North America. In this new world, they discovered a land rich with natural resources and established their first settlement, Vinland. Today, we recognize their courageous spirit and the daring exploration that forged a path for centuries of exchange, innovation, and opportunity.

More than 800 years after this historic voyage, a group of Norwegian immigrants boarded a ship named *Restauration,* and with the same sense of hope and determination shared by Erikson and his crew, they crossed the Atlantic in pursuit of the freedoms promised in America. On October 9, 1825, they arrived in New York City, becoming the first organized group of immigrants from Norway to reach the United States. Together, they wrote a chapter of our two countries' interconnected story and opened the doors to opportunity for the hundreds of thousands of Norwegians who would follow, enriching our communities and bettering our Nation.

This year, we also celebrate the 200th anniversary of the adoption of Norway's constitution, a charter influenced by America's founding documents, and we are reminded of the powerful bonds between our two nations and the values and ideals our people embrace. As we reflect on our common past, we rededicate ourselves to preserving all that has brought us together: the story of a fearless leader who reached for new possibilities; our shared commitment to self-determination and freedom; and the simple truth that has drawn immigrants to our shores—in America, anyone who works hard should be able to get ahead.

Today, there is more work to do to strengthen these promises, and we require bold thinkers and explorers to achieve what we know can be possible. The far reaches of our universe and the depths of our oceans remain unexplored, and the next frontiers in science, medicine, and technology await a new generation of innovators and entrepreneurs. As a Nation, let us carry forward the spirit of Leif Erikson and seize the future together.

To honor Leif Erikson and celebrate our Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 9, 2014, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

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

[FR Doc. 2014–24574
Filed 10–14–14; 8:45 am]
Billing code 3295–F5

# Rules and Regulations

Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 13

**[Docket No.: FAA–2014–0505; Amdt. No. 13–36 A]**

**RIN 2120–AK43**

### Orders of Compliance, Cease and Desist Orders, Order of Denial, and Other Orders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; confirmation of effective date; disposition of comments.

**SUMMARY:** On August 12, 2014, the FAA published an immediate final rule (79 FR 46964) entitled ''Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders.'' This action confirms the effective date of the immediate final rule and responds to the comments received on that immediate final rule.

**DATES:** The immediate final rule published August 12, 2014 (79 FR 46964) will become effective on October 14, 2014.

**ADDRESSES:** You may review the public docket for this rulemaking (Docket No. FAA–2014–0505) at the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the public docket on the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For technical or legal questions concerning this action, contact Edmund Averman, Office of the Chief Counsel (AGC–210), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3147; email *Ed.Averman@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 12, 2014, the FAA published an immediate final rule entitled ''Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders'' (79 FR 46964). That rulemaking provides the opportunity for an informal conference with an FAA attorney before an order is issued under 14 CFR 13.20, the FAA's regulation covering orders other than certificate action and civil penalty orders. The change is necessary to provide additional fairness and process to those persons who are subject to such an order, and is consistent with the process available in other enforcement actions. These conferences may result in either a resolution of the matter or a narrowing of the issues, thereby conserving resources for respondents and the FAA.

#### Discussion of Comments

The FAA received one comment on the immediate final rule. The National Business Aviation Association (NBAA) welcomed the FAA's amendment to § 13.20. The NBAA recognized this change provides additional fairness to those subject to an order. The NBAA acknowledged this rule as a positive change for the industry.

#### Conclusion

After consideration of the comments submitted in response to the immediate final rule, the FAA has determined that no revisions to the rule are warranted based on the comments received.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44707 in Washington, DC, on October 9, 2014.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2014–24566 Filed 10–14–14; 8:45 am]

BILLING CODE 4910–13–P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

### Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in November 2014. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective November 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for November 2014.[1]

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer

Continued

The November 2014 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for October 2014, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during November 2014, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 4022**

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 253, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | * | * |
| 253 | 11–1–14 | 12–1–14 | 1.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 253, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | * | * |
| 253 | 11–1–14 | 12–1–14 | 1.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

Issued in Washington, DC, on this 7th day of October 2014.

**Judith Starr,**

*General Counsel, Pension Benefit Guaranty Corporation.*

[FR Doc. 2014–24440 Filed 10–14–14; 8:45 am]

BILLING CODE 7709–01–P

plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2014–0715]**

**RIN 1625–AA08**

## Special Local Regulation; Mavericks Invitational Surf Competition, Half Moon Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Coast Guard is establishing a special local regulation in the navigable waters of Half Moon Bay, CA near Pillar Point in support of the Mavericks Invitational Surf Competition to be held one day between November 1 of each year and March 31 of the following year, from 6 a.m. until 6 p.m. This special local regulation will temporarily restrict vessel traffic in vicinity of Pillar Point and prohibit vessels not participating in the surfing event from entering the dedicated surfing area and a designated no-entry area. This regulation is necessary to provide for the safety of life on the navigable waters immediately prior to, during, and immediately after the surfing competition.

**DATES:** This rule is effective November 1, 2014.

*Comment Date:* Comments and related material must be received by the Coast Guard on or before November 14, 2014.

Requests for public meetings must be received by the Coast Guard on or before November 14, 2014.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–0715 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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 Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call 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

## A. Public Participation and Request for Comments

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

### *1. Submitting Comments*

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0715) in the ''Search'' box and click ''Search.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

### *2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0715) 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 plan to hold public meetings on this rule. However, you may submit a request for one on or before November 14, 2014 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 Mavericks Invitational Surf Competition has grown in popularity within the past several years. Due to the inherent dangers of the competition and the disruption to the normal uses of the waterways in the vicinity of Pillar Point, the Coast Guard issues a Marine Event Permit to the event sponsor. Following the collapse of the Cliffside viewing area in 2011, the Coast Guard became concerned that the loss of shore-side viewing would result in a larger than expected number of spectator vessels in the vicinity of the event and considered promulgating a Safety Zone which would prevent spectator vessels from encroaching on the competition area to preserve the safety of both the surfers and the spectators. Because it proved impossible to reliably predetermine the exact location of breaking surf, the Coast Guard did not establish a Safety Zone for subsequent events, but has continued to maintain a presence at the event to protect the competitors from encroaching spectator vessels and vice versa. This special local regulation formalizes the scheme employed during the 2013 and 2014 competitions, which proved to be an effective means of separating competitors from spectators. The two zones and associated regulations contained in this rule are intended to ensure the safety of competitors from spectator vessels, and to enhance safety of spectator vessels by creating a designated area in which the Coast Guard may direct the movement of such vessels. Because of the dangers posed by the surf conditions during the Mavericks Invitational Surf Competition, the special local regulation is necessary to provide for the safety of event participants, spectators, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

The Coast Guard is enacting this special local regulation without publishing an NPRM. The Coast Guard finds good cause for publishing this interim rule without an NPRM because an NPRM, in this case, is unnecessary.

Public interest in this regulation is low: This event involves a limited area, does not restrict navigation and is enforced for only one day within the regulated period. In addition, the Coast Guard has been working with the event sponsors, participants and spectators for two years and has received input from the involved parties on how to best manage this event over the years. Finally, by publishing this rule as an interim rule, the Coast Guard remains open to public comment on how to improve the regulation.

The effective date of this regulation is less than thirty days from the date of publication. The Coast Guard finds good cause for making this interim rule effective less than thirty days after publication because doing so is unnecessary. This event has been occurring for the previous two years and is known to the local community. In addition, the Coast Guard has been working with the event sponsors, participants and spectators for two years and has a good idea how to best manage this event. Finally, while the regulation will be in effect starting in November, the date of the event is most likely to be between January and March, so sufficient notice before the actual enforcement period would be available.

**C. Basis and Purpose**

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations.

The Mavericks Invitational Surf Competition is a one day ''Big Wave'' surfing competition between the top 24 big wave surfers. The competition only occurs when 15–20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5–10 knots. The rock and reef ridges that make up the sea floor of the Pillar Point area combined with optimal weather conditions create the large waves that Mavericks is known for. Due to the hazardous waters surrounding Pillar Point at the time of the surfing competition, the Coast Guard is establishing a special local regulation in vicinity of Pillar Point that restricts navigation in the area of the surf competition and in neighboring hazardous areas. This regulation is intended to ensure the safety of competitors by delineating a specific competition area, and to provide for the safety of spectators by imposing operating restrictions on those vessels.

**D. Discussion of the Interim Rule**

The Coast Guard is establishing a regulated area for the Mavericks Invitational Surf Competition. The Mavericks Invitational Surf Competition will take place on a day that presents favorable surf conditions between November 1 of each year and March 31 of the following year, from 6 a.m. until 6 p.m. The Mavericks Invitational can only occur when 15–20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5–10 knots. Unpredictable weather patterns and the event's narrow operating window limit the Coast Guard's ability to notify the public of the event. The Coast Guard will issue notice of the event as soon as practicable and no later than 24 hours prior via the Broadcast Notice to Mariners.

The Mavericks Invitational Surf Competition will occur in the navigable waters of Half Moon Bay, CA in vicinity of Pillar Point as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18682. The Coast Guard will enforce a regulated area defined by an arc extending 1000 yards from Sail Rock (37°29′34″ N, 122°30′02″ W) excluding the waters within Pillar Point Harbor. All restrictions would apply only between 6 a.m. and 6 p.m. on the day of the actual competition.

The effect of this regulation will be to restrict navigation in the vicinity of Pillar Point during the Mavericks Invitational Surf Competition. During the enforcement period, the Coast Guard will direct the movement and access of all vessels within the regulated area. The regulated area will be divided into two zones. Zone 1 will be designated as the competition area, and the movement of vessels within Zone 2 will be controlled by PATCOM.

This regulation is needed to keep spectators and vessels a safe distance away from the event participants and the hazardous waters surrounding Pillar Point. Past competitions have demonstrated the importance of restricting access to the competition area to only vessels in direct support of the competitors. Failure to comply with the lawful directions of the Coast Guard could result in additional vessel movement restrictions, citation, or both.

**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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The regulated area and associated regulations are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the regulated area, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the regulations will result in minimum impact. The entities most likely to be affected are small commercial vessels, and pleasure craft engaged in recreational activities.

*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 may affect owners and operators of commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of the enforcement of the regulated area via Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, 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 calls for no 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add § 100.1106 to read as follows:

**§ 100.1106 Special Local Regulation; Annual Mavericks Invitational Big Wave Surf Competition.**

(a) *Location.* This special local regulation establishes a regulated area on the waters of Half Moon Bay, located in the vicinity of Pillar Point. Movement within marinas, pier spaces, and facilities within Pillar Point Harbor is not regulated by this section.

(b) *Enforcement Period.* The following regulations will be enforced between the hours of 6 a.m. and 6 p.m. on one day between November 1 of each year and March 31 of the following year. Annual notice of the specific enforcement dates and times of these regulations will be announced via Broadcast Notice to Mariners and published by the Coast Guard in a Boating Public Safety Notice at least 24 hours in advance of the competition. Annual notice of the specific enforcement dates and times will also be published in a Notice of Enforcement in the **Federal Register** each year.

(c) *Definitions.* (1) *Patrol Commander.* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) pursuant to a Memorandum of Understanding with that agency, to assist in the enforcement of the special local regulation.

(2) *Regulated Area.* As used in this section ''Regulated Area'' means the area in which the Maverick's Invitational Surf Competition will take place. This area is bounded by an arc

extending 1000 yards from Sail Rock (37°29′34″ N, 122°30′02″ W) excluding the waters within Pillar Point Harbor. All coordinates are North American Datum 1983. Within the Regulated Area, at least two zones will be established and marked by buoys on the day of the competition. Due to the dynamic and changing nature of the surf, the exact size and location of the zones will not be made public until the competition day. The zones will be prominently marked by at least 8 buoys, placed by the event sponsor in a pattern approved by PATCOM. In addition, the USCG will notify the public of the zone locations via broadcast notice to mariners on the day of the event.

(3) *Zone 1.* As used in this section, ''Zone 1'' means the competition area within the Regulated Area. Zone 1 will generally be located to the northwest of a line drawn between Sail Rock (37°29′34″ N, 122°30′02″ W) and Pillar Point Entrance Lighted Gong Buoy 1 (37°29′10.410″ N, 122°30′21.904″ W).

(4) *Zone 2.* As used in this section, ''Zone 2'' means the area within the Regulated Area where the Coast Guard may direct the movement of all vessels, including restricting vessels from this area. Due to weather and sea conditions, the Captain of the Port may deny access to Zone 2 and the remainder of the regulated area to all vessels other than competitors and support vessels on the day of the event. Zone 2 will generally be located to the southeast of a line drawn between Sail Rock (37°29′34″ N, 122°30′02″ W) and Pillar Point Entrance Lighted Gong Buoy 1 (37°29′10.410″ N, 122°30′21.904″ W).

(5) *Competitor.* As used in this section ''competitor'' means a surfer, enrolled in the Maverick's Invitational Surf Competition.

(6) *Support Vessel.* As used in this section ''support vessel'' means a vessel which is designated and conspicuously marked by the sponsor to provide direct support to the competitors.

(7) *Spectator Vessel.* As used in this section ''spectator vessel'' means any vessel or person which is not designated by the sponsor as a support vessel.

(d) *Special Local Regulations.* The following regulations apply between the hours of 6am and 6pm on the competition day.

(1) Regulated Area Restrictions:

(i) Only support vessels may be authorized by the Patrol Commander (PATCOM) to enter Zone 1 during the competition.

(ii) Entering the water in Zone 1 by any person other than the competitors is prohibited. Competitors shall enter the water in Zone 1 from authorized support vessels only.

(iii) Vessels within Zone 2 shall maneuver as directed by PATCOM. Given the changing nature of the surf in the vicinity of the competition, PATCOM may close Zone 2 to all vessels due to hazardous conditions.

(iv) Entering the water in Zone 2 by any person is prohibited.

(v) Rafting and anchoring of vessels are prohibited within the Regulated Area.

(vi) Only vessels authorized by PATCOM shall be permitted to tow other watercraft within the regulated area.

(vii) Spectator and support vessels in Zones 1 and 2 shall operate at speeds which will create minimum wake, in general, seven (7) miles per hour or less.

(viii) When hailed or signaled by PATCOM by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(ix) During the events, vessel operators may contact the PATCOM on VHF–FM channel 16.

(2) [Reserved]

Dated: September 18, 2014.

**Michael H. Day,**

*Captain, U.S. Coast Guard. Captain of the Port San Francisco, Acting.*

[FR Doc. 2014–24428 Filed 10–14–14; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–8355]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

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

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

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

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

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth

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

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

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

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

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

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

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

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

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

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

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

### § 64.6 [Amended]

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

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region III** | | | | |
| Maryland: | | | | |
| Calvert County, Unincorporated Areas | 240011 | July 5, 1973, Emerg; September 28, 1984, Reg; November 19, 2014, Susp. | November 19, 2014. | November 19, 2014 |
| Chesapeake Beach, Town of, Calvert County. | 240100 | September 15, 1975, Emerg; November 1, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Leonardtown, Town of, Saint Mary's County. | 240065 | April 14, 1975, Emerg; September 28, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| North Beach, Town of, Calvert County | 240012 | August 30, 1974, Emerg; September 28, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Saint Mary's County, Unincorporated Areas. | 240064 | April 28, 1975, Emerg; February 19, 1987, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Pennsylvania: | | | | |
| Ashland, Borough of, Schuylkill County | 420765 | August 20, 1974, Emerg; August 1, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Auburn, Borough of, Schuylkill County | 420766 | July 29, 1975, Emerg; May 17, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Barry, Township of, Schuylkill County ... | 421997 | August 5, 1975, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Blythe, Township of, Schuylkill County | 420767 | March 30, 1973, Emerg; June 15, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Branch, Township of, Schuylkill County | 421998 | December 2, 1975, Emerg; June 4, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Butler, Township of, Schuylkill County .. | 421999 | September 15, 1975, Emerg; November 16, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Cass, Township of, Schuylkill County ... | 422000 | December 8, 1975, Emerg; May 17, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Cressona, Borough of, Schuylkill County. | 420769 | May 23, 1973, Emerg; August 1, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Deer Lake, Borough of, Schuylkill County. | 422640 | January 22, 1976, Emerg; February 2, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Delano, Township of, Schuylkill County | 422001 | April 30, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| East Brunswick, Township of, Schuylkill County. | 422002 | April 9, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| East Norwegian, Township of, Schuylkill County. | 422003 | August 7, 1975, Emerg; August 3, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| East Union, Township of, Schuylkill County. | 422004 | April 21, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | Do. ..... | Do. |
| Eldred, Township of, Schuylkill County | 422005 | August 5, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Foster, Township of, Schuylkill County | 422006 | April 21, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Frackville, Borough of, Schuylkill County. | 420771 | July 9, 1975, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Gilberton, Borough of, Schuylkill County | 421007 | August 18, 1972, Emerg; May 2, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Girardville, Borough of, Schuylkill County. | 420772 | April 29, 1975, Emerg; February 2, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Gordon, Borough of, Schuylkill County | 420773 | September 6, 1974, Emerg; November 15, 1978, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Hegins, Township of, Schuylkill County | 422008 | July 15, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Hubley, Township of, Schuylkill County | 422009 | October 15, 1975, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Kline, Township of, Schuylkill County ... | 422010 | December 26, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Landingville, Borough of, Schuylkill County. | 420774 | June 28, 1973, Emerg; August 15, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Mahanoy, Township of, Schuylkill County. | 422011 | August 20, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| McAdoo, Borough of, Schuylkill County | 420776 | June 6, 1973, Emerg; April 17, 1978, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Mechanicsville, Borough of, Schuylkill County. | 421994 | May 12, 1975, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Middleport, Borough of, Schuylkill County. | 420777 | September 27, 1974, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Minersville, Borough of, Schuylkill County. | 420778 | April 4, 1974, Emerg; March 2, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Mount Carbon, Borough of, Schuylkill County. | 421995 | August 28, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| New Castle, Township of, Schuylkill County. | 422012 | December 3, 1979, Emerg; August 13, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| New Philadelphia, Borough of, Schuylkill County. | 420779 | May 25, 1973, Emerg; August 15, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| New Ringgold, Borough of, Schuylkill County. | 421996 | August 22, 1975, Emerg; November 15, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| North Manheim, Township of, Schuylkill County. | 422013 | September 29, 1975, Emerg; November 15, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| North Union, Township of, Schuylkill County. | 422014 | July 11, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Norwegian, Township of, Schuylkill County. | 422015 | April 21, 1975, Emerg; July 9, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Orwigsburg, Borough of, Schuylkill County. | 421204 | May 15, 1974, Emerg; March 2, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Palo Alto, Borough of, Schuylkill County | 420780 | December 13, 1974, Emerg; August 3, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Pine Grove, Borough of, Schuylkill County. | 420781 | April 17, 1973, Emerg; December 4, 1979, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Pine Grove, Township of, Schuylkill County. | 420782 | June 14, 1973, Emerg; April 16, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Port Carbon, Borough of, Schuylkill County. | 420783 | September 15, 1972, Emerg; January 19, 1978, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Port Clinton, Borough of, Schuylkill County. | 420784 | December 15, 1972, Emerg; February 1, 1980, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Porter, Township of, Schuylkill County | 422016 | August 18, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Pottsville, City of, Schuylkill County ..... | 420785 | June 28, 1973, Emerg; July 5, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Reilly, Township of, Schuylkill County .. | 422017 | April 7, 1975, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Ringtown, Borough of, Schuylkill County. | 422505 | May 27, 1975, Emerg; June 25, 1976, Reg; November 19, 2014, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Rush, Township of, Schuylkill County ... | 422018 | April 21, 1975, Emerg; January 7, 1983, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Ryan, Township of, Schuylkill County ... | 422019 | April 7, 1975, Emerg; April 1, 1983, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Schuylkill, Township of, Schuylkill County. | 422020 | May 27, 1975, Emerg; March 11, 1983, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Shenandoah, Borough of, Schuylkill County. | 420788 | May 16, 1973, Emerg; May 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| South Manheim, Township of, Schuylkill County. | 422022 | August 6, 1975, Emerg; May 4, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Saint Clair, Borough of, Schuylkill County. | 420786 | November 24, 1972, Emerg; March 15, 1977, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Tamaqua, Borough of, Schuylkill County. | 425389 | January 29, 1971, Emerg; December 3, 1971, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Tower City, Borough of, Schuylkill County. | 420790 | April 29, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Tremont, Township of, Schuylkill County. | 422023 | March 19, 1975, Emerg; September 5, 1979, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Union, Township of, Schuylkill County .. | 422024 | July 24, 1975, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Walker, Township of, Schuylkill County | 422026 | March 19, 1975, Emerg; December 5, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Washington, Township of, Schuylkill County. | 422506 | April 4, 1979, Emerg; February 2, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Wayne, Township of, Schuylkill County | 422027 | November 13, 1979, Emerg; September 1, 1986, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| West Brunswick, Township of, Schuylkill County. | 422028 | August 1, 1979, Emerg; July 17, 1989, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| West Mahanoy, Township of, Schuylkill County. | 420792 | May 16, 1973, Emerg; April 1, 1983, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| West Penn, Township of, Schuylkill County. | 422029 | April 3, 1979, Emerg; February 2, 1990, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Virginia: | | | | |
| Gloucester County, Unincorporated Areas. | 510071 | March 25, 1974, Emerg; August 4, 1987, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| **Region V** | | | | |
| Indiana: | | | | |
| Brownstown, Town of, Jackson County | 180317 | January 29, 1976, Emerg; January 3, 1985, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Carmel, City of, Hamilton County ..... | 180081 | August 7, 1975, Emerg; May 19, 1981, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Cicero, Town of, Hamilton County ..... | 180320 | March 24, 1975, Emerg; January 2, 1980, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Crothersville, Town of, Jackson County | 180378 | September 23, 1976, Emerg; January 3, 1985, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Hamilton County, Unincorporated Areas | 180080 | December 15, 1988, Emerg; December 16, 1988, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Jackson County, Unincorporated Areas | 180405 | December 13, 1974, Emerg; January 5, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Medora, Town of, Jackson County ..... | 180098 | May 11, 1976, Emerg; January 5, 1984, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Noblesville, City of, Hamilton County .... | 180082 | June 12, 1975, Emerg; March 2, 1981, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Seymour, City of, Jackson County ..... | 180099 | April 3, 1975, Emerg; November 2, 1983, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Sheridan, Town of, Hamilton County .... | 180516 | N/A, Emerg; June 1, 2004, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Westfield, City of, Hamilton County ..... | 180083 | August 15, 1975, Emerg; March 16, 1981, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Minnesota: | | | | |
| Albert Lea, City of, Freeborn County ..... | 270135 | October 17, 1974, Emerg; May 3, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Emmons, City of, Freeborn County ..... | 270657 | March 25, 1977, Emerg; May 3, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Freeborn County, Unincorporated Areas | 270134 | April 16, 1974, Emerg; May 3, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |
| Glenville, City of, Freeborn County ..... | 270137 | May 2, 1974, Emerg; May 3, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Twin Lakes, City of, Freeborn County .. | 270139 | September 22, 1977, Emerg; May 3, 1982, Reg; November 19, 2014, Susp. | .....do ..... | Do. |

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 29, 2014.

**David L. Miller,**

*Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014–24417 Filed 10–14–14; 8:45 am]

**BILLING CODE 9110–12–P**

## LEGAL SERVICES CORPORATION

## 45 CFR Part 1614

## Private Attorney Involvement

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the Legal Services Corporation (LSC or Corporation) regulation on private attorney involvement (PAI) in the delivery of legal services to eligible clients.

**DATES:** The rule will be effective November 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1563 (phone), (202) 337–6519 (fax), *sdavis@lsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Private Attorney Involvement

In 1981, LSC issued the first instruction (''Instruction'') implementing the Corporation's policy that LSC funding recipients dedicate a percentage of their basic field grants to involving private attorneys in the delivery of legal services to eligible clients. 46 FR 61017, 61018, Dec. 14, 1981. The goal of the policy was to ensure that recipients would provide private attorneys with opportunities to give legal assistance to eligible clients ''in the most effective and economical manner and consistent with the purposes and requirements of the Legal Services Corporation Act.'' *Id.* at 61017. The Instruction gave recipients guidance on the types of opportunities that they could consider, such as engaging private attorneys in the direct representation of eligible clients or in providing community legal education. *Id.* at 61018. Recipients were directed to consider a number of factors in deciding which activities to pursue, including the legal needs of eligible clients, the recipient's priorities, the most effective and economical means of providing legal assistance, linguistic and cultural barriers to effective advocacy, conflicts of interest between private attorneys and eligible clients, and the substantive expertise of the private attorneys participating in the recipients' projects. *Id.*

LSC published the first PAI rule in 1984. 49 FR 21328, May 21, 1984. The new regulation adopted the policy and procedures established by the Instruction in large part. The rule adopted an amount equivalent to 12.5% of a recipient's basic field grant as the amount recipients were to spend on PAI activities. *Id.* The rule also adopted the factors that recipients were to consider in determining which activities to pursue and the procedures by which recipients were to establish their PAI plans. *Id.* at 21328–29. Finally, the rule incorporated the Instruction's prohibition on using revolving litigation funds as a method of engaging private attorneys. *Id.* at 21329.

Over the course of the next two years, LSC amended the PAI rule in several material respects. In recognition of LSC's belief that ''the essence of PAI is the direct delivery of legal services to the poor by private attorneys,'' LSC introduced a provision requiring recipients to meet at least part of their PAI requirement by engaging private attorneys to provide legal assistance directly to eligible clients. 50 FR 48586, 48588, Nov. 26, 1985. At the same time, LSC introduced rules governing joint ventures, waivers, and sanctions for failure to comply with the PAI requirement, in addition to establishing simplified audit rules. *Id.* at 48587–89. The following year, LSC made two substantive changes to the rule. First, LSC included a definition for the term *private attorney,* which the Corporation defined as ''an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.'' 51 FR 21558, June 13, 1986. Second, LSC promulgated the ''blackout provision,'' which prohibited recipients from counting toward their PAI requirement payments made to individuals who had been staff attorneys within the preceding two years. *Id.* at 21558–59.

LSC last amended part 1614 in 2013 as part of the final rule revising LSC's enforcement procedures. 79 FR 10085, Feb. 13, 2013. The only effect of the 2013 amendments was to harmonize part 1614 with the enforcement rules by eliminating references to obsolete rules and replacing them with references to the new rules. *Id.* at 10092.

### II. The Pro Bono Task Force

On March 31, 2011, the LSC Board of Directors (Board) approved a resolution establishing the Pro Bono Task Force. Resolution 2011–009, ''Establishing a Pro Bono Task Force and Conferring Upon the Chairman of the Board Authority to Appoint Its Members,'' Mar. 31, 2011, *http://www.lsc.gov/board-directors/resolutions/resolutions-2011.* The purpose of the Task Force was to ''identify and recommend to the Board new and innovative ways in which to promote and enhance pro bono initiatives throughout the country[.]'' *Id.* The Chairman of the Board appointed to the Task Force individuals representing legal services providers, organized pro bono programs, the judiciary, law firms, government attorneys, law schools, bar leadership, corporate general counsels, and technology providers.

The Task Force focused its efforts on identifying ways to increase the supply of lawyers available to provide pro bono legal services while also engaging attorneys to reduce the demand for legal services. Legal Services Corporation, *Report of the Pro Bono Task Force* at 2, October 2012, *available at http://lri.lsc.gov/legal-representation/private-attorney-involvement/resources.* Members considered strategies for expanding outreach to private attorneys and opportunities for private attorneys to represent individual clients in areas of interest to the attorneys. In addition, the Task Force explored strategies, such as appellate advocacy projects or collaborations with special interest groups, to help private attorneys address systemic problems as a way to decrease the need for legal services on a larger

scale than can be achieved through individual representation. *Id.* Finally, the Task Force considered ways in which volunteers, including law students, paralegals, and members of other professions, could better be used to address clients' needs. *Id.*

In October 2012, the Task Force released its report to the Corporation. The Task Force made four overarching recommendations to LSC in its report.

Recommendation 1: LSC Should Serve as an Information Clearinghouse and Source of Coordination and Technical Assistance to Help Grantees Develop Strong Pro Bono Programs

Recommendation 2: LSC Should Revise Its Private Attorney Involvement (PAI) Regulation to Encourage Pro Bono.

Recommendation 3: LSC Should Launch a Public Relations Campaign on the Importance of Pro Bono

Recommendation 4: LSC Should Create a Fellowship Program to Foster a Lifelong Commitment to Pro Bono

The Task Force also requested that the judiciary and bar leaders assist LSC in its efforts to expand pro bono by, for example, changing or advocating for changes in court rules that would allow retired attorneys or practitioners licensed outside of a recipient's jurisdiction to engage in pro bono legal representation. *Id.* at 25–27. Collaboration among LSC recipients, the private bar, law schools, and other legal services providers was a theme running throughout the Task Force's recommendations to the Corporation.

Recommendation 2 provided the impetus for the NPRM. Recommendation 2 had three subparts. Each recommendation focused on a portion of the PAI rule that the Task Force identified as posing an obstacle to effective engagement of private attorneys. Additionally, each recommendation identified a policy determination of the Corporation or an interpretation of the PAI rule issued by the Office of Legal Affairs (OLA) that the Task Force believed created barriers to collaboration and the expansion of pro bono legal services. The three subparts are:

2(a)—Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in ''incubator'' initiatives.

2(b)—Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.

2(c)—LSC should reexamine the rule that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

*Id.* at 20–21.

The Task Force observed in Recommendation 2 that the ''PAI regulation has resulted in increased collaboration between LSC grantees and private attorneys,'' but that the legal market has changed since the rule's issuance. *Id.* at 20. The Task Force suggested that ''there are certain areas where the regulation might productively be revised to ensure that LSC grantees can use their grants to foster pro bono participation.'' *Id.* For example, the omission of services provided by law students and other non-lawyers and the poor fit of the ''staff attorney'' construct in the definition of ''private attorney'' created complications for recipients attempting to fulfill the PAI requirement. *Id.* at 20–21. The Task Force encouraged LSC to undertake a ''thoughtful effort to reexamine the regulation to ensure that it effectively encourages pro bono participation.'' *Id.* at 22.

## III. History of This Rulemaking

After receiving the PBTF's report, LSC determined that it would be necessary to revise part 1614 to respond to some of the Task Force's recommendations. On January 26, 2013, LSC's Board of Directors authorized the initiation of rulemaking to explore options for revising the PAI requirement.

LSC determined that an examination of the PAI rule within the context of the Task Force recommendations would benefit from early solicitation of input from stakeholders. LSC therefore published two requests for information seeking both written comments and participation in two rulemaking workshops held in July and September 2013. The first request for information focused discussion specifically on the three parts of Recommendation 2. 78 FR 27339, May 10, 2013. The second request for information, published after the July workshop, supplemented the first with questions developed in response to issues raised at the July workshop. 78 FR 48848, Aug. 12, 2013. The closing date of the comment period for both requests for information was October 17, 2013.

The Corporation considered all comments received in writing and provided during the rulemaking workshops in the development of the NPRM. On April 8, 2014, the Board approved the NPRM for publication, and the NPRM was published in the **Federal Register** on April 16, 2014. 79 FR 21188, Apr. 16, 2014. The comment period was open for sixty days, and closed on June 16, 2014. *Id.*

LSC analyzed all comments received and sought additional input from the Office of Program Performance (OPP), the Office of Compliance and Enforcement (OCE), and the Office of Inspector General (OIG). For the reasons discussed in the Section-by-Section Analysis below, LSC is not making significant revisions to the proposed rule.

LSC presented this final rule to the Committee on October 5, 2014, at which time the Committee voted to recommend that the Board adopt the rule, subject to minor amendments. On October 7, 2014, the Board voted to adopt the amended final rule and approved it for publication in the **Federal Register**.

All of the comments and related memos submitted to the LSC Board regarding this rulemaking are available in the open rulemaking section of LSC's Web site at *http://www.lsc.gov/about/regulations-rules/open-rulemaking.* After the effective date of the rule, those materials will appear in the closed rulemaking section at *http://www.lsc.gov/about/regulations-rules/closed-rulemaking*.

## IV. Section-by-Section Discussion of Comments and Regulatory Provisions

LSC received eight comments during the public comment period. LSC subsequently received one additional comment. Four comments were submitted by LSC recipients—California Rural Legal Assistance (CRLA) (jointly with the Legal Services Association of Michigan (LSAM), an organization representing fourteen LSC and non-LSC civil legal services providers in Michigan), Northwest Justice Project (NJP), Legal Aid Society of Northeastern New York (LASNNY), and Legal Services NYC (LSNYC). The National Legal Aid and Defender Association (NLADA), the American Bar Association (ABA), through its Standing Committee on Legal Aid and Indigent Defendants and with substantial input from the Standing Committee on Pro Bono and Public Service, the New York State Bar Association, the California Commission on Access to Justice (Access Commission), and the LSC Office of Inspector General (OIG) submitted the other five comments.

Commenters were generally supportive of the changes LSC proposed that expanded opportunities to engage interested individuals in providing legal assistance and legal information to the poor; however, OIG took no position on the proposed changes. Overall, the public comments endorsed LSC's decision to adopt the part of Recommendation 2(a) of the PBTF report that advocated allowing recipients to allocate resources spent

supervising and training law graduates, law students, and others to their PAI requirements. The Access Commission noted that this proposed change ''reflects the reality that law students, law graduates, and other professionals can and do play an important role in helping to meet unmet legal needs in a cost-effective and sustainable manner.'' LSNYC stated that the changes would ''harmonize[] PAI regulations with the pro bono standards of other funders and the pro bono community at large.''

Comments from the public also praised LSC's decision to adopt the part of Recommendation 2(a) that advocated exempting attorneys who had participated in ''incubator'' projects from the two-year blackout period on payments to former staff attorneys. For example, NLADA commented that the revision would ''assist[] LSC programs in creating incubator programs that benefit new attorneys by giving them a start in practice [and] benefit[] recipients by providing trained attorneys to handle cases for a modest payment thus expanding the supply of available lawyers.''

Finally, the public comments supported LSC's decision to amend part 1614 in order to reverse the effect of two opinions published by OLA, AO–2011–001 and EX–2008–1001. These opinions interpreted part 1614 as requiring recipients to accept eligible clients as their own in order to allocate to their PAI requirements the costs incurred by either providing support to a pro bono clinic at which participants received individualized legal assistance or to screening clients and referring them to an established network of volunteer attorneys for placement. LSC's decision responded to Recommendations 2(b) and 2(c) of the PBTF report. NJP, which operates the screening and referral program that was the subject of AO–2011–001, specifically commented that it was ''heartened by the fact that under the proposed revisions it appears that NJP's significant support for the statewide pro bono delivery system in Washington, through its telephonic intake and referral system . . . will now enjoy recognition of the important role this support plays to enhance private bar involvement efforts statewide.'' The Access Commission supported the revision as a ''sensible and efficient proposal[] that promote[s] use of private attorneys, conservation of program resources, and meeting unmet legal needs.'' The ABA and NLADA similarly supported amending the rule to reverse the effect of the two opinions.

*Proposed § 1614.1—Purpose.*

LSC proposed revising this section to state more clearly the purpose of the PAI rule and to encourage the inclusion of law students, law graduates, and other professionals in recipients' PAI plans. LSC received no public comments on this section. LSC is making a technical change to the first sentence of the section to make clear that PAI programs are to be conducted ''within the established priorities of that program, and consistent with LSC's governing statutes and regulations[.]''

*Proposed § 1614.2—General Policy*

LSC proposed to consolidate all statements of policy scattered throughout existing part 1614 into this section. LSC received no public comments on this section. LSC is making technical revisions to § 1614.2 to make clear that the PAI requirement applies only to the annualized award to provide legal services to the general low-income population living in a specific geographic area (''Basic Field-General grants''). Three types of awards are not subject to the PAI requirement: awards to provide legal services to Native Americans living in a specific geographical area, related to their status as Native Americans (''Basic Field-Native American grants'') and awards to provide legal services to migrant farmworkers living in a specific geographical area, related to their status as migrant farmworkers (''Basic Field-Migrant grants''), and any grants outside of basic field grants, such as Technology Initiative Grants and the grants to be awarded from the Pro Bono Innovation Fund.

*Proposed § 1614.3—Definitions*

*Organizational note.* Because LSC is adding a definition for the term *incubator project* as § 1614.3(b), the terms defined in paragraphs (b)–(i) in the NPRM will be redesignated as paragraphs (c)–(j) in this final rule. In the following discussion of the comments and changes to the proposed rule, LSC will refer to the redesignated paragraphs by the designation used in the final rule, except where the proposed rule is explicitly referenced.

*§ 1614.3(a) Attorney.* LSC is making editorial changes to the proposed definition of the term *attorney* in response to staff comments. Some commenters found the proposed definition, which simply excepted *attorney* from the definition provided in 45 CFR 1600.1 for purposes of this part, awkward. LSC revised the definition to mirror the § 1600.1 definition to the extent possible and still have it make sense within the context of the PAI rule. LSC also retained the part of the NPRM definition that stated the § 1600.1 definition does not apply to part 1614.

*§ 1614.3(b) Incubator project.* LSC is adding a definition for the term *incubator project* in response to staff comments. LSC took the definition proposed in the version of the final rule presented to the Committee from proposed § 1614.5(c)(2), which described an incubator project as ''a program to provide legal training to law graduates or newly admitted attorneys who intend to establish their own independent law practices.'' 79 FR 21188, 21200, Apr. 15, 2014. At the Committee meeting on October 5, 2014, the ABA proposed revising the definition to include law students as individuals who could participate in an incubator project and to make clear that participation in an incubator project, rather than the project itself, is time-limited. The Committee agreed to revise the definition consistent with the ABA's proposal, and the version of the final rule approved by the Board contained the new language.

*§ 1614.3(c) Law graduate.* Section 1614.3(b) proposed to define the term *law graduate* to mean an individual who has completed the educational or training requirements required for application to the bar in any U.S. state or territory. LSC received no comments on this definition.

*§ 1614.3(d) Law student.* Proposed 1614.3(c) defined the term *law student* to include two groups. The first was individuals who are or have been enrolled in a law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory. The second was individuals who are or have been participating in an apprenticeship program that can provide the individual with sufficient qualifications to apply for the bar in any U.S. state or territory. LSC received no comments on this definition.

*§ 1614.3(e) Legal assistance.* This proposed definition was substantially adapted from the LSC CSR Handbook, and is different from the term *legal assistance* defined in the LSC Act and in § 1600.1 of these regulations. LSC proposed to adopt the CSR Handbook definition in the PAI rule for consistency in the treatment of legal assistance and compliance with eligibility screening requirements by both recipients and private attorneys. LSC received no comments on this definition.

*§ 1614.3(f) Legal information.* LSC proposed to define the term *legal information* as the provision of

substantive legal information that is not tailored to address an individual's specific legal problem and that does not involve applying legal judgment or recommending a specific course of action. This definition was also adapted substantially from the CSR Handbook for the same reasons stated above with respect to the definition of *legal assistance.* LSC received no comments on this definition.

*§ 1614.3(g) Other professional.* In the NPRM, LSC proposed to define *other professional* as any individual who is not engaged in the practice of law, is not employed by the recipient, and is providing services to an LSC recipient in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. LSC intended this definition to cover a wide spectrum of professionals whose services will help recipients increase the effectiveness and efficiency of their programs. Such professionals include paralegals, accountants, and attorneys who are not authorized to practice law in the recipient's jurisdiction (such as an attorney licensed in another jurisdiction or a retired attorney who is prohibited from practicing by the bar rules). These individuals may provide services within their areas of expertise to a recipient that would improve the recipient's delivery of legal services. For example, a volunteer paralegal representing a client of the recipient in a Supplemental Security Income case or a volunteer accountant providing a legal information program on the earned income tax credit would constitute *other professionals* assisting a recipient in its delivery of legal information or legal assistance to eligible clients. LSC received no comments on this definition.

LSC will replace the phrase ''limited license to provide legal services'' with the term ''limited license to practice law'' to reflect more accurately what limited license legal technicians and others similarly situated are authorized to do.

*§ 1614.3(h) PAI clinic.* Proposed § 1614.3(g) defined the term *PAI clinic* as ''an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.'' PAI clinics may consist solely of a legal information session on a specific topic, such as bankruptcy or no-contest divorce proceedings, that are open to the public and at which no individual legal assistance is provided. Additionally, a PAI clinic may be open to the public for either the provision of individual legal assistance or a referral for services from another organization. Some clinics are hybrids of the two models, and some clinics are aimed at providing technical assistance to pro se litigants, such as help understanding the court procedures or filling out pleadings. The common thread among the activities considered to be *clinics* is that they are open to the public and distinct from a recipient's regular legal practice. LSC received no comments on this definition.

*§ 1614.3(i) Private attorney. Comment 1:* LSC received four comments objecting to the exclusion of attorneys ''employed by a non-LSC-funded legal services provider acting within the terms of [their] employment with the non-LSC-funded provider'' from the definition of *private attorney.* 79 FR 21188, 21199, Apr. 15, 2014. NLADA, the Access Commission, and CRLA/LSAM all asserted that the proposed exclusion was ambiguous and overly broad, and would prevent recipients from including collaborations with certain other non-profit organizations within their PAI plans. The ABA also observed that the term ''legal services provider'' was ambiguous and could be interpreted as including private law firms.

CRLA/LSAM observed that

> [o]ften times, due to lack of profitability, logistics and conflicts the only law firms willing to join rural LSC recipients as attorneys willing to co-counsel education, housing and environmental justice cases in the remote rural communities we work in are attorneys employed by a non-LSC-funded, non-profit legal services provider who is acting within the terms of his/her employment . . . . For rural grantees to engage in co-counseling cases, they largely rely on non-LSC funded non-profits with an expertise in specific legal areas, but no geographic ties . . . to these rural communities.

Finally, they observed that AO–2009–1004 only prohibited recipients from allocating to their PAI requirements costs associated with subgrants to staff-model legal services providers to operate a hotline that provided advice and referrals. AO–2009–1004 did not, they continued ''exclude from PAI counting staff time facilitating, supervising, or co-counseling with these same non-profit, non-LSC staff model legal providers who donate their time to a recipient.'' It is the donation of the services, rather than the donor's nature as a provider of legal services to the poor, that ''is at the heart of pro bono legal services and should be at the heart of all LSC PAI plans.'' CRLA/LSAM recommended that LSC revise the exclusion to apply only to ''[a]n attorney who receives more than half of his or her professional income from a non-LSC-funded legal services provider which receives a subgrant from any recipient, acting within the terms of his or her employment with the non-LSC-funded provider.''

The Access Commission also observed that the ''proposed exclusion is ambiguous and overly broad and may unnecessarily restrict the pool of attorneys eligible to volunteer with LSC-funded legal services programs.'' Like CRLA/LSAM, the Access Commission highlighted California's particular concerns about having a limited pool of attorneys available to work in its ''vast rural and underserved areas.'' Unlike CRLA/LSAM, the Access Commission recommended that LSC narrow the exclusion to apply only to ''non-profit organization[s] whose primary purpose is delivery of civil legal services to the poor . . . .'' They urged that ''the proposed rules be flexible enough to encourage the participation of attorneys who do not usually serve low income clients while permitting LSC-funded legal services programs to recruit and work with available attorneys and organizations in their local communities.''

Finally, NLADA advocated the inclusion of attorneys who work for non-profit organizations whose primary purpose is not the delivery of legal services to the poor. As examples, NLADA offered two organizations: the American Association for Retired Persons (AARP), and the protection and advocacy systems (P&As) funded by the federal government to ensure the rights of individuals with the full range of disabilities. Nationally, AARP provides an array of services and benefits to members; in the District of Columbia, AARP supports Legal Counsel for the Elderly, which provides free legal assistance in civil cases to residents over the age of 60, and in disability cases to residents over the age of 55. P&As receive funding from the U.S. Department of Education, the U.S. Department of Health and Human Services, and the Social Security Administration, to engage in systemic advocacy efforts and to provide individual assistance to individuals with the full range of emotional, developmental, and physical disabilities. P&As may provide legal representation to individuals free of charge or on a sliding scale fee basis.

According to NLADA, these types of organizations ''have invaluable specialized expertise and often strong relationships/collaborations with private firms operating for profit. Partnerships with these organizations

provide significant opportunities for collaborations that expand a recipient's ability to effectively and efficiently serve clients and provide increased opportunities for private bar participation.'' Similar to the Access Commission, NLADA recommended that LSC limit the exclusion to attorneys ''employed by a non-profit organization whose primary purpose is the delivery of civil legal services to the poor during any time that attorney is acting within the terms of his or her employment with that organization[.]''

In its comment, the ABA stated that it agreed in principle with LSC's view that the purpose of the PAI regulation is to engage lawyers who are not currently involved in the delivery of legal services to low-income individuals as part of their regular employment. The ABA recommended that LSC clarify that the term ''legal services provider,'' as used in the rule, means ''an entity whose primary purpose is the delivery of free legal services to low-income individuals.''

*Response:* LSC will revise the language in § 1614.3(i)(2)(ii) to narrow the exclusion to attorneys acting within the terms of their employment by a non-profit organization whose primary purpose is the delivery of free civil legal services to low-income individuals. This definition is adapted from the New York State Bar Association's definition of ''pro bono service'' in the context of the Empire State Counsel Program, which annually recognizes New York attorneys' pro bono efforts, and is substantially similar to the definition recommended by the ABA. LSC understands the issues raised by CRLA, LSAM, the Access Commission, and NLADA, and appreciates the benefits that collaborations between LSC recipients and other non-profit organizations bring to the populations served by those collaborations. Within the context of the PAI rule, however, LSC believes that the focus should be on engaging attorneys who are not employed to provide free legal services to low-income individuals.

Although LSC is excluding legal aid attorneys acting within the scope of their employment from the definition of *private attorney,* the revised language permits recipients to allocate costs to the PAI requirement associated with co-counseling arrangements or other collaborations with attorneys employed by organizations whose primary purpose is not the delivery of free legal services to low-income individuals. For example, although CRLA may no longer be able to count co-counseling with a legal aid organization toward its PAI requirement, it could allocate costs associated with co-counseling a case with California's P&A to the PAI requirement. It also permits a recipient to count as a *private attorney* an attorney who is employed by an organization whose primary purpose is the delivery of free civil legal services to low-income individuals, but who is participating in a PAI clinic supported by a recipient *on the attorney's own time.*

LSC wants to be clear that its decision to exclude legal aid attorneys from the definition of *private attorney* does not mean that recipients should not collaborate with these providers in the delivery of legal information and legal assistance to eligible clients. LSC supports and encourages recipients to work creatively and to build relationships necessary to increase their effectiveness at achieving positive outcomes for their clients. The exclusion simply means that recipients may not allocate costs associated with those collaborations to the PAI requirement.

*Comment 2:* LSC received two comments on § 1614.3(h)(2)(i), which proposed to exclude from the definition of *private attorney* attorneys employed more than 1,000 hours per year by an LSC recipient or subrecipient. In their joint comment, CRLA and LSAM observed that proposed § 1614.3(h)(2)(i) precluded the participation of attorneys who retired or otherwise moved on from an LSC recipient, but wanted to volunteer to handle cases or support the recipient in some fashion. They stated that, according to the history of the PAI rule, the two-year restriction on PAI payments to attorneys who had left a recipient's employ was intended to prevent ''situations in which programs had laid off staff attorneys and then contracted to pay these attorneys for doing the same work they had done before as staff.'' 50 FR 48586, 48587, Nov. 26, 1985. They additionally noted that ''for our purposes here, a recipient could co-counsel with these former staff members within 24 hours of their leaving the employ of a recipient and the staff time spent co-counseling with the former staff member could be counted as PAI.''

NJP objected to proposed § 1614.3(h)(2)(i) on similar grounds. NJP argued that the rule would

> exclude attorneys (1) who leave a recipient's employ after 1001 hours during any year and then seek to volunteer for the program, including recently retired attorneys, attorneys leaving the recipient upon termination of a grant-based position, or attorneys leaving for private employment; and (2) who volunteer for a recipient, but may on occasion be employed on a short-term basis to fill temporary needs arising from staff vacancies or absences such as an extended family medical leave, military leave, short-term special project grant funding, or emergency needs occurring from a sudden staff departure.''

In NJP's view, ''[g]iven that a recipient cannot allocate non-PAI activity to PAI costs in any event, there seems little reason to limit who is considered a 'private attorney' for purposes of supporting their pro bono services based on duration of employment by a recipient, so long as costs are not allocated for time spent while they are employed by the recipient.'' NJP urged LSC to eliminate paragraph (2)(i) from the definition of *private attorney.*

*Response:* LSC did not intend the result described by the commenters. In response to their comment, LSC will revise the language in the definition of *private attorney.* LSC will replace the 1,000 hours per calendar year timeframe with a ''half time'' standard. LSC believes that using a half time standard will more clearly capture its intent that recipients assess an attorney's employment status with the recipient contemporaneously with the services for which they seek to allocate costs to the PAI requirement. In other words, if a recipient employs an attorney ten hours per week, and that attorney also wishes to volunteer to provide advice and counsel at a PAI clinic supported by the recipient, the recipient may consider the part-time attorney a *private attorney* at the time he or she is providing services at the PAI clinic.

LSC will also make two other changes to § 1614.3(i) in the final rule. First, LSC will define *private attorney* as meaning an attorney defined in § 1614.3(a), and relocate all the exceptions to the definition to paragraphs (i)(1)–(3). Second, LSC will add paragraph (i)(4) to clarify that *private attorney* does not include an attorney acting within the terms of his or her employment by a component of a non-profit organization, where the component's primary purpose is the delivery of free civil legal services to low-income individuals. In other words, attorneys working for the legal aid component of a non-profit social services organization whose overall mission is to deliver free social services to low-income individuals are not *private attorneys* for purposes of part 1614. This exclusion is consistent with the rule's primary purpose of engaging attorneys who do not provide legal assistance to the poor in the delivery of legal information and legal assistance to eligible clients.

*§ 1614.3(j) Screen for eligibility.* The proposed definition made clear that individuals receiving legal assistance

through PAI activities must get the same level of screening that recipients use for their own legal assistance activities. Screening for eligibility includes screening for income and assets, eligible alien status, citizenship, whether the individual's case is within the recipient's priorities, and whether the client seeks assistance in an area or through a strategy that is restricted by the LSC Act, the LSC appropriation acts, and applicable regulations. Screening for eligibility can also include determining whether a client can be served using non-LSC funds. LSC received no comments on this definition.

*§ 1614.3(k) Subrecipient.* LSC will add a definition for the term *subrecipient* to the final rule. As LSC considered the public comments, particularly the comments discussing the definition of the term *private attorney,* and recipients' use of subgrants and fee-for-service arrangements to carry out PAI activities, LSC discovered that the term *subrecipient* was over-inclusive for purposes of the PAI rule. *Subrecipient,* as defined in § 1627.2(b)(1) includes fee-for-service arrangements through which attorneys represent a recipient's clients, such as under a contract or a judicare arrangement, when the cost of such arrangement exceeds $25,000.

LSC did not intend to exclude from the definition of *private attorney* attorneys working for a subrecipient that meets the definition solely because an LSC recipient is paying the entity more than $25,000 to provide legal representation to the recipient's clients on a contract or judicare basis. For purposes of part 1614, LSC will define *subrecipient* as not including entities receiving more than $25,000 from a recipient to provide legal representation to the recipient's clients on a contract or judicare basis.

*Proposed § 1614.4—Range of Activities*

*§ 1614.4(a) Direct delivery of legal assistance to eligible clients.* In the NPRM, LSC proposed to consolidate existing §§ 1614.3(a) and (d) into one paragraph. LSC also proposed to add paragraph (a)(2), which stated that direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorney individuals to represent individuals. LSC received no comments on this section.

*§ 1614.4(b) Support and other activities. Comment:* LSNYC expressed concern about LSC's proposal to revise existing § 1614.4(b)(1) to exclude from PAI support activities pro bono work done on behalf of the recipient itself, rather than for a client. It referred to the ABA and Pro Bono Institute definitions of ''pro bono,'' which include legal work provided to organizations ''in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate,'' and indicated that LSC's decision to exclude work on behalf of organizations ''deviate[s] from the well-reasoned standards of the pro bono community.'' LSNYC stated that if it could no longer count toward its PAI requirement pro bono work provided to LSNYC as an organization, it would either have to spend ''substantial amounts of money on attorneys for the organization'' or ''skimp[] on the resources that are available to effectively run the organization.'' Finally, LSNYC argued that LSC's proposed change would ''ignore[] the contribution of many transactional attorneys'' whose skill sets do not necessarily lend themselves to individual representation of clients or conducting legal information clinics.

*Response:* LSC will retain the language from the NPRM, including the statement that support provided by private attorneys must be provided as part of a recipient's delivery of legal information or legal assistance to eligible clients to count toward the PAI requirement. Since its original incarnation in 1981 as a special condition on LSC grant funds, the purpose of PAI has been to involve private attorneys in the delivery of legal services to eligible clients. It does not appear from the administrative record that LSC envisioned pro bono services to recipients themselves to be support activities within the context of the PAI rule. As a result, LSC views the language change proposed in the NPRM to represent a clarification of the existing rule, rather than a change in policy.

LSC wants to be clear that LSC supports recipients' efforts to leverage resources within their legal communities for the benefit of themselves and their clients. LSC recognizes the value or pro bono services provided to recipients themselves, as well as the value that providing such assistance returns to the pro bono attorneys. Recipients can, and should, continue to secure pro bono legal assistance with the issues they face as organizations whenever possible. For purposes of allocating costs to the PAI requirement, however, recipients must obtain services from private attorneys that inures primarily to the benefit of the recipients' clients rather than to the recipient in its organizational capacity.

*Proposed § 1614.4(b)(4) PAI Clinics. Comment 1:* LSC received three comments identifying ambiguity in the text of proposed § 1614.4(b)(4)(ii)(C). The Access Commission, the ABA, and NLADA remarked that although proposed § 1614.4(b)(4)(i) allows recipients to allocate costs to the PAI requirement associated with support to legal information clinics without screening for eligibility, § 1614.4(b)(4)(ii)(C) appears to allow recipients to allocate costs to the PAI requirement associated with ''hybrid'' legal information and legal assistance clinics only if the legal assistance portion of the clinic screens for eligibility. All three commenters asserted that this result does not make sense because recipients may provide legal information without screening. In NLADA's words, ''there is no reason to prohibit the allocation of PAI to an LSC program's support of a clinic's legal information activities which are severable from the legal assistance activities of the clinic.''

*Response:* LSC intended to allow recipients supporting hybrid PAI clinics to allocate to their PAI requirements costs associated with support to the legal information portion of the PAI clinic, regardless of whether the legal assistance portion of the PAI clinic screens for eligibility. In response to these comments, LSC will revise § 1614.4(b)(4)(ii)(C) to make clear that, in the context of hybrid PAI clinics, recipients may allocate costs associated with support of the legal information portion of the PAI clinic to their PAI requirements. If the legal assistance portion of a hybrid PAI clinic screens for eligibility and only provides legal assistance to LSC-eligible individuals, the recipient may allocate costs associated with its support of both parts of the clinic to the PAI requirement.

*Comment 2:* LASNNY commented that the proposed requirement for screening at legal assistance clinics would restrict it from continuing to participate in some of its current activities. As an example, LASNNY described its volunteers' participation in the Albany County Family Court Help Center, which provides support and assistance to pro se litigants in family court. LASNNY stated that the program does not screen for income eligibility, citizenship, or eligible alien status, and that it was participating in the program at the request of the court's presiding justice and the director of the court's Access to Justice initiatives. As a solution, LASNNY proposed that recipients could use non-LSC funds to

provide services to clients who have not been screened for eligibility.

*Response:* LSC believes that the screening requirement should not preclude recipients from providing support to unscreened clinics that give legal information to pro se litigants. In the NPRM, LSC proposed that recipients would be able to allocate to the PAI requirement costs associated with PAI clinics providing legal assistance only if the clinics screened for eligibility and only provided legal assistance to LSC-eligible clients. LSC believes this approach is consistent with the April 9, 1998 opinion of the LSC Office of the General Counsel (OGC), which addressed the regulatory requirements applicable to legal information provided by recipients in pro se clinics. In that opinion, OGC stated that the recipient, which had received a contract from the court to provide assistance to pro se litigants, did not need to comply with either the client retainer provision in part 1611 or the provision in part 1626 that requires recipients to obtain citizenship attestations or documentation of eligible alien status. Importantly, OGC opined that compliance with the relevant provisions of parts 1611 and 1626 was not required ''as long as the litigants are *pro se,* they do not enter into an attorney-client relationship with [a recipient] attorney, [and] they are not applicants for or are not seeking legal representation from [the recipient.]'' LSC believes that these principles should guide recipients' thinking about whether supporting a PAI clinic that serves pro se litigants may be considered legal information clinics that do not require screening, or instead constitute legal assistance clinics that do. Regarding LASNNY's suggestion that non-LSC funds could be used for services to unscreened clients, some restrictions, such as the alienage restriction in part 1626, apply to legal assistance that is provided with both LSC and non-LSC funds.

*Comment 3:* The ABA commented that the NPRM did not include several important types of clinics within its scope. One type was the hybrid legal information/legal assistance clinic discussed above. A second type was a clinic with two components: ''one in which LSC-eligible clients are provided pro bono advice by one group of lawyers, and another component in which non-eligible individuals are provided service by either staff of the clinic (who are not employees of a LSC recipient) or a separate group of pro bono lawyers.'' In the model described by the ABA, individuals are pre-screened and sent to the LSC recipient's private attorney if they are LSC-eligible, and to attorneys in another part of the clinic if they are not. The ABA believes that LSC should allow recipients to support such clinics ''because in many communities, the bar association wants to serve through its pro bono programs many people who cannot afford an attorney, not just those who fall within the LSC eligibility guidelines.''

The ABA described a final model, in which a court or local bar association contacts an LSC recipient to ask for assistance in planning a pro bono clinic. According to the ABA, at the time the court or bar association asks for the recipient's assistance, it may not be clear whether the clinic will provide legal information, legal assistance, or both, or whether it will screen for eligibility if it provides legal assistance. The ABA ''regards these support activities as permissible and as ones that should count toward the PAI requirement because the LSC recipient is not assisting lawyers who will be helping ineligible clients, but is simply engaging in discussions initiated by the court or bar to explore options.''

*Response:* As discussed above, LSC agrees that recipients may allocate to their PAI requirements costs associated with support of the legal information portion of a hybrid clinic, regardless of whether the legal assistance portion screens for eligibility. LSC also believes that recipients may support clinics of the second type described by the ABA. LSC's concern about recipients' providing support to clinics that do not screen for eligibility is that recipients will be diverting resources to activities that serve individuals who are not eligible for LSC-funded legal assistance. This concern is greatest in the context of a clinic where no screening occurs. It is still present in the context of a clinic that screens for eligibility and provides legal assistance to individuals who are not eligible for LSC-funded assistance, but the concern is lessened because the recipient's support is limited to the part of the clinic that is providing legal assistance to LSC-eligible clients.

With respect to the ABA's third scenario, LSC agrees that the type of technical assistance described is a valuable service provided by recipients in furtherance of the court or bar association's efforts to increase pro bono. LSC also agrees that it is consistent with the purposes of the PAI rule to allow recipients to allocate costs to the PAI requirement associated with providing support to courts or local bar associations in response to requests for assistance in setting up clinics at which private attorneys will provide legal information or legal assistance. However, LSC considers this type of assistance to be support provided to courts or local bar associations in their efforts to increase pro bono services, rather than as support for the operation of PAI clinic within the meaning of § 1614.4(b)(4). Once the clinic begins providing legal information or legal assistance to the public, the recipient may provide support consistent with proposed § 1614.4(b)(4).

LSC will address the ABA's proposal by including a new paragraph (b)(4) that allows recipients to count toward their PAI requirements costs incurred assisting bar associations or courts with planning and establishing clinics at which private attorneys will provide legal information or legal assistance to the public. Consequently, LSC will redesignate proposed paragraphs (b)(4)–(b)(6) to paragraphs (b)(5)–(b)(7) in the final rule.

*Comment 4:* NLADA recommended that LSC allow limited screening of individuals receiving legal assistance through PAI clinics. NLADA asserted that the eligibility screening requirement ''is not necessary to ensure compliance with the LSC Act and other statutory restrictions[,]'' and offered two alternatives. The first alternative was limited screening for financial eligibility and citizenship or eligible non-citizen status. NLADA suggested that ''a clinic participant could be determined LSC eligible if the applicant attests that he is a U.S. citizen or has a green card and either has zero income or receives assistance under programs such as SNAP, TANF, Medicaid or SSI. While this limited screening may rule out eligible clients, the screening could serve as an acceptable and workable method for clinic participants to determine who should and who should not be referred to LSC program staff participating in the clinic for legal assistance.'' The second alternative was periodic limited screening. Under this alternative, the clinic would occasionally conduct the limited screening described in the first option, and the recipient could use the results to ''calculate the percentage of LSC eligible applicants served by the clinic and appropriately apportion LSC program resources used to support the clinic that can be allocated to PAI.'' NLADA noted the additional benefit that ''the clinic would then have the option to have LSC grantees not participate in the provision of legal assistance to individual clients or have procedures in place to conduct limited or full screening with LSC grantees only providing legal assistance to LSC eligible individuals.''

*Response:* LSC will not revise the requirement for PAI clinics to screen for

eligibility prior to providing legal assistance to individuals. During the April 2014 Committee meeting in Washington, DC, LSC made clear that it was willing to consider alternatives to the proposed screening requirement if the alternatives were supported by a legal analysis of how the alternatives would ensure compliance with the LSC Act, the restrictions contained in LSC's appropriations acts, and LSC's regulations. No commenter, however, has offered any legal analysis supporting the assertion that screening ''is not necessary to ensure compliance with the LSC Act and other statutory restrictions.''

LSC considered the issue of limited screening at length during the development of the NPRM. During the July 2013 and September 2013 rulemaking workshops, and in response to the two Requests for Information published by LSC last year, multiple commenters recommended that LSC allow limited screening for PAI clinics. When discussing screening in this context, commenters expressed minimal concern about the potential for assisting clients who are ineligible for LSC-funded services. Most commenters focused on expanding the availability of private attorneys to provide pro bono legal services and not on the scope of LSC's legal obligations to ensure that LSC resources are not used for restricted activities. One commenter suggested that the test for the PAI rule should be whether the activity is targeted at the base of eligible clients, even if the recipient cannot know whether every person assisted would be eligible. Another spoke about screened advice clinics, recommending that recipients should be able to count resources toward the PAI requirement for the time recipients spend supervising such clinics. OIG expressed concern that a relaxed screening requirement for clinics would have the ''unintended effect of increasing subsidization of restricted activity.'' OIG urged LSC to exercise caution to ''ensure that changes to the PAI rule do not make it more difficult to prevent and detect noncompliance with LSC regulations and do not increase the risk that LSC funds will be used to subsidize, whether intentionally or not, restricted activity.''

LSC considered the commenters' views on screening and the burden that screening may place on recipients' support for clinics operated solely by them or through the joint efforts of community organizations. LSC considered those views in light of the statutory restrictions Congress places on the funds appropriated to LSC and on recipients of LSC funds. LSC concluded that, regardless of whether legal assistance is provided directly by a recipient or through PAI activities individuals must be screened for LSC eligibility and legal assistance may be provided only to those individuals who may be served consistent with the LSC Act, the LSC appropriation statutes, and the applicable regulations. Nothing in NLADA's comment causes LSC to reconsider its decision with respect to screening for eligibility in PAI clinics that provide legal assistance to individuals.

LSC recognizes that adopting either the simplified screening requirement or a test that a clinic was targeted at the LSC-eligible client population would allow recipients to support a broader range of clinics at which private attorneys provide legal assistance to low-income individuals. What neither of these mechanisms ensures is that LSC recipients are supporting clinics that provide services permitted by LSC's authorizing statutes to individuals eligible to receive those services. While Congress has repeatedly supported LSC's efforts to expand pro bono consistent with the recommendations of the Pro Bono Task Force, it has couched its support in terms of ''increasing the involvement of private attorneys in the delivery of legal services to their clients.'' S. Rep. 113–78, H.R.Rep. 113–171, *incorporated by reference* by Sec. 4, Pub. L. 113–76, 128 Stat. 5, 7 (2014). LSC does not believe that its responses to the Task Force's recommendations can include expanding the PAI rule to allow recipients to participate, directly or indirectly, in the provision of legal assistance to individuals who are not eligible to receive legal assistance from an LSC recipient.

*Comment 5:* OIG commented that it had ''observed some ambiguity in the discussion of PAI support for clinics that provide individualized legal assistance. The transcripts of meetings preceding publication of the NPRM appear to contain the suggestion that grantees will be able to count their direct participation in PAI clinics toward their PAI requirement.'' OIG urged LSC to clarify that costs incurred by a recipient in supporting a PAI clinic count toward the PAI requirement, while costs associated with clinics at which recipient attorneys themselves provide the legal information or legal assistance cannot be allocated to the PAI requirement.

*Response:* LSC understands OIG's concern and believes their comment is addressed by the definition of *PAI clinic.* In the NPRM, LSC defined *PAI clinic* as ''an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.'' 79 FR 21188, 21199, Apr. 15, 2014 (emphasis added). LSC clearly stated its intent regarding the application of § 1614.4(b)(4) in the preamble to the NPRM:

> This new regulatory provision will allow recipients to allocate costs associated with support to clinics to the PAI requirement. The new provisions of part 1614 will govern only those clinics in which a recipient plays a supporting role. Recipients will remain responsible for complying with the screening and CSR case-handling requirements for those clinics at which recipient attorneys provide legal assistance to individuals.

79 FR 21188, 21193.

*Comment 6:* OIG also commented on LSC's proposal to promulgate clear standards for when a PAI clinic must screen for eligibility. OIG first noted that proposed § 1614.4(b)(4) ''describes in some detail eligibility constraints on three different types of PAI clinics: clinics that exclusively provide legal information not tailored to particular clients; clinics that exclusively provide individualized legal advice, and clinics that do both.'' OIG also cited the observation made by a member of the Board of Directors at the April Board meeting that ''without a change in meaning, one could remove the proposed eligibility constraints in Section 1614.4(b)(4) and substitute language pointing to generally applicable standards governing the use of LSC funds as the operative constraint on PAI activities, thereby reducing the complexity [of] the proposed rule.'' OIG stated its understanding that proposed § 1614.4(b)(4) merely explicated ''the straightforward implications of general eligibility requirements found in LSC's regulations and governing statutes,'' and recommended that if LSC intended to establish new eligibility requirements, LSC should clarify that intent before adopting a final rule. Finally, OIG recommended that LSC either significantly simplify § 1614.4(b)(4) to plainly state the ''generally applicable eligibility requirements'' or, if retaining the language proposed in the NPRM, including language ''to the effect that notwithstanding any other provision or subsection of the rule, a grantee may only count toward its PAI requirement funds spent in support of activities that the grantee would itself be able to undertake with LSC funds.''

*Response:* LSC agrees with OIG that it should be clear that the rule is not establishing new or additional eligibility requirements or screening requirements. LSC believes that the specificity of the

definition of the term *screen for eligibility* makes clear that individuals being served through PAI clinics must be LSC-eligible. The definition does not establish new or additional screening requirements for individuals being served by private attorneys through PAI projects.

LSC understands that part 1614 states its position on when individuals must be screened for eligibility more clearly than LSC has done in any prior issuance, and that the issue of eligibility to receive legal assistance from an LSC recipient is not unique to the PAI context. However, as discussed in the response to the comment above regarding screening, LSC believed that a clear statement in the PAI rule about its requirements for eligibility screening was necessary. LSC reiterates now that the screening requirements contained in § 1614.4(b)(4) do not create new standards for determining the eligibility of individuals receiving legal assistance through a PAI clinic.

*§ 1614.4(b)(5) Screening and referral systems.* Section 1614.4(b)(5) established the rules governing intake and referral systems. This addition to the rule adopted Recommendation 2(b) by expanding the situations in which recipients may allocate costs associated with intake and referral to private attorneys to their PAI requirement. Section 1614.4(b)(5) reflects the Corporation's decision to relieve recipients of the obligation to accept referred clients as part of their caseload and to determine the ultimate resolution of the clients' cases by considering intake and referral activities *other activities.* Cases screened and referred through these systems do not need to be accepted by the recipient as CSR cases and tracked in order for recipients to allocate costs associated with the system to the PAI requirement. LSC received no comments on this section.

*§ 1614.4(b)(6) Law student activities.* Section 1614.4(b)(6) established the rules for allocating costs associated with the work provided by law students to the PAI requirement. LSC received no comments on this section.

*§ 1614.4(c) Determination of PAI activities.* Section 1614.4(c) adopted existing § 1614.3(c) in its entirety. LSC proposed to revise the phrase ''involve private attorneys in the provision of legal assistance to eligible clients'' to include law students, law graduates, or other professionals. LSC proposed this change to reflect the rule's inclusion of the other categories of individuals that recipients may engage in PAI activities. LSC received no comments on this section.

*§ 1614.4(d) Unauthorized practice of law.* Section 1614.4(d) made clear that the rule is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the jurisdiction in which a recipient is located. LSC received no comments on this section.

*Proposed § 1614.5 Compensation of recipient staff and private attorneys; blackout period.* In the NPRM, LSC proposed to introduce a new § 1614.5 establishing rules for the treatment of compensation paid to private attorneys, law students, law graduates, or other professionals under the PAI rules.

*§ 1614.5(a).* Section 1614.5(a) stated that recipients may allocate to the PAI requirement costs for the compensation of staff for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients under this part. This section was intended to make clear that recipients may not allocate costs associated with compensation, such as salaries or stipends, paid to individuals employed by the recipient who are providing legal information or legal assistance to eligible clients as part of their employment. LSC received no comments on this section.

LSC will make one technical edit to this section in the final rule. LSC will add ''or employees of subrecipients'' to make clear that compensation paid to employees of subrecipients, as defined in § 1614.3(k), may only be allocated to the PAI requirement if the compensation was incurred to facilitate PAI activities.

*§ 1614.5(b).* Section 1614.5(b) established limits on the amount of compensation paid to a private attorney, law graduate, or other professional that a recipient may allocate to its PAI requirement. LSC proposed to limit the amount of compensation to the amount paid for up to 800 hours of service during a calendar year. The reason for this limitation was that compensation at a higher level is inconsistent with the goal of the PAI rule to engage private attorneys in the work of its recipients. LSC received no comments on this section.

*§ 1614.5(c).* Section 1614.5(c) adopted a revised version of existing § 1614.1(e), which prohibits recipients from allocating to the PAI requirement PAI fees paid to a former staff attorney for two years after the attorney's employment has ended, except for judicare or similar fees available to all participating attorneys. LSC proposed to remove as obsolete the references to the effective date of the regulation and contracts made prior to fiscal year 1986. LSC also proposed to change the time period of the rule's coverage from attorneys employed as staff attorneys for any portion of the previous two years to any individual employed by the recipient for any portion of the current year and the previous year for more than 1,000 hours per calendar year, except for individuals employed as law students. LSC proposed the latter change to account for the expansion of the rule to allow recipients to engage individuals other than private attorneys in activities under this part. In recognition of the fact that law students are primarily engaged in educational endeavors, even while working at a recipient, LSC proposed to exclude law students from the scope of this provision. Finally, the rule exempted from this restriction compensation paid to attorneys who had been employed at a recipient or subrecipient while participating in incubator projects. LSC received no comments on this section during the public comment period.

LSC will make two technical changes to § 1614.5 in response to internal comments. First, LSC will replace the term ''PAI funds'' with references to allocation of costs to the PAI requirement. ''PAI funds'' was language carried over from existing § 1614.1(e), but as LSC staff pointed out, part 1614 is a cost allocation regulation, rather than authority for the expenditure of funds for a specified purpose. Consequently, the language of § 1614.5 has been revised to reflect more accurately the nature of the activity covered by the regulation.

The second technical change is related to the first. With the move away from using the term ''PAI funds,'' the language of proposed § 1614.5(c)(2) became difficult to understand. LSC will simplify paragraph (c)(2) by replacing ''PAI funds'' with ''allocation of costs to the PAI requirement'' and relocating the description of an incubator project to § 1614.3(b) as the definition of the term *incubator project.*

In response to the final rule presented to the Committee in advance of its October 5, 2014 meeting, NJP commented that the prohibition on payments to an ''individual who for any portion of the current or previous year has been employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient'' was confusing. NJP stated that the prohibition seemed to conflict with § 1614.5(a), which permits recipients to allocate costs to the PAI requirement associated with compensation paid to employees for facilitating the involvement of private attorneys, law students, law graduates, and other

professionals in PAI activities. In order to make clear that the blackout period described in paragraph (c) applies to individuals who are no longer employed by the recipient, LSC proposed revising the language to state ''No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient . . . .''

LSC staff brought NJP's concern and the language LSC proposed above to address the concern to the Board's attention. The Board accepted the change, which is now contained in the final rule.

*Proposed § 1614.6 Procedure.* LSC moved the text of existing § 1614.4, regarding the procedure recipients must use to establish their PAI plans, to § 1614.6. LSC proposed to include law students, law graduates, or other professionals as individuals that recipients may consider engaging in activities under this part during the development of their PAI plans. However, LSC did not revise proposed § 1614.6(b) to require recipients to consult with local associations for other professionals. LSC believed that recipients are in the best position to know which other professionals they may attempt to engage in their PAI programs, and encourages recipients to determine which professional associations they may want to consult in developing their PAI plans. In the interest of simplifying and improving the logic of the rule, LSC also proposed to relocate existing § 1614.2(b), regarding joint PAI efforts by recipients with adjacent, coterminous, or overlapping service areas, to § 1614.6(c) without substantive changes. LSC received no comments on this section.

*Proposed § 1614.7 Compliance. Comment:* NJP commented on the omission of current § 1614.3(e)(4) from the NPRM. Existing § 1614.3(e)(4) states that recipients must make available to LSC auditors and monitors ''all records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law.'' NJP expressed concern that the omission of § 1614.3(e)(4) ''seems to extend the proposed changes in 2015 Grant Assurances Nos. 10 and 11 (to which NJP strongly objects) to private attorneys providing services under a PAI contract. . . . Compelling a private attorney to disclose client information in contravention of applicable Washington law and Rules of Professional Conduct, creates a significant disincentive to participation in a compensated PAI program through NJP.'' NJP urged LSC to reinstate the language of existing § 1614.3(e)(4).

*Response:* LSC understands NJP's concern, but will not reinstate the language of current § 1614.3(e)(4). LSC notes that it rescinded the proposed changes to Grant Assurances 10 and 11 in response to comments made by NJP, discussed above, and others regarding the potential adverse effect of the proposed changes.

LSC intentionally omitted this section in the NPRM as the result of internal discussions with OIG. OIG and LSC came to the conclusion that existing § 1614.3(e)(4) was unnecessary because it did not establish recordkeeping or disclosure requirements beyond those stated in LSC's governing statutes and regulations. LSC has not included similar disclosure provisions in any of its other regulations. Instead, LSC has chosen to prescribe its access to records through the grant assurances that recipients must accept each year. Records pertaining to a recipient's PAI activities are not subject to different recordkeeping or access requirements than records pertaining to its in-house activities. LSC believes that its governing statutes, regulations, and grant assurances adequately describe the circumstances under which recipients must provide LSC access to records pertaining to their PAI requirements and the kinds of information that may be withheld. There is no need to include a provision explaining that access in part 1614.

LSC will make one technical change to the title of § 1614.7. LSC staff believed that the title ''Compliance'' was misleading because § 1614.7 governs only fiscal recordkeeping, rather than recordkeeping about all aspects of a recipient's operations, including compliance with parts 1626 (eligibility of citizens and certain non-citizens), 1620 (determination of priorities), and 1611 (financial eligibility). We agree with this comment, and will retitle § 1614.7 ''Fiscal recordkeeping.'' Programmatic recordkeeping requirements specific to the activities described in § 1614.4 are contained in the paragraphs to which they apply.

*Proposed § 1614.8 Prohibition of revolving litigation funds.* In the NPRM, LSC proposed to move existing § 1614.5, prohibiting the use of revolving litigation funds to meet the PAI requirement, to new § 1614.8. The only proposed substantive change to this section was the inclusion of law students, law graduates, or other professionals. LSC received no comments on this section.

*Proposed § 1614.9 Waivers.* LSC proposed to move existing § 1614.6, governing the procedures by which recipients may seek full or partial waivers of the PAI requirement, to new § 1614.9 without substantive change. LSC proposed to make technical amendments by replacing the references to the Office of Field Services (OFS) and the Audit Division of OFS, which no longer exist, with references to LSC. LSC received no comments on this section.

*Proposed § 1614.10 Failure to comply.* In the NPRM, LSC proposed to move existing § 1614.7, which established sanctions for a recipient's failure to comply with the PAI requirement or seek a waiver of the requirement, to new § 1614.10.

*§ 1614.10(a). Comment*: NLADA expressed concern that withholding of funds under § 1614.10(a) would not be considered an enforcement action under 45 CFR parts 1606, 1618, 1623, or 1630. Section 1614.10(a) authorizes the Corporation to withhold funds if a recipient fails to meet the PAI requirement for a given year and fails without good cause to seek a waiver of the PAI requirement. NLADA wanted to ''ensure that, although actions under 1614 are not to be construed as actions under the other regulatory sections referenced above, LSC will follow normal procedures of due process, including allowing recipients the ability to appeal a decision to withhold funds to LSC's President.''

*Response:* In light of NLADA's comment, LSC will establish a process for considering whether a recipient has failed without cause to seek a waiver of the PAI requirement, notifying the recipient of LSC's determination, and providing for review of an initial adverse decision. LSC believes that the opportunity for review by the President of the Corporation is appropriate when a recipient's failure to comply with a requirement may result in the loss of funds. LSC will use a process modeled substantially on the process described at 45 CFR 1630.7 because the withholding of funds for failure to comply with a requirement is most akin to a disallowance of questioned costs.

In considering NLADA's comment, LSC researched the regulatory history of existing § 1614.7(a). When it enacted existing § 1614.7(a) in 1986, LSC received comments from the field that the provision placed too much discretion with the staff to determine whether recipients were in compliance with the PAI requirement or had failed without good cause to seek a waiver. 50 FR 48586, 48590, Nov. 26, 1986. In response, LSC clarified that the Board

''intends for this section to minimize staff discretion. The only determination left to staff under § 1614.7 is whether or not a recipient has failed without good cause, to seek a waiver during the term of the grant.'' 50 FR 48586, 48590–91. The Board did not address whether a recipient had any recourse in the event that staff determined that the recipient failed without good cause to seek a waiver.

LSC will add § 1614.10(a)(2), which states that the Corporation will inform the recipient in writing of its decision about whether the recipient failed without good cause to seek a waiver. LSC will also add § 1614.10(a)(3), which states that appeals under this section will follow the process set forth at 45 CFR 1630.7(c)–(g). Finally, LSC will add two provisions that limit the applicability of the process described to actions under part 1614. Consistent with the Board's intentions, as stated in the preamble to the 1986 final rule, paragraph (a)(3)(i) will limit the subject matter of the appeal to the Corporation's determination that the recipient failed without good cause to seek a waiver. Paragraph (a)(3)(ii) will limit the method by which the Corporation may recover funds to withholding, consistent with the existing rule.

*§ 1614.10(b).* This section carried over from existing § 1614.7(b), and states that recipients who fail with good cause to seek a waiver, or who apply for but fail to receive a waiver, or who receive a partial waiver but do not expend the amount required will have their PAI requirement increased for the following year. The requirement will be increased by an amount equal to the difference between the amount actually expended and the amount required to be expended. LSC received no comments on this section.

*§ 1614.10(c). Comment*: The ABA commented on LSC's proposal to revise this section to allow LSC to reallocate funds withheld under § 1614.10(a) for any basic field purpose. The ABA agreed with LSC's proposal to allow it to compete the withheld funds outside of a recipient's service area if the recipient from whom the funds were withheld is the only applicant for the funds. However, the ABA opposed the proposal to make funds withheld for failure to meet the PAI requirement available for basic field grant purposes because it believed the proposal was contrary to the purposes of the PAI regulation. According to the ABA, ''[i]f the consequence of failing to use funds for PAI is that the funds become available for basic field services, this provides a disincentive to comply with the PAI requirement.'' Instead, the ABA recommended that LSC revise the rule to allow funds withheld under § 1614.10(a) to be competed for PAI purposes in another service area if the program from which the funds were withheld is the ''only LSC recipient applying for the funds in the competitive grant process.''

*Response:* LSC concurs with the ABA's comment and will revise § 1614.10(c) accordingly.

LSC will make two changes to this section in the final rule. First, LSC will include language stating that when the Corporation has withheld funds from a recipient and such funds are available for competition, LSC shall provide public notice setting forth the details of the application process. LSC's notice will include the time, format, and content of the application, as well as the procedures for submitting an application for the withheld funds. Second, LSC will add a new paragraph (c)(2) regarding the relationship of an award of funds withheld under § 1614.10(a) to a recipient's annual twelve and one-half percent (12.5%) PAI requirement. An award of funds pursuant to § 1614.10(c)(1) is an additional amount of funding to engage in PAI activities beyond a recipient's annual PAI requirement. In other words, LSC intends a § 1614.10(c)(1) award to expand a recipient's PAI activities, rather than to supplement the amount available to meet the recipient's annual twelve and one-half percent (12.5%) requirement. An award under § 1614.10(c)(1) will not increase the amount of the recipient's PAI requirement by the same amount in subsequent grant years. It is intended as a one-time award that has no future effect on a recipient's PAI requirement.

During the October 5, 2014 Committee meeting, the Committee noted that the phrase ''in another service area'' in the last sentence of paragraph (c)(1) appeared to limit LSC's options for competing withheld funds in the event the recipient from whom they were withheld was the only applicant for the funds. In other words, it seemed to preclude the Corporation from holding a competition in which the recipient's application would be considered along with applications from other LSC recipients in other service areas. LSC did not intend to limit competition in that manner. LSC adopted the Committee's proposed language—''in additional service areas''—in the last sentence of paragraph (c)(1) to reflect more accurately LSC's intention to allow expanded competition. The version of the rule approved by the Board contained the revised language.

*§ 1614.10(d).* LSC proposed to revise § 1614.10(d) to be consistent with the changes to the enforcement rules, 78 FR 10085, Feb. 13, 2013. LSC received no comments on this section.

*Other Comments*

LSC received three comments that did not pertain to particular sections of the proposed rule. NJP submitted one comment recommending that LSC raise the dollar threshold at which recipients must seek approval to make payments to private attorneys in excess of $25,000. The rule governing subgrants, 45 CFR part 1627, requires recipients to obtain approval before making payments in excess of $25,000 to a third party to provide services ''that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis[.]'' 45 CFR 1627.2(b)(1). NJP noted that the $25,000 limit has not changed since its enactment in 1983. They recommended that LSC increase the threshold to $60,000, which is the approximate amount that $25,000 in 1983 represents today.

The proposed change is outside the scope of this rulemaking, which is focused on changes to part 1614. Consequently, LSC will not revise part 1627 at this time. However, LSC has placed a priority on resuming the rulemaking initiated in 2011 to revise the subgrant rule in part 1627 and the transfer rule at 45 CFR § 1610.7 as part of the 2014–2015 rulemaking agenda. LSC will consider NJP's recommendation as part of that rulemaking.

OIG made two general comments regarding the rule. OIG first recommended that LSC retitle part 1614 to reflect the expansion of the rule to include services provided by individuals other than private attorneys. OIG recommended this change in part to avoid ''giving LSC's appropriators, oversight authorities, or outside observers the misimpression that all funding directed to what is now called private attorney involvement is devoted to securing the services of private attorneys.'' OIG suggested ''Volunteer and Reduced Fee Services'' or ''Private Provider Services'' as alternate titles.

OIG's second comment reiterated their belief that LSC should include reporting requirements in the rule. OIG recommended that the rule require recipients to provide information that would allow LSC to analyze the impact that the changes to the PAI rule have on services provided by private attorneys. OIG expressed its concern that ''if the PAI rule is revised to make PAI funds

available to activities other than the involvement of private attorneys, the legal services community may end up with fewer private attorneys involved in the provision of legal assistance to eligible clients.'' In OIG's view, it is essential that the new rule have mechanisms in place to measure the ''performance of the revised PAI rule from its inception. . . . These measuring mechanisms should, in the OIG's view, consist largely of reporting requirements that, at a minimum, break out the number of private attorneys (as distinguished from other service providers) involved in the program and the magnitude of their services.'' OIG concluded by opining that such reporting ''would minimize the opportunity for confusion on the part of LSC's appropriators, oversight authorities, or outside observers concerning the extent to which PAI funds are directed toward *pro bono* services of attorneys.''

Regarding OIG's first comment, LSC has determined that it will not change the title of part 1614. Part 1614 has been known as ''Private Attorney Involvement'' since 1986; recipients and stakeholders thus regularly use the term ''PAI.'' Moreover, because engaging private attorneys in the delivery of legal information and legal assistance to eligible clients remains the primary vehicle for carrying out the purpose of the rule, LSC does not believe a change is necessary.

With respect to the second comment, LSC agrees with the OIG regarding the importance of reporting requirements, but will not specify reporting requirements in the final rule. During the March 3, 2014 Committee meeting, LSC stated that it would not prescribe, through the rule, the types of information that recipients must keep about services and whether the services were provided by private attorneys or others. LSC informed the Committee of two factors relevant to this decision. First, LSC is in the midst of a project with the Public Welfare Foundation to improve the Corporation's data collection methods and measures. As part of this work, recipients have advised LSC about the types of data they provide to LSC and to other funders, and what types of data collection they find useful. Second, LSC typically informs recipients about the data that it wants them to provide through guidance, such as the annual grant assurances that recipients must accept at the beginning of each grant year. Particularly in light of its ongoing work with the Public Welfare Foundation, LSC believes the optimal approach is to prescribe data collection through policy documents so that LSC has the flexibility to adjust the data collection requirements in consultation with recipients and in a timely fashion. Promulgating specific data collection requirements in the regulation binds LSC and recipients to those requirements until the regulation can be amended, which is time-consuming and may delay desired changes. LSC agrees with the OIG regarding the importance of data LSC seeks from recipients, and intends to solicit OIG's input as it develops additional data collection requirements for PAI.

**List of Subjects in 45 CFR Part 1614**

Legal services, Private attorneys, Grant programs—law.

For the reasons stated in the preamble, the Legal Services Corporation revises 45 CFR part 1614 to read as follows:

## PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

1614.1 Purpose.
1614.2 General policy.
1614.3 Definitions.
1614.4 Range of activities.
1614.5 Compensation of recipient staff and private attorneys; blackout period.
1614.6 Procedure.
1614.7 Fiscal recordkeeping.
1614.8 Prohibition of revolving litigation funds.
1614.9 Waivers.
1614.10 Failure to comply.

**Authority:** 42 U.S.C. 2996g(e).

### § 1614.1 Purpose.

Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program, and consistent with LSC's governing statutes and regulations, in a manner that furthers the statutory requirement of providing high quality, economical, and effective client-centered legal assistance and legal information to eligible clients. This part is designed to ensure that recipients of LSC funds involve private attorneys, and encourages recipients to involve law students, law graduates, or other professionals, in the delivery of legal information and legal assistance to eligible clients.

### § 1614.2 General policy.

(a) A recipient of LSC funding shall devote an amount equal to at least twelve and one-half percent (12.5%) of the recipient's annualized Basic Field-General award to the involvement of private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients. This requirement is hereinafter referred to as the ''PAI requirement.''

(b) Basic Field-Native American grants, Basic Field-Migrant grants, and non-Basic Field grants are not subject to the PAI requirement. For example, Technology Initiative Grants are not subject to the PAI requirement. However, recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of legal information and legal assistance by private attorneys, law students, law graduates, or other professionals in a manner that is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

### § 1614.3 Definitions.

(a) *Attorney* means a person who is authorized to practice law in the jurisdiction in which assistance is rendered. For purposes of this part, *attorney* does not have the meaning stated in 45 CFR 1600.1.

(b) *Incubator project* means a program that provides legal training and support, for a limited period of time, to law students, law graduates, or attorneys who are establishing, or upon graduation and bar admission intend to establish, their own independent law practices.

(c) *Law graduate* means an individual who, within the last two years, has completed the education and/or training requirements necessary for application to the bar in any U.S. state or territory.

(d) *Law student* means an individual who is, or has been, enrolled, full-time or part-time, within the past year, and not expelled from:

(1) A law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory; or

(2) An apprenticeship program that can provide the student with sufficient qualifications for application to the bar in any U.S. state or territory.

(e) *Legal assistance* means service on behalf of a client or clients that is specific to the client's or clients' unique circumstances, involves a legal analysis that is tailored to the client's or clients' factual situation, and involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.

(f) *Legal information* means substantive legal information not tailored to address a person's specific problem and that does not involve applying legal judgment or

recommending a specific course of action.

(g) *Other professional* means an individual, not engaged in the practice of law and not employed by the recipient, providing services in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of *other professional.* An individual granted a limited license to practice law by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of *other professional.*

(h) *PAI Clinic* means an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.

(i) *Private attorney* means an attorney. *Private attorney* does not include:

(1) An attorney employed half time or more per calendar year by an LSC recipient or subrecipient; or

(2) An attorney employed less than half time by an LSC recipient or subrecipient acting within the terms of his or her employment by the LSC recipient or subrecipient; or

(3) An attorney acting within the terms of his or her employment by a non-profit organization whose primary purpose is the delivery of free civil legal services to low-income individuals; or

(4) An attorney acting within the terms of his or her employment by a component of a non-profit organization, where the component's primary purpose is the delivery of free civil legal services to low-income individuals.

(j) *Screen for eligibility* means to screen individuals for eligibility using the same criteria recipients use to determine an individual's eligibility for cases accepted by the recipient and whether LSC funds or non-LSC funds can be used to provide legal assistance (e.g., income and assets, citizenship, eligible alien status, within priorities, applicability of LSC restrictions).

(k) *Subrecipient* has the meaning stated in 45 CFR 1627.2(b)(1), except that as used in this part, such term shall not include entities that meet the definition of *subrecipient* solely because they receive more than $25,000 from an LSC recipient for services provided through a fee-for-service arrangement, such as services provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis.

**§ 1614.4 Range of activities.**

(a) *Direct delivery of legal assistance to recipient clients.* (1) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients by private attorneys through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through ''revolving litigation fund'' systems, as described in § 1614.8, shall neither be used nor funded under this part nor funded with any LSC support.

(2) In addition to the activities described in paragraph (a)(1) of this section, direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorneys to represent individuals before the tribunal.

(3) Systems designed to provide direct legal assistance to eligible clients of the recipient by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components:

(i) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(ii) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(iii) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(iv) Access by private attorneys to LSC recipient resources that provide back-up on substantive and procedural issues of the law.

(b) *Support and other activities.* Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient or a subrecipient as part of its delivery of legal assistance or legal information to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of the private attorney's facilities, libraries, computer-assisted legal research systems or other resources;

(2) Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient; and

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(4) Support provided to bar associations or courts establishing legal clinics. A recipient may allocate to its PAI requirement costs associated with providing a bar association or court with technical assistance in planning and establishing a legal clinic at which private attorneys will provide legal information and/or legal assistance.

(5) *PAI Clinics*—(i) *Legal information provided in PAI clinics.* A recipient may allocate to its PAI requirement costs associated with providing support to clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information.

(ii) *Legal assistance provided in PAI clinics.* A recipient may provide support to a PAI clinic that provides legal assistance if the PAI clinic screens for eligibility.

(A) A recipient may allocate to its PAI requirement costs associated with its support of such clinics for legal assistance provided to individuals who are eligible to receive LSC-funded legal services.

(B) Where a recipient supports a clinic that provides legal assistance to individuals who are eligible for permissible non-LSC-funded services, the recipient may not allocate to its PAI requirement costs associated with the legal assistance provided to such individuals. For example, a recipient may not allocate to its PAI requirement costs associated with legal assistance provided through a clinic to an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible.

(C) For clinics providing legal information to the public and legal assistance to clients screened for eligibility, a recipient may allocate to its

PAI requirement costs associated with its support of both parts of the clinic. If the clinic does not screen for eligibility, the recipient may allocate to the PAI requirement costs associated with the legal information portion of the PAI clinic, but may not allocate to the PAI requirement costs associated with the legal assistance portion of the clinic.

(D) In order to allocate to its PAI requirement costs associated with support of the legal assistance portion of a clinic, a recipient must maintain records sufficient to document that such clinic has an eligibility screening process and that each individual provided with legal assistance in the portion of the clinic supported by the recipient was properly screened for eligibility under the process.

(6) *Screening and referral systems.* (i) A recipient may participate in a referral system in which the recipient conducts intake screening and refers LSC-eligible applicants to programs that assign applicants to private attorneys on a pro bono or reduced fee basis.

(ii) In order to allocate to its PAI requirement costs associated with participating in such referral systems, a recipient must be able to report the number of eligible persons referred by the recipient to each program and the number of eligible persons who were placed with a private attorney through the program receiving the referral.

(7) *Law student activities.* A recipient may allocate to its PAI requirement costs associated with law student work supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients. Compensation paid by the recipient to law students may not be allocated to the PAI requirement.

(c) *Determination of PAI activities.* The specific methods to be undertaken by a recipient to involve private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to part 1620 of this chapter;

(2) The effective and economic delivery of legal assistance and legal information to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys, law students, law graduates, or other professionals and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other professionals.

(d) *Unauthorized practice of law.* This part is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the recipient's jurisdiction.

**§ 1614.5 Compensation of recipient staff and private attorneys; blackout period.**

(a) A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law graduate, or other professional for services under this part for any hours an individual provides above 800 hours per calendar year.

(c) No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however:

(1) This paragraph (c) shall not be construed to prohibit the allocation of costs to the PAI requirement for payments made to such an individual participating in a pro bono or judicare project on the same terms that are available to other attorneys;

(2) This paragraph (c) shall not apply to the allocation of costs to the PAI requirement for payments to attorneys who were employed for less than a year by an LSC recipient or subrecipient as part of an incubator project; and

(3) This paragraph (c) shall not be construed to restrict recipients from allocating to their PAI requirement the payment of funds as a result of work performed by an attorney or other individual who practices in the same business with such former employee.

**§ 1614.6 Procedure.**

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and 45 CFR part 1620 adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, law students, law graduates, or other professionals to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

(c) In the case of recipients whose service areas are adjacent, coterminous, or overlapping, the recipients may enter into joint efforts to involve private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients, subject to the prior approval of LSC. In order to be approved, the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12.5%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, twelve and one-half percent (12.5%) of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under this section;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys, law students, law graduates, or other professionals throughout the entire joint service area(s).

**§ 1614.7 Fiscal recordkeeping.**

The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for

costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and shall have the following characteristics:

(a) They shall accurately identify and account for:

(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(2) Payments to private attorneys, law graduates, or other professionals for support or direct client services rendered. The recipient shall maintain contracts on file that set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys, law graduates, or other professionals shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(3) Contractual payments or subgrants to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts or subgrants concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and 45 CFR parts 1610, 1627 and 1630;

(4) Other such actual costs as may be incurred by the recipient in this regard.

(b) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(c) Attorneys, law students, law graduates, or other professionals may be reimbursed for actual costs and expenses.

(d) Fees paid to individuals for providing services under this part may not exceed 50% of the local prevailing market rate for that type of service.

**§ 1614.8 Prohibition of revolving litigation funds.**

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of this chapter by advancing funds to private attorneys, law students, law graduates, or other professionals to enable them to pay costs, expenses, or attorneys' fees for representing clients.

(b) No funds received from the Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys, law students, law graduates, or other professionals for costs and expenses, provided:

(1) The private attorney, law student, law graduate, or other professional is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under LSC's governing statutes and regulations; and

(2) The private attorney, law student, law graduate, or other professional has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney, law student, law graduate, or other professional the amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

**§ 1614.9 Waivers.**

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) Because of the unavailability of qualified private attorneys, law students, law graduates, or other professionals an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys, law students, law graduates, or other professionals in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) The population of qualified private attorneys, law students, law graduates, or other professionals available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys, law students, law graduates, or other professionals are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts—including, but not limited to, communicating its problems expending the required amount to LSC and requesting and availing itself of assistance and/or advice from LSC regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12.5%) requirement but, because of variances in the timing of work performed by the private attorneys

and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12.5%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full twelve and one-half percent (12.5%) of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least twelve and one-half percent (12.5%) of cases brought on behalf of eligible clients through its PAI program(s).

(d)(1) A waiver of special accounting and bookkeeping requirements of this part may be granted by LSC, if the recipient shows to the satisfaction of LSC that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by LSC; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to LSC. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

**§ 1614.10 Failure to comply.**

(a)(1) If a recipient fails to comply with the expenditure required by this part *and* that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's grant payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12.5%) of the recipient's basic field award.

(2) If the Corporation determines that a recipient failed without good cause to seek a waiver, the Corporation shall give the recipient written notice of that determination. The written notice shall state the determination, the amount to be withheld, and the process by which the recipient may appeal the determination.

(3) The appeal process will follow the procedures for the appeal of disallowed costs set forth at 45 CFR 1630.7(c)–(g), except that:

(i) The subject matter of the appeal shall be limited to the Corporation's determination that the recipient failed without good cause to seek a waiver; and

(ii) Withholding of funds shall be the method for the Corporation to recover the amount to be withheld.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c)(1) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services through PAI programs. When such funds are available for competition, LSC shall publish notice of the requirements concerning time, format, and content of the application and the procedures for submitting an application for such funds. Disbursement of these funds for PAI activities shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people. Competition for these funds may be held in the recipient's service area, or if the recipient from which funds are withheld is the only LSC recipient applying for the funds in the competitive solicitation, in additional service areas.

(2) Recipients shall expend funds awarded through the competitive process in paragraph (c)(1) of this section in addition to twelve and one-half percent (12.5%) of their Basic Field-General awards.

(d) The withholding of funds under this section shall not be construed as any action under 45 CFR parts 1606, 1618, 1623, or 1630.

Dated: October 9, 2014.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2014–24456 Filed 10–14–14; 8:45 am]

BILLING CODE P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 12

**[PS Docket Nos. 13–75, 11–60; FCC 13–158]**

## Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the Commission's *Report and Order,* FCC 13–158, published at 79 FR 3123 on January 17, 2014, and at 79 FR 7589 on February 10, 2014. This notice is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of requirements subject to OMB approval. Specifically, this document announces the effective date of initial and annual reliability certification requirements for covered 911 service providers, including any associated record retention requirements.

**DATES:** 47 CFR 12.4(c), 12.4(d)(1), and 12.4(d)(3) are effective October 15, 2014. The effective date of 47 CFR 4.9(h), which requires a modification of existing OMB information collection 3060–0484, will be published separately in the **Federal Register** once approved by OMB.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This document announces that, on October 1, 2014, OMB approved information collection requirements contained in the Commission's *Report and Order,* FCC

13–158, Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, published at 79 FR 3123 on January 17, 2014 and at 79 FR 7589 on February 10, 2014. These requirements involve initial and annual reliability certifications for covered 911 service providers and associated record retention requirements. The OMB Control Number is 3060–1202. The Commission publishes this notice as an announcement of the effective date of the certification requirements.

The *Report and Order* also amended § 4.9 of the Commission's rules regarding outage notification to public safety answering points (PSAPs). The effective date of 47 CFR 4.9(h), which requires a modification of existing OMB information collection 3060–0484, will be published separately in the **Federal Register** once approved by OMB.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1202, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on October 1, 2014, for new information collection requirements contained in the Commission's rules at 47 CFR 12.4(c), 12.4(d)(1), and 12.4(d)(3). Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1202. The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1202.

*OMB Approval Date:* October 1, 2014.

*OMB Expiration Date:* October 31, 2017.

*Title:* Improving 9–1–1 Reliability, Reliability and Continuity of Communications Including Networks, Broadband Technologies.

*Form Number:* Not applicable (annual online certification).

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents and Responses:* 1,000 respondents, 1,000 responses.

*Estimated Time per Response:* Varies by respondent. Average of 170 hours per annual certification.

*Frequency of Response:* Annual reporting requirement and recordkeeping requirement.

*Obligation to Respond:* Mandatory. The statutory authority for the collection of this information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

*Total Annual Burden:* 169,982 hours.

*Total Annual Cost:* $0.

*Nature and Extent of Confidentiality:* The Commission will treat as presumptively confidential and exempt from routine public disclosure under the federal Freedom of Information Act: (1) Descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification standards; (2) information detailing specific corrective actions taken; and (3) supplemental information requested by the Commission or Bureau with respect to a certification. The Commission does not consider confidential the fact of filing a certification or the responses provided on the face of the certification.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On December 12, 2013, the Commission released a *Report and Order,* PS Docket Nos. 13–75, 11–60; FCC 13–158 (the *Report and Order*) adopting rules. These rules are codified at 47 CFR 12.4. The *Report and Order* requires covered 911 service providers, defined in § 12.4(a)(4), to certify annually whether they comply with specified best practices with respect to critical 911 circuit diversity, central office backup power, and diverse network monitoring. If a covered 911 service provider does not comply with specific certification elements set forth in § 12.4(c), it must provide a brief explanation of what alternative measures it has taken, in light of the provider's particular facts and circumstances, to ensure reliable 911 service with respect to those elements. A service provider may also respond by demonstrating that a particular certification element is not applicable to its network, but must include a brief explanation of why the element does not apply.

The information will be collected through an online system administered by the Commission's Public Safety and Homeland Security Bureau for review and analysis to verify that covered 911 service providers are taking reasonable measures to maintain reliable 911 service, as required under § 12.4(b). In certain cases, based on the information included in the certifications and on subsequent coordination with individual providers, the Commission may require remedial action to correct vulnerabilities in a service provider's 911 network if it determines that the service provider has not, in fact, adhered to the best practices incorporated in the certification, or in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas.

The purpose of this information collection is to verify that covered 911 service providers are taking reasonable measures to provide reliable service, as evidenced by their certification of compliance with specified best practices or reasonable alternative measures. The Commission adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service. By holding covered 911 service providers accountable for reliable service, the Commission seeks to ensure that all Americans have access to critical 911 communications during emergencies and other times of need.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2014–24474 Filed 10–14–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 14–69; RM–11716; DA 14–1400]**

### Radio Broadcasting Services; McCall, Idaho

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Ashley A. Bruton, allot Channel 280A at McCall, Idaho, as the community's eighth local transmission service. A staff engineering analysis confirms that Channel 280A can be allotted to McCall, Idaho consistent with the minimum distance separation requirements of the rules with a site restriction 0.4 kilometers (0.2 miles) southwest of the community. The reference coordinates are 44–54–30 NL and 116–06–00 WL. *See* **SUPPLEMENTARY INFORMATION,** *supra.*

**DATES:** Effective November 10, 2014.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Report and Order,* MB Docket No. 14–69, adopted September 25, 2014, and released September 26, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

As discussed in the proposed rule, we are removing from the FM Table of Allotments: (1) Channel 228C3, McCall, Idaho because Station KHNO's channel and community of license were changed from Channel 228C3, McCall, Idaho, to Channel 228C1, Huntington, Oregon, File No. BMPH–20121002ACH; (2) Channel 238C3, McCall, Idaho because the channel is no longer considered a vacant allotment since it is licensed to Station KUJJ, File No. BLH–20131227ADB; and (3) Channel 276C3, McCall, Idaho because Station KVBL changed its community of license from McCall, Idaho, to Union, Idaho, File Nos. BNPH–20110624ADA and BLH–20120627ABD.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 228C3 at McCall; Channel 238C3 at McCall; and Channel 276C3 at McCall, and by adding Channel 280A at McCall.

[FR Doc. 2014–24496 Filed 10–14–14; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 79, No. 199
Wednesday, October 15, 2014

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 870

**RIN 3206–AN04**

### Federal Employees' Group Life Insurance Program: Providing Option C Coverage for Children of Same-Sex Domestic Partners

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees' Group Life Insurance (FEGLI) regulations to allow children of same-sex domestic partners living in states that do not allow same-sex couples to marry to be covered as family members under an eligible individual's FEGLI Option C enrollment. This rule expands the circumstances under which an employee experiencing a change in family circumstances may include eligible children of a same-sex domestic partner.

**DATES:** Comments are due on or before December 15, 2014.

**ADDRESSES:** Send written comments to Ronald Brown, Policy Analyst, Planning & Policy Analysis, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–9700; or deliver to OPM, Room 2309, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0636. Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Ronald Brown, Policy Analyst, (202) 606–0004, or by email to *Ronald.Brown@opm.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule is intended to: (1) Extend eligibility as a stepchild under FEGLI Option C to children of same-sex domestic partners of Federal employees or annuitants in states where same-sex couples are not permitted to marry; (2) amend 5 CFR Part 870 to provide that acquiring a child or children of an employee's same-sex domestic partner as described in Part 870 will be treated as a change in family circumstances so that a waiver of Basic insurance or Optional insurance may be cancelled; and (3) make other non-substantive, technical conforming amendments to the FEGLI rules in connection with the extension of coverage to children of same-sex domestic partners of Federal employees.

On June 17, 2009, President Obama issued the Presidential Memorandum on Federal Benefits and Non-Discrimination requesting that the Director of OPM extend certain benefits to qualified same-sex domestic partners of Federal employees. That Presidential Memorandum also requested that heads of executive departments and agencies conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees, annuitants, and their families. The results of that review were reported to the Director of OPM, who, in consultation with the United States Department of Justice, made recommendations to the President to provide benefits to the same-sex domestic partners of Federal Government employees. Subsequently, President Obama issued a Presidential Memorandum on June 2, 2010 requesting agencies to implement the recommended regulatory and administrative actions expanding benefits for same-sex domestic partners of Federal employees and their families.

Since OPM made its recommendations to the President, the Agency has determined that coverage under the FEGLI Program as a family member under Option C may be extended to the children of the same-sex domestic partners of Federal employees and annuitants. This regulatory action is necessary to implement fully the Presidential Memoranda cited above and is consistent with OPM's policy determination that extension of coverage is appropriate.

To maintain consistency across the Federal benefits programs, the definitions of domestic partner and domestic partnership mirror those governing the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Dental and Vision Insurance Program (FEDVIP). For the reasons cited in the FEHBP and FEDVIP final regulation at 78 FR 64873, this includes a requirement that the employee or annuitant enrolled in Option C coverage reside in a state that does not recognize same-sex marriage. Also, this proposed rule adds a definition of ''stepchild'' to Part 870 to denote the child of an enrollee's spouse or same-sex domestic partner the same as in FEHBP and FEDVIP.

We recognize that the legal landscape is changing and certain states that currently do not allow same-sex couples to marry may allow them to do so in the future. Same-sex couples may also relocate from states where they cannot marry to states where they are permitted to marry. The possibility that the relevant state marriage laws may change has the potential to create significant administrative difficulties. For this reason, eligibility to elect Option C FEGLI coverage will be determined at the time the employee has a change in family circumstances (including marriage or divorce, a spouse's death, or acquisition of eligible child(ren)) and files an election with his or her employing office as provided by FEGLI regulation. Eligibility will depend on whether an enrollee seeking to cover the child of his or her domestic partner lives in a state that does not authorize same-sex marriage. This change can be found in section 870.302.

This regulation also adds to the events that constitute a change in family circumstances for employees, annuitants or compensationers who have Option C insurance under the FEGLI Program. The regulation amends Part 870 to provide that an employee who waived FEGLI Basic insurance or Optional insurance may cancel the waiver and become covered upon acquiring an eligible stepchild, if all eligibility requirements are met. Please see the changes to sections 870.503 and 870.506.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds

additional groups to the list of groups eligible for coverage under FEGLI.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

**List of Subjects in 5 CFR Part 870**

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life Insurance, Retirement.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR as follows:

## PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604.

## Subpart A—Administration and General Provisions

■ 2. In § 870.101, add the definitions of ''domestic partner'', ''domestic partnership'', and ''stepchild'' in alphabetical order to read as follows:

### § 870.101 Definitions.

* * * * *

*Domestic partner* means a person in a domestic partnership with an employee, annuitant, or compensationer enrolled in Option C.

* * * * *

*Domestic partnership* means a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM;

(ix) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001; and

(x) Certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

* * * * *

*Stepchild* means the child of an enrollee's spouse or domestic partner and shall continue to refer to such child in the event of the enrollee's divorce from the spouse, termination of the domestic partnership, or death of the spouse or domestic partner, so long as the child continues to live with the enrollee in a regular parent-child relationship.

* * * * *

## Subpart C—Eligibility

■ 3. In § 870.302 amend by revising paragraph (a)(5) to read as follows:

### § 870.302 Exclusions.

(a) * * *

(5) The child who otherwise meets the requirements for life insurance coverage but whose parent enrollee and his or her domestic partner live in a state or whose parent enrollee and his or her domestic partner maintain a common residence in a state that has authorized marriage by same-sex couples by the day prior to the date of notice of the election to the employing office or the day prior to the first day of an open enrollment period.

* * * * *

■ 4. Section 870.304 is added to read as follows:

### § 870.304 Eligibility of stepchildren under Option C.

(a) Stepchildren are eligible for coverage as family members under Option C.

(b) (1) For purposes of this part, to qualify for coverage as a stepchild, the child must be the child of the insured employee, annuitant or compensationer's spouse or domestic partner.

(2) For purposes of this section, the term ''domestic partner'' is as defined in section 870.101 of this part.

(3) An enrollee or his or her domestic partner must notify the employing office within thirty calendar days in the event that any of the conditions of domestic partnership found in the definition section of 870.101 of this part are no longer met, in which case a domestic partnership will be deemed terminated.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, the child who otherwise meets the requirements for life insurance coverage but whose parent enrollee and his or her domestic partner live in a state or whose parent enrollee and his or her domestic partner maintain a common residence in a state that has authorized marriage by same-sex couples, shall not be considered a stepchild. For enrollment changes involving the addition of a new stepchild, as defined by this regulation, the determination of whether a state's marriage laws render the child ineligible for coverage shall be made at the time the employee notifies the employing office of his or her desire to cover the child.

## Subpart E—Coverage

■ 5. Section 870.503 is amended by revising paragraph (b)(3) to read as follows:

### § 870.503 Basic insurance: Cancelling a waiver.

* * * * *

(b) * * *

(3) The employee has a change in family circumstances (marriage or divorce, a spouse's death or acquisition of an eligible child) and files an election as provided in paragraph (b)(3(i), (b)(3)(ii), or (b)(3)(iii) of this section. Except as provided in paragraph (b)(3)(iii), the effective date of Basic insurance elected under this paragraph (b)(3) is the 1st day the employee actually enters on duty in a pay status on or after the day the employing office receives the election.

* * * * *

■ 6. Section 870.506 is amended by revising paragraphs (a)(2) and (a)(4)(i) to read as follows:

**§ 870.506 Optional insurance: Cancelling a waiver.**

(a) * * *

(2) An employee who has waived Options A and B coverage may elect coverage, and an employee who has fewer than 5 multiples of Option B may increase the number of multiples, upon his or her marriage or divorce, upon a spouse's death, or upon acquisition of an eligible child.

* * *

(4)(i) An employee who has waived Option C may elect it, and an employee who has fewer than 5 multiples of Option C may increase the number of multiples, upon his or her marriage, or acquisition of an eligible child or stepchild(ren). An employee who has Option C may also elect or increase Option C coverage upon divorce or death of a spouse, if the employee has any eligible children or stepchild(ren).

* * * * *

[FR Doc. 2014–24488 Filed 10–14–14; 8:45 am]

BILLING CODE 6325–63–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2014–0743; Airspace Docket No. 14–ASW–2]**

## Proposed Establishment of Class E Airspace; Cypress, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Cypress, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Dry Creek Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** Comments must be received on or before December 1, 2014.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0743/Airspace Docket No. 14–ASW–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0743/Airspace Docket No. 14–ASW–2.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dry Creek Airport, Cypress, TX, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014 and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would

establish controlled airspace at Dry Creek Airport, Cypress, TX.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASW TX E5 Cypress, TX [New]**

Dry Creek Airport, TX
(Lat. 29°59′11″ N., long. 95°41′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dry Creek Airport.

Issued in Fort Worth, TX, on October 4, 2014.

**Robert W. Beck,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2014–24450 Filed 10–14–14; 8:45 am]

BILLING CODE 4901–14–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–136676–13]**

**RIN 1545–BM01**

## Removal of the 36-Month Non-Payment Testing Period Rule

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that will remove a rule that a deemed discharge of indebtedness for which a Form 1099–C, ''Cancellation of Debt,'' must be filed occurs at the expiration of a 36-month non-payment testing period. The Department of the Treasury and the IRS are concerned that the rule creates confusion for taxpayers and does not increase tax compliance by debtors or provide the IRS with valuable third-party information that may be used to ensure taxpayer compliance. The proposed regulations will affect certain financial institutions and governmental entities.

**DATES:** Comments and requests for a public hearing must be received by January 13, 2015.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–136676–13), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–136676–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–136676–13).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Hollie Marx, (202) 317–6844; concerning the submission of comments and requests for a public hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free calls).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed regulations to amend certain Income Tax Regulations (26 CFR Part 1) issued under section 6050P of the Internal Revenue Code (Code), which provide that the 36-month non-payment testing period is an identifiable event triggering an information reporting obligation for discharge of indebtedness by certain entities. The proposed regulations would remove the 36-month non-payment testing period as an identifiable event.

*Statutory Provisions*

Section 61(a)(12) provides that income from discharge of indebtedness is includible in gross income. Section 6050P was added to the Code by section 13252 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 312, 531–532 (1993)). Section 6050P was enacted in part ''to encourage taxpayer compliance with respect to discharged indebtedness'' and to ''enhance the ability of the IRS to enforce the discharge of indebtedness rules.'' H.R. Rep. No. 103–111, at 758 (1993). As originally enacted, section 6050P generally required applicable financial entities (generally financial institutions, credit unions, and Federal executive agencies) that discharge (in whole or in part) indebtedness of $600 or more during a calendar year to file information returns with the IRS and to furnish information statements to the persons whose debt is discharged. In addition to other information prescribed by regulations, an applicable financial entity is required to include on the information return the debtor's name, taxpayer identification number, the date of the discharge, and the amount discharged. *See* 26 U.S.C. 6050P(a) (1994).

The Debt Collection Improvement Act of 1996 (1996 Act), Public Law 104–134 (110 Stat. 1321, 1321–368 through 1321–369 (1996)) was enacted on April 26, 1996. Section 31001(m)(2)(B)(i) and (ii) of the 1996 Act amended section 6050P to expand the reporting requirement to cover ''applicable entities,'' which includes any executive, judicial, or legislative agency, not just federal executive agencies, and any previously covered applicable financial entity. Effective for discharges of indebtedness occurring after December 31, 1999, section 533(a) of the Ticket to Work and Work Incentives Improvement Act of 1999 (1999 Act), Public Law 106–170 (113 Stat. 1860, 1931 (1999)), added subparagraph (c)(2)(D) to section 6050P, to further expand entities covered by the reporting requirements to include any organization the ''significant trade or business of which is the lending of money.''

On April 4, 2000, the IRS released Notice 2000–22 (2000–1 CB 902) to provide penalty relief to organizations that were newly made subject to section 6050P by the 1999 Act (organizations

with a significant trade or business of lending money and agencies other than Federal executive agencies). The relief applied to penalties for failure to file information returns or furnish payee statements for discharges of indebtedness occurring before January 1, 2001. On December 26, 2000, the IRS released Notice 2001–8 (2001–1 CB 374) to extend the penalty relief for organizations described in Notice 2000–22 for discharges of indebtedness that occurred prior to the first calendar year beginning at least two months after the date that appropriate guidance is issued.

*Regulatory History*

On December 27, 1993, temporary regulations under section 6050P relating to the reporting of discharge of indebtedness were published in the **Federal Register** (TD 8506) (58 FR 68301). The temporary regulations provided that an applicable financial entity must report a discharge of indebtedness upon the occurrence of an identifiable event that, considering all the facts and circumstances, indicated the debt would never have to be repaid. The temporary regulations provided a non-exhaustive list of three identifiable events that would give rise to the reporting requirement under section 6050P: (1) A discharge of indebtedness under title 11 of the United States Code (Bankruptcy Code); (2) an agreement between the applicable financial entity and the debtor to discharge the indebtedness, provided that the last event to effectuate the agreement has occurred; and (3) a cancellation or extinguishment of the indebtedness by operation of law. These regulations were effective for discharges of indebtedness occurring after December 31, 1993.

A concurrently published notice of proposed rulemaking (IA–63–93) (58 FR 68337) proposed to adopt those and other rules in the temporary regulations. Written comments were received in response to the notice of proposed rulemaking, and testimony was given at a public hearing held on March 30, 1994. In response to the comments and testimony, the IRS provided, in Notice 94–73 (1994–2 CB 553), interim relief from penalties for failure to comply with certain of the reporting requirements of the temporary regulations for discharges of indebtedness occurring before the later of January 1, 1995, or the effective date of final regulations under section 6050P.

On January 4, 1996, prior to the amendments made by the 1996 Act, final regulations relating to the information reporting requirements of applicable financial entities for discharges of indebtedness were published in the **Federal Register** (TD 8654) (61 FR 262) (1996 final regulations). The final regulations were generally effective for discharges of indebtedness occurring after December 21, 1996, although applicable financial entities at their discretion could apply the final regulations to any discharge of indebtedness occurring on or after January 1, 1996, and before December 22, 1996. Further, the preamble to these regulations provided that the temporary regulations and the interim relief provided in Notice 94–73 remained in effect until December 21, 1996. Finally, the 36-month non-payment testing period identifiable event would not occur prior to December 31, 1997. *See* § 1.6050P–1(b)(2)(iv)(C) of the 1996 final regulations.

In response to objections by commenters, the 1996 final regulations did not adopt the facts and circumstances test to determine whether a discharge of indebtedness had occurred and information reporting was required. Instead, the 1996 final regulations provided that a debt is deemed to be discharged for information reporting purposes only upon the occurrence of an identifiable event specified in an exhaustive list under § 1.6050P–1(b)(2), whether or not an actual discharge has occurred on or before the date of the identifiable event. *See* § 1.6050P–1(a)(1).

Section 1.6050P–1(b)(2) of the 1996 final regulations listed eight identifiable events that trigger information reporting obligations on the part of an applicable financial entity: (1) A discharge of indebtedness under the Bankruptcy Code; (2) a cancellation or extinguishment of an indebtedness that renders the debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or state court, as described in section 368(a)(3)(A)(ii) (other than a discharge under the Bankruptcy Code); (3) a cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection (but only if, and only when, the debtor's statute of limitations affirmative defense has been upheld in a final judgment or decision in a judicial proceeding, and the period for appealing it has expired) or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding; (4) a cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness; (5) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding; (6) a discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration; (7) a discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; (8) the expiration of a 36-month non-payment testing period.

The first seven identifiable events are specific occurrences that typically result from an actual discharge of indebtedness. The eighth identifiable event, the expiration of a 36-month non-payment testing period, may not result from an actual discharge of indebtedness. The 36-month non-payment testing period was added to the final regulations in 1996 as an additional identifiable event in response to concerns of creditors that the facts and circumstances approach taken in the temporary and proposed regulations was unclear regarding the effect of continuing collection activity. Creditors proposed (among other things) that the final regulations require reporting after a fixed time period during which there had been no collection efforts.

Section 1.6050P–1(b)(2)(iv) of the 1996 regulations sets forth the 36-month non-payment testing period rule (the 36-month rule). Under that rule, a rebuttable presumption arises that an identifiable event has occurred if a creditor does not receive a payment within a 36-month testing period. The creditor may rebut the presumption if the creditor engaged in significant bona fide collection activity at any time within the 12-month period ending at the close of the calendar year or if the facts and circumstances existing as of January 31 of the calendar year following the expiration of the non-payment testing period indicate that the indebtedness has not been discharged. A creditor's decision not to rebut the presumption that an identifiable event has occurred pursuant to the 36-month rule is not an indication that it has discharged the debt. Concluding that the debts have, in fact, been discharged, some taxpayers may include in income the amounts reported on Forms 1099–C even though creditors may continue to attempt to collect the debt after issuing a Form 1099–C as required by the 36-month rule. *See* § 1.6050P–1(a)(1) and (b)(iv).

On October 25, 2004, final regulations reflecting the amendments to section 6050P(c) were published in the **Federal Register** (TD 9160) (69 FR 62181). These regulations describe circumstances in which an organization has a significant trade or business of lending money and

provide three safe harbors under which organizations will not be considered to have a significant trade or business of lending money.

On November 10, 2008, final and temporary regulations were published in the **Federal Register** (TD 9430) (73 FR 66539) (2008 regulations) to amend the regulations under section 6050P to exempt from the 36-month rule entities that were not within the scope of section 6050P as originally enacted (organizations with a significant trade or business of lending money and agencies other than Federal executive agencies). The changes made by the 2008 regulations reduced the burden on these entities and protected debtors from receiving information returns that reported discharges of indebtedness from these entities before a discharge had occurred. The 2008 regulations also added § 1.6050P–1(b)(2)(v), which provided that, for organizations with a significant trade or business of lending money and agencies other than federal executive agencies that were required to file information returns pursuant to the 36-month rule in a tax year prior to 2008 and failed to file them, the date of discharge would be the first identifiable event, if any, described in § 1.6050P–1(b)(2)(i)(A) through (G) that occurs after 2007. On September 17, 2009, final regulations were published in the **Federal Register** (TD 9461) (74 FR 47728–01) adopting the 2008 regulations without change.

*Notice 2012–65*

Even after the amendments to the regulations in 2008 and 2009, concerns continued to arise about the 36-month rule, and taxpayers remained confused regarding whether the receipt of a Form 1099–C represents cancellation of debt that must be included in gross income. To address those concerns, in Notice 2012–65 (2012–52 IRB 773 (Dec. 27, 2012)), the Treasury Department and the IRS requested comments from the public regarding whether to remove or modify the 36-month rule as an identifiable event for purposes of information reporting under section 6050P. Ten comments were received, all recommending removal or revision of the 36-month rule. Several commenters generally expressed concerns that the expiration of a 36-month non-payment testing period does not necessarily coincide with an actual discharge of the indebtedness, leading to confusion on the part of the debtor and, in some instances, uncertainty on the part of the creditor regarding whether it may lawfully continue to pursue the debt. Additionally, commenters noted that the IRS's ability to collect tax on discharge of indebtedness income may be undermined if the actual discharge occurs in a different year than the year of information reporting.

**Explanation of Provisions**

The Treasury Department and the IRS agree that information reporting under section 6050P should generally coincide with the actual discharge of a debt. Because reporting under the 36-month rule may not reflect a discharge of indebtedness, a debtor may conclude that the debtor has taxable income even though the creditor has not discharged the debt and continues to pursue collection. Issuing a Form 1099–C before a debt has been discharged may also cause the IRS to initiate compliance actions even though a discharge has not occurred. Additionally, § 1.6050P–1(e)(9) provides that no additional reporting is required if a subsequent identifiable event occurs. Therefore, in cases in which the Form 1099–C is issued because of the 36-month rule but before the debt is discharged, the IRS does not subsequently receive third-party reporting when the debt is discharged. The IRS's ability to enforce collection of tax for discharge of indebtedness income may, thus, be diminished when the information reporting does not reflect an actual cancellation of indebtedness. After considering the public comments and the effects on tax administration, the Treasury Department and the IRS propose to remove the 36-month rule.

In addition to the comments recommending removal of the 36-month rule, commenters made other suggestions to change this rule, which were not adopted. One commenter suggested that the rule should be revised to require information reporting after 24 months of non-payment, without regard to the creditor's collection efforts. The commenter suggested that most debts are not collectible after 24 months of non-payment and that requiring information reporting after 24 months would allow the IRS time to assess. This commenter also suggested that the Form 1099–C should be revised to clarify that the issuance of a Form 1099–C does not mean that the debt is discharged, and that creditors should be required to issue corrected Forms 1099–C if they receive payments after the first Form 1099–C is issued.

The revisions proposed by the commenter do not alleviate the problems to debtors, creditors, and the IRS caused by the 36-month rule. There is no indication that merely shortening the time before a Form 1099–C is required to be issued more closely comports with the actual discharge of indebtedness. For example, even if the debt has actually been discharged, the amount reported on the Form 1099–C may not be the same as the amount that the taxpayer is required to report as income because, for instance, the taxpayer may be entitled to claim an exclusion or an exemption. In addition, the Instructions for Debtor on Form 1099–C already explain that the issuance of a Form 1099–C does not necessarily mean that the debtor must include the cancellation of debt in gross income. As a result, such revisions would fail to address the fact that issuance of a Form 1099–C pursuant to the 36-month rule does not necessarily coincide with a discharge of indebtedness. Also, the commenter's suggestion that creditors be required to issue a corrected Form 1099–C if they later receive a payment from the debtor would not reduce the debtor's confusion about what receipt of a Form 1099–C issued pursuant to the 36-month rule means. The issuance of a corrected Form 1099–C after the debtor has already reported discharge of indebtedness income with respect to the discharge that is reported on the corrected Form 1099–C could require the debtor to file amended returns to report the reduced amount of cancellation indebtedness and the debtor may be entitled to a refund. Issuance of a corrected Form 1099–C would increase, not decrease, the debtor's confusion regarding how to proceed.

One commenter suggested that the rule should be retained because it eliminates the possibility of a ''permanent deferral'' of information reporting of a discharged debt. This commenter noted two recent Tax Court cases, *Kleber* v. *Commissioner,* T.C. Memo. 2011–233, and *Stewart* v. *Commissioner,* T.C. Sum. Op. 2012–46, in which the court used the 36-month rule to determine the year in which a debt was discharged. In both cases, the court determined that the statute of limitations for assessment had expired before a Form 1099–C was issued. The commenter stated that confusion could result if the 36-month rule is eliminated for information reporting purposes, but the court continues to use it to determine whether there has been an actual discharge. The commenter viewed this as a reason to retain the rule in a modified form. The commenter suggested that the Treasury Department and the IRS modify the 36-month rule and § 1.6050P–1(b)(2)(i)(G) by: (1) Treating a creditor's decision to discontinue collection activities as an

identifiable event, whether or not that decision coincides with an actual discharge; (2) placing a 36-month time limit on a creditor's defined policy for discharging a debt under § 1.6050P–1(b)(2)(i)(G); (3) prohibiting creditors from issuing Forms 1099–C while collection activities are ongoing or while the creditor is considering selling the debt; and (4) requiring creditors to issue corrected Forms 1099–C if they engage in subsequent collection activities or receive a payment on the debt.

Because the revisions suggested by this commenter would not require information reporting only upon an actual discharge of indebtedness, the revisions would not eliminate the problems associated with issuance of Forms 1099–C under the 36-month rule. Adopting these changes could increase, not decrease, confusion, because they would modify another identifiable event, § 1.6050P–1(b)(2)(i)(G), to require that a debtor's policy for discharging debt incorporate a 36-month discharge rule. Additionally, as explained in this preamble, requiring creditors to issue corrected Forms 1099–C would neither improve tax compliance nor reduce debtors' confusion. Eliminating the 36-month rule for information reporting purposes, moreover, is likely to lead courts to cease using it as an identifiable event for purposes of determining when an actual discharge occurs, thereby eliminating the issue of the IRS being precluded from assessing tax on discharge of indebtedness before the information return has been issued.

**Effective Date**

Sections 1.6050P–1(b)(2)(i)(H), 1.6050P–1(b)(2)(iv), and 1.6050P–1(b)(2)(v) would be removed on the date these regulations are published as final regulations in the **Federal Register**. Conforming amendments to § 1.6050P–1(h)(1) necessary as a result of the removal of the above-referenced sections would be effective on the same date.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Hollie Marx of the Office of Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6050P–1 is amended by:

■ a. Removing paragraphs (b)(2)(i)(H), (b)(2)(iv), and (b)(2)(v).

■ b. Revising paragraph (h).

The revision reads as follows:

**§ 1.6050P–1 Information reporting for discharge of indebtedness by certain entities.**

* * * * *

(h) *Effective/applicability date.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (3) of this section, which apply to discharges of indebtedness after December 31, 1994, and except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2014–24392 Filed 10–14–14; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2014–0746; FRL–9917–79–Region–9]**

## Approval, Disapproval, and Limited Approval and Disapproval of Air Quality Implementation Plans; California; Monterey Bay Unified Air Pollution Control District; Stationary Source Permits

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on seven permitting rules submitted as a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD or District) portion of the applicable state implementation plan (SIP) for the State of California. We are proposing to disapprove one rule, we are proposing a limited approval and limited disapproval of one rule, we are proposing to repeal one rule, and we are proposing to approve the remaining four permitting rules. The submitted revisions include new and amended rules governing the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under part C of title I of the Clean Air Act (CAA). The intended effect of these proposed actions is to update the applicable SIP with current MBUAPCD permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, the limited disapproval actions would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action.

**DATES:** Written comments must be received on or before November 14, 2014.

**ADDRESSES:** Submit comments, identified by Docket ID Number EPA–R09–OAR–2014–0746, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

*Docket:* Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, by phone: (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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## I. The State's Submittals

### *A. Which rules did the State submit?*

On December 13, 2000, March 21, 2001, October 16, 2002, and April 20, 2011, the MBUAPCD submitted amended regulations to EPA for approval as revisions to the MBUAPCD portion of the California SIP under the Clean Air Act (CAA or Act). Collectively, the submitted regulations comprise the District's current program for preconstruction review and permitting of new or modified stationary sources. These SIP revision submittals, referred to herein as the ''SIP submittal'' or ''submitted rules,'' represent a minor update to the District's preconstruction review and permitting program and are intended to satisfy the requirements under part C (prevention of significant deterioration) (PSD) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act (minor NSR).

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the District and submitted to EPA by the California Air Resources Board, which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED NSR RULES

| Rule No. | Rule title | Adopted or amended | Submitted |
|---|---|---|---|
| 200 | Permits Required | 12/13/00 | 5/8/01 |
| 203 | Application | 10/16/02 | 12/12/02 |
| 204 | Cancellation of Applications | 3/21/01 | 5/31/01 |
| 206 | Standards for Granting Applications | 3/21/01 | 5/31/01 |
| 207 | Review of New or Modified Sources | 4/20/11 | 5/12/11 |
| 208 | Standards for Granting Permits to Operate (Request to Repeal) | 12/13/00 | 5/8/01 |
| 212 | Public Availability of Emission Data | 10/16/02 | 12/12/02 |

Each of these submittals was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, six months after the date of submittal. These criteria must be met before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. While we can act only on the most recently submitted version of each regulation (which supersedes earlier submitted versions), we have reviewed materials provided with previous submittals. Our technical support document (TSD) provides additional background information on each of the submitted rules.

### *B. What are the existing MBUAPCD rules governing stationary source permits in the California SIP?*

Table 2 lists the rules that make up the existing SIP-approved rules for new or modified stationary sources in MBUAPCD. All of these rules, except for Rule 200, would be replaced or otherwise deleted from the SIP by the submitted set of rules listed in table 1 if EPA were to take final action as proposed herein.

TABLE 2—EXISTING SIP RULES

| Rule No. | Rule title | SIP approval date | FEDERAL REGISTER Citation |
|---|---|---|---|
| 200 | Permits Required | 7/1/99 | 64 FR 35577 |
| 204 | Cancellation of Applications | 7/1/99 | 64 FR 35577 |
| 206 | Standards for Granting Applications | 7/13/87 | 52 FR 26148 |
| 207 | Review of New or Modified Sources | 2/4/00 | 65 FR 5433 |
| 208 | Standards for Granting Permits to Operate (Request to Repeal) | 7/13/87 | 52 FR 26148 |
| 212 | Public Availability of Emission Data | 7/13/87 | 52 FR 26148 |

*C. What is the purpose of this proposed rule?*

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the submitted rules adopted by the District as identified in table 1. We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

**II. EPA's Evaluation**

*A. How is EPA evaluating the rules?*

EPA has reviewed the rules submitted by MBUAPCD governing PSD and minor NSR for stationary sources for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164 and 51.166, and the CAA requirements for SIP revisions in CAA section 110(l).[1] As described below, EPA is proposing a combination of actions consisting of disapproval of Rule 200 (Permits), limited approval and limited disapproval of Rule 207 (Review of New or Modified Sources), repeal of Rule 208 (Standards for Granting Permits to Operate) and approval of Rules 203, 204, 206 and 212.

*B. Do the rules meet the evaluation criteria?*

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

Based on our review of the public process documentation included in the various submittals, we find that MBUAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each submitted rule in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act and 40 CFR 51.160–164, and (2) PSD permit programs under part C of title I of the Act and 40 CFR 51.166. For the most part, the submitted rules satisfy the applicable requirements for these permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised PSD permitting requirements promulgated by EPA in the last several years, but the submitted rules also contain specific deficiencies which prevent full approval. Below, we discuss generally our evaluation of MBUAPCD's submitted rules and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D'' of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified ''major'' stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the NAAQS are achieved. These general pre-construction requirements are commonly referred to as ''minor NSR'' and are subject to EPA's implementing regulations in 40 CFR 51.160–51.164.

Rules 200—*Permits Required,* 203—*Application,* 204—*Cancellation of Applications,* 206—*Standards for Granting Applications,* 207—*Review of New or Modified Sources,* and 212—*Public Availability of Emission Data,* contain the requirements for review and permitting of individual minor stationary sources in MBUAPCD. Except for Rule 200, these regulations satisfy the statutory and regulatory requirements for minor NSR programs. The changes the District made to the rules listed above were largely administrative in nature and provide additional clarity to the rules. However, language added to Rule 200 in Part 4 conflicts with the provisions of 40 CFR 52.23 which provides that all permit conditions issued under an EPA-approved permit program which are incorporated into the SIP, are federally enforceable conditions subject to enforcement under section 113 of the CAA. Thus, the default enforcement status of permit conditions issued as part of a federally approved permit program is that they are federally enforceable, regardless of the origin of the authority for the conditions. Because the new language in Rule 200, Part 4, explicitly contravenes the provisions contained in 40 CFR 52.23, the revisions to Rule 200 cannot be approved into the SIP. Therefore EPA is proposing to disapprove submitted Rule 200—*Permits Required.* If we finalize our action as proposed, the current SIP approved version of Rule 200—*Permits Required* will remain in effect. (64 FR 35577 July 1, 1999).

[1] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated ''attainment'' or ''unclassifiable'' for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166. MBUAPCD is currently designated as ''attainment'' or ''unclassifiable/attainment'' for all NAAQS pollutants.

Rule 207 contains the requirements for review and permitting of minor and PSD sources in MBUAPCD. This Rule satisfies most of the statutory and regulatory requirements for PSD permit programs, but Rule 207 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, 40 CFR 51.161(a) requires the District to provide an opportunity for public comment on proposed permit actions. In addition, 40 CFR 51.161(d) specifies that a public notice must be provided for all lead point sources, as defined in 40 CFR 51.100(k). The provisions of Sections 6.9 and 4.2 provide specific public notice emission rate thresholds to determine when public notice is required. The rule provides thresholds for all NAAQS pollutants except $PM_{2.5}$ and lead. To correct this deficiency, the District should add public notice emission thresholds for both pollutants.

Second, the definitions of ''Major Stationary Source'' and ''Major Modification to an Existing Source'' do not include the specific applicability thresholds provided in 40 CFR 51.166(b)(1) and (2), respectively, for these terms. Instead both definitions provide a general reference to the ''. . . threshold levels provided by the federal Clean Air Act . . .'' to be used to determine the emission thresholds that constitute a Major Stationary Source and Major Modification to an Existing Source. This general reference is not sufficient to satisfy the requirement to provide definitions for these terms which are ''more stringent, or at least as stringent, in all respects as the corresponding definitions. . . .'' To correct the deficiency, the District should add the threshold levels provided in the 40 CFR 51.166(b)(1) and (2) to its definitions.

Third, the definition in 40 CFR 51.166(b)(2) provides that a modification is ''major'' if it would result in a ''significant emissions increase'' and a ''significant net emissions increase'' of a pollutant, whereas the definition in Rule 207 provides that a modification is ''major'' if it may result in a ''potential to emit'' greater than the threshold levels provided by the federal CAA for the area designation and pollutant. This rule language means that only increases above the existing potential to emit levels are considered emission increases when determining if a project will result in a major modification. This calculation methodology is inconsistent with federal requirements in 40 CFR 51.166(a)(7)(iv)(c) and (d), which specify that emission increases from a modification must be based on the difference between post-project projected actual or potential emissions and pre-project actual emissions. Using the Rule 207 definition, a project that would be considered a major modification under federal regulations, may not be considered a major modification at an existing source under Rule 207. The District should correct this deficiency by including an applicability test equivalent to the test provided in 40 CFR 51.166(a)(7) to its rule.

Fourth, 40 CFR 51.166(b)(23) for the term ''significant'' contains three separate paragraphs ((i), (ii) and (iii)). While Rule 207 does not provide a specific definition for this term, we have determined that the emission thresholds provided in Table 4.1.1 of the rule provide an alternative definition that is at least as stringent as the provisions in paragraph (i). Paragraph (ii) specifies the definition of significant for any regulated NSR pollutant not listed in paragraph (i). We could not find any Rule 207 provisions that would satisfy the paragraph (ii) definition of significant. Paragraph (iii) defines ''any emissions rate or any net emissions increase [NEI] associated with a major stationary source or major modification, which would construct within 10 kilometers [6 miles] of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average)'' as significant. While the provisions of Section 4.5, Protection of Class I Areas appear to satisfy the requirements for this definition by providing a range of 15 miles, impact levels of 1 $\mu g/m^3$ (24-hour average) or less for various pollutants, and a net emission increase threshold of zero, it provides for the calculation of a ''net emission increase'' in a manner entirely inconsistent with the 40 CFR 51.166(b)(3) definition of this term. EPA's definition only allows contemporaneous emission increases and decreases (typically occurring within the last 5 years) to be used in determining the NEI from a project, whereas the definition of NEI in Section 2.36 requires the use of all emission increases and decreases since the specified baseline date for each pollutant. Except for $PM_{2.5}$, these dates are between 20 and 30 years old. The District should correct this deficiency by including all of the provisions found in 40 CFR 51.166(23)(iii) in Rule 207.

Fifth, Rule 207 does not contain a provision to satisfy the requirement of 40 CFR 51.166(q)(2)(iii) which requires the District to provide the opportunity for a public hearing to consider a proposed permit action. The District should correct this deficiency by including the opportunity for a public hearing for proposed permit actions in Rule 207.

Finally, Rule 207 does not contain any provisions to satisfy the requirements of 40 CFR 51.166(r)(1) and (2) which require permit programs to include specific language providing that (1) ''. . . approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law'' and (2) that if ''. . . a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements . . .'' of the PSD program shall apply to the source or modification as though construction had not yet commenced on the source or modification. This deficiency should be corrected by adding the language found in 40 CFR 51.166(r)(1) and (2).

Compared to the existing SIP approved PSD program in Rule 207 (approved February 4, 2000), however, submitted Rule 207 represents an overall strengthening of the District's PSD program, in large part because the rule includes updated PSD provisions to regulate new or modified major stationary sources of $PM_{2.5}$ emissions, which is unregulated under the existing SIP PSD program. Because submitted Rule 207 strengthens the SIP, we are proposing a limited approval and limited disapproval based on the deficiencies listed above.

3. Nonattainment New Source Review

The CAA defines ''nonattainment areas'' as air quality planning areas that exceed the primary or secondary

NAAQS for the given criteria pollutant. The MBUAPCD is not designated nonattainment for any NAAQS, although the District was classified as nonattainment in the past. Because the MBUAPCD is not currently classified nonattainment for any NAAQS, we are not evaluating the submitted rules for approval under 40 CFR 51.165, which contains the requirements for nonattainment NSR programs. To the extent some rules contain provisions typically associated with nonattainment NSR programs (e.g. offset provisions), we are approving those provisions only for purposes of the District's minor NSR program.

4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would ''interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Act].''

MBUAPCD is currently designated attainment or unclassifiable/attainment for all NAAQS pollutants. We are unaware of any reliance by the District on the continuation of any aspect of the permit-related rules in the MBUAPCD portion of the California SIP for the purpose of continued attainment or maintenance of the NAAQS. Our approval of the MBUAPCD SIP submittal (and supersession of the existing SIP rules) would strengthen the applicable SIP in some specific respects and would relax the SIP in other specific respects. Taken in its entirety, we find that the SIP revision represents a strengthening of MBUAPCD's minor NSR and PSD programs compared to the existing SIP rules that we approved in 1987, 1999 and 2000, and that our approval of the SIP submittal would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Given all these considerations and in light of the air quality improvements in MBUAPCD, we propose to conclude that our approval of these updated NSR regulations into the California SIP would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted rules satisfy most of the applicable CAA and regulatory requirements for the District's minor NSR and PSD permit programs under CAA section 110(a)(2)(C) and part C of title I of the Act. However, Rule 207 contains certain deficiencies that prevent us from proposing a full approval and we are proposing a limited approval and limited disapproval of that Rule. We do so based also on our finding that, while Rule 207 does not meet all of the applicable requirements, the Rule represents an overall strengthening of the SIP by clarifying and enhancing the permitting requirements for major and minor stationary sources in MBUAPCD. We are also proposing a full disapproval of Rule 200. We are proposing to approve the District's request to repeal Rule 208 from the SIP. Finally, we are proposing a full approval of the remaining four permitting rules.

## III. Public Comment and Proposed Action

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of Rule 207, a full disapproval of Rule 200 and approval of the remaining revisions to the MBUAPCD portion of the California SIP that governs the issuance of permits for stationary sources under the jurisdiction of the MBUAPCD, including review and permitting of major sources and major modifications under part C of title I of the CAA. Specifically, EPA is proposing an action on MBUAPCD regulations listed in table 1, above, as a revision to the MBUAPCD portion of the California SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval of Rule 207, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of the proposed approval and limited approval and limited disapproval portions of this action is to update the applicable SIP with current MBUAPCD permitting regulations [2] and to set the stage for remedying deficiencies in these regulations.

If finalized as proposed, the limited disapproval of Rule 207 would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless the State of California corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action.

[2] Final approval of the rules in table 1, except Rule 200, would supersede all of the rules in the existing California SIP as listed in table 2.

We will accept comments from the public on this proposed action for 30 days following publication in the **Federal Register**.

## IV. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

*B. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this proposed action under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed action under section 110 and subchapter I, part C of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State

requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval and limited disapproval portions of this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). These proposed actions under section 110 and subchapter I, part C of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: September 30, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2014–24506 Filed 10–14–14; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2014–0178; FRL–9917–85–Region–9]**

## Approval and Promulgation of Implementation Plans; State of California; Sacramento Metro Area; Attainment Plan for 1997 8-Hour Ozone Standard

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the 1997 8-hour ozone national ambient air quality standard (''standard'' or NAAQS) in the Sacramento Metro

nonattainment area. EPA is proposing to approve the emissions inventories, air quality modeling, reasonably available control measures, provisions for transportation control strategies and measures, rate of progress and reasonable further progress (RFP) demonstrations, attainment demonstration, transportation conformity motor vehicle emissions budgets, and contingency measures for failure to make RFP or attain. EPA is also proposing to approve commitments for measures by the Sacramento Metro nonattainment area air districts.

**DATES:** Any comments must be submitted by November 14, 2014.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2014–0178, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *Email: ungvarsky.john@epa.gov.*
- *Mail or deliver:* John Ungvarsky, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3963, *ungvarsky.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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## I. The 8-Hour Ozone NAAQS and the Sacramento Metro Ozone Nonattainment Area

### *A. Background on the 8-Hour Ozone NAAQS*

Ground-level ozone is formed when oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC) react in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure. See ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010 and 75 FR 2938 (January 19, 2010).

In 1979, under section 109 of the Clean Air Act (CAA), EPA established primary and secondary national ambient air quality standards (NAAQS or standard) for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period. 44 FR 8202 (February 8, 1979).

On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (''1997 8-hour ozone standard''). 62 FR 38856 (July 18, 1997). EPA set the 1997 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On March 27, 2008, EPA revised and further strengthened the primary and secondary NAAQS for ozone by setting the acceptable level of ozone in the ambient air at 0.075 ppm, averaged over an 8-hour period (''2008 8-hour ozone standard''). 73 FR 16436. On May 21, 2012, EPA designated areas of the country with respect to the 2008 8-hour ozone standard. 77 FR 30088 and 40 CFR 81.330. Today's action only applies to the 1997 8-hour ozone standard and does not address requirements of the 2008 8-hour ozone standard.

[1] California plans sometimes use the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous. For simplicity, we use the term VOC herein to mean either VOC or ROG.

*B. The Sacramento Metro 8-Hour Ozone Nonattainment Area*

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. Effective June 15, 2004, we designated nonattainment areas for the 1997 8-hour ozone NAAQS. At the same time, we assigned classifications to many of these areas based upon their ozone ''design value,'' in accordance with the structure of part D, subpart 2 of Title I of the Clean Air Act. See 69 FR 23858 (April 30, 2004) and 40 CFR 51.903(a). The designations and classifications for the 1997 8-hour ozone standard for California areas are codified at 40 CFR 81.305. EPA classified the Sacramento Metro Area (SMA) as ''serious'' nonattainment for the 1997 8-hour ozone standard, with an attainment date no later than June 15, 2013, and published a rule governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004). In a February 14, 2008 letter, the California Air Resources Board (CARB) requested that EPA reclassify the SMA from ''serious'' to ''severe-15'' under CAA section 181(b)(3).[2] On May 5, 2010, EPA finalized the reclassification of the SMA to ''severe-15'' with an attainment date no later than June 15, 2019.[3] 75 FR 24409.

The SMA consists of Sacramento and Yolo counties and portions of El Dorado, Placer, Solano and Sutter counties. For a precise description of the geographic boundaries of the SMA, see 40 CFR 81.305. Sacramento County is under the jurisdiction of the Sacramento Metropolitan Air Quality Management District (SMAQMD). Yolo County and the eastern portion of Solano County comprise the Yolo-Solano AQMD (YSAQMD). The southern portion of Sutter County is part of the Feather River AQMD (FRAQMD). The western portion of Placer County is part of the Placer County Air Pollution Control District (PCAPCD). Lastly, the western portion of El Dorado County is part of the El Dorado County AQMD (EDCAQMD). Collectively, we refer to these five districts as the ''Districts.'' Under California law, each air district is responsible for adopting and implementing stationary source rules, while the CARB adopts and implements consumer products and mobile source rules. The Districts and State rules are submitted to EPA by CARB.

Ambient 8-hour ozone levels in the Sacramento area are well above the 1997 8-hour ozone NAAQS. The maximum design value for the area, based on monitored readings at the Folsom monitor in Sacramento County, is 0.090 ppm for the 2011–2013 period.[4]

## II. CAA and Regulatory Requirements for Ozone Nonattainment SIPs

States must implement the 1997 8-hour ozone standard under Title 1, Part D of the CAA, which includes section 172, ''Nonattainment plan provisions,'' and subpart 2, ''Additional Provisions for Ozone Nonattainment Areas'' (sections 181–185).

In order to assist states in developing effective plans to address their ozone nonattainment problem, EPA issued the 8-hour ozone implementation rule. This rule was finalized in two phases. The first phase of the rule addresses classifications for the 1997 8-hour ozone standard, applicable attainment dates for the various classifications, and the timing of emissions reductions needed for attainment. See 69 FR 23951 (April 30, 2004). The second phase addresses SIP submittal dates and the requirements for reasonably available control technology and measures (RACT and RACM), reasonable further progress (RFP), modeling and attainment demonstrations, contingency measures, and new source review. See 70 FR 71612 (November 29, 2005). The rule is codified at 40 CFR part 51, subpart X.[5] We discuss each of these CAA and regulatory requirements for 8-hour ozone nonattainment plans in more detail below.

## III. California's State Implementation Plan Submittals To Address 8-Hour Ozone Nonattainment in the Sacramento Metro Area

*A. California's SIP Submittals*

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP providing for attainment of the NAAQS under title 1, part D of the CAA. For 8-hour ozone areas designated as nonattainment effective June 15, 2004, this attainment SIP was due by June 15, 2007. See CAA section 172(b) and 40 CFR 51.908(a) and 51.910.

California has made several SIP submittals to address the CAA's planning requirements for attaining the 1997 8-hour ozone standard in the SMA. The principal submittals are:

- Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008, February 2006;
- Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan, March 26, 2009;
- CARB's 2007 State Strategy (''2007 State Strategy'');
- Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy (''Revised 2007 State Strategy'');[6] and
- Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (2013 SIP Revisions), September 26, 2013.

We refer to these submittals collectively as the ''Sacramento 8-Hour Ozone Attainment Plan'' or ''Sacramento Ozone Plan.''

1. Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008

The Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008 (''2002–2008 RFP Plan'') was

[2] See SCAQMD Governing Board Resolution No. 07–9 (June 1, 2007), p. 12; CARB Resolution No. 07–41 (September 27, 2007), p. 8; and letter, James Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, November 28, 2007.

[3] For the 2008 ozone standard, we also designated the SMA as nonattainment and classified the area as ''severe-15.'' See 77 FR 30088 (May 21, 2012). The SMA attainment date for the 2008 8-hour ozone standard is as expeditious as practicable but no later than December 31, 2027. Today's action does not address requirements concerning the 2008 8-hour ozone standard.

[4] See EPA Air Quality System Quick Look Report dated June 10, 2014 in the docket for today's action. A design value is an ambient concentration calculated using a specific methodology to evaluate monitored air quality data and is used to determine whether an area's air quality is meeting a NAAQS. The methodology for calculating design values for the 8-hour ozone NAAQS is found in 40 CFR part 50, Appendix I. This value is based on complete, validated, and certified data for the 2011–2013 timeframe.

[5] EPA has revised or proposed to revise several elements of the 8-hour ozone implementation rule since its initial promulgation in 2004. See, e.g., 74 FR 2936 (January 16, 2009); 75 FR 51960 (August 24, 2010); and 75 FR 80420 (December 22, 2010). None of these revisions affect any provision of the rule that is applicable to EPA's proposed action on the Sacramento 8-Hour Ozone Attainment Plan.

[6] On July 21, 2011, CARB further revised the State Strategy (i.e., Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions). Although the 2011 revision was specific to the South Coast and San Joaquin Valley ozone nonattainment areas, they contained Appendix E, an assessment of the impacts of the economic recession on emissions from the goods movement sector. The growth projections developed for emissions inventories in the Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (2013 Revisions) also rely on the recessionary impacts in Appendix E.

adopted by the Districts' governing boards during January–February 2006 and then by CARB Executive Order G–125–335 on February 24, 2006. See table 1 for the Districts' adoption dates and resolution or order numbers. CARB submitted the 2002–2008 RFP Plan to EPA on February 24, 2006.[7]

TABLE 1—AGENCIES AND ADOPTION DATES FOR SACRAMENTO REGIONAL 8-HOUR OZONE ATTAINMENT AND REASONABLE FURTHER PROGRESS PLAN

| Agency | Hearing and adoption dates | Board resolution |
|---|---|---|
| SMAQMD | January 26, 2006 | 2006–010 |
| FRAQMD | February 6, 2006 | 2006–01 |
| EDCAQMD. | February 7, 2006 | 040–2006 |
| YSAQMD | February 8, 2006 | 06–01 |
| PCAPCD | February 19, 2006 | 06–01 |

The 2002–2008 RFP Plan includes an RFP demonstration for the 2002–2008 timeframe, an amended Rate of Progress Plan for the 1990–1996 timeframe, and motor-vehicle emissions budgets used for transportation conformity purposes.

2. Sacramento Regional 8-Hour Ozone Attainment Plan

The Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (''2009 Ozone Attainment and RFP Plan'' or ''2009 Plan'') was adopted by the Districts' governing boards during January–February 2009 and then by CARB on March 26, 2009. See table 2 for adoption dates and resolution numbers. CARB submitted the 2009 Ozone Attainment and RFP Plan to EPA on April 19, 2009.[8]

TABLE 2—AGENCIES AND ADOPTION DATES FOR 2009 OZONE ATTAINMENT AND RFP PLAN

| Agency | Hearing and adoption dates | Board resolution |
|---|---|---|
| SMAQMD | January 22, 2009 | 2009–001 |
| FRAQMD | February 2, 2009 | 2009–02 |
| EDCAQMD. | February 10, 2009 | 021–2009 |
| YSAQMD | February 11, 2009 | 09–02 |
| PCAPCD | February 19, 2009 | 09–01 |
| CARB ..... | March 26, 2009 .... | 09–19 |

[7] See letter from Catherine Witherspoon, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, February 24, 2006, with enclosures.

[8] See letter from James N. Goldstene, Executive Officer, CARB to Laura Yoshii, Acting Regional Administrator, EPA Region 9, April 19, 2009, with enclosures.

The 2009 Ozone Attainment and RFP Plan includes an attainment demonstration, commitments by the Districts to adopt control measures to achieve emissions reductions from sources under its jurisdiction (primarily stationary sources), and motor-vehicle emissions budgets used for transportation conformity purposes. The attainment demonstration includes air quality modeling, an RFP plan, an analysis of reasonably available control measures/reasonably available control technology (RACM/RACT), base year and projected year emissions inventories, and contingency measures. The 2009 Ozone Attainment and RFP Plan also includes a demonstration that the most expeditious date for attaining the 1997 8-hour ozone NAAQS in the SMA is June 15, 2018.

In late 2013, SMAQMD and CARB updated and revised the Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (''2013 Ozone Attainment and RFP Plan Update'' or ''2013 Plan Update''). The 2013 Plan Update included a revised emissions inventory that accounted for control measures adopted through 2011, revised attainment and RFP demonstrations, the effects of the economic recession, and updated transportation activity projections provided by the Sacramento Area Council of Governments (SACOG). See table 3 for relevant hearing and adoption dates and board resolutions. CARB submitted the 2013 Plan Update to EPA on December 31, 2013.[9]

TABLE 3—AGENCIES AND ADOPTION DATES FOR THE 2013 OZONE ATTAINMENT AND RFP PLAN UPDATE

| Agency | Hearing and adoption dates | Board resolution |
|---|---|---|
| SMAQMD | September 26, 2013. | 2013–026 |
| CARB ..... | November 21, 2013. | 13–39 |

On June 19, 2014, CARB submitted a technical supplement to the Sacramento Vehicle Miles Travelled (VMT) emissions offset demonstration in the 2013 Plan Update.[10] CARB's technical supplement includes a revised set of motor vehicle emissions estimates reflecting technical changes to the inputs used to develop the original set of calculations.[11] While the vehicle emissions estimates in CARB's technical supplement differ from those contained in the demonstration in the 2013 Plan Update, the conclusions of the analysis remain the same.

[9] See letter from Richard W. Corey, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, EPA Region 9, December 31, 2013, with enclosures.

[10] See letter from Lynn Terry, Deputy Executive Officer, CARB, to Deborah Jordan, Director, Air Division, EPA Region 9, June 19, 2014, with enclosures. On July 25, 2014, CARB sent EPA a revised technical supplement that corrected minor typographical errors. See record of July 25, 2014 email and attachment from Jon Taylor, CARB, to Matt Lakin, EPA, included in the docket.

3. CARB State Strategy

To demonstrate attainment, the Sacramento Ozone Plan relies to a large extent on measures in CARB's 2007 State Strategy. The 2007 State Strategy was adopted by CARB on September 27, 2007 and submitted to EPA on November 16, 2007.[12]

The 2007 State Strategy describes CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 Fine Particulate Matter ($PM_{2.5}$) and 1997 8-hour ozone NAAQS not only in the SMA but also in California's other nonattainment areas, such as the South Coast Air Basin and the San Joaquin Valley. It also includes CARB's commitments to obtain emissions reductions of $NO_X$ and VOC from sources under the State's jurisdiction, primarily on- and off-road motor vehicles and engines, through the implementation of 15 defined State measures.[13]

On August 12, 2009, CARB submitted the Revised 2007 State Strategy, dated March 24, 2009 and adopted April 24, 2009.[14] [15] This submittal updated the

[11] The principal difference between the two sets of calculations is that CARB's technical supplement includes running exhaust, start exhaust, hot soak, and running loss emissions of VOCs in all of the emissions scenarios. These processes are directly related to VMT and vehicle trips. The revised calculation excludes diurnal and resting loss emissions of VOCs from all of the emissions scenarios because such evaporative emissions are related to vehicle population rather than to VMT or vehicle trips.

[12] See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

[13] The 2007 State Strategy also includes measures (i.e., Smog Check improvements) to be implemented by the California Bureau of Automotive Repair. See 2007 State Strategy, pp. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

[14] See CARB Resolution No. 09–34, April 24, 2009 and letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the Revised 2007 State Strategy were submitted as a SIP revision. The balance of the report was for informational purposes only. See Attachment A to CARB Resolution No. 09–34.

[15] EPA has previously approved portions of CARB's 2007 State Strategy and the Revised 2007 State Strategy that are relevant for attainment of the 1997 8-hour ozone standard in the San Joaquin Valley. See 77 FR 12674 (March 1, 2012).

2007 State Strategy to reflect its implementation during 2007 and 2008 and calculated emission reductions in the SMA from implementation of the State Strategy. The 2013 Plan Update incorporates the Revised 2007 State Strategy and updates $NO_X$ and VOC emissions reductions estimates from adopted State measures and commitments. In today's proposal and in the context of the Sacramento Ozone Plan, we are only evaluating the State measures that are included in the Revised 2007 State Strategy and applicable in the SMA.

*B. CAA Procedural and Administrative Requirements for SIP Submittals*

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

The Districts and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2009 Ozone Attainment and RFP Plan and 2013 Plan Update. The Districts conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of the 2002–2008 RFP Plan, 2009 Ozone Attainment and RFP Plan and 2013 Plan Update. See discussions above in III.A.1, III.A.2, and III.A.3 for hearing and adoption dates.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007. See CARB Resolution No. 07–28. CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the Revised 2007 State Strategy. See CARB Resolution 09–34. CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its November 21, 2013 adoption of the 2013 Plan Update. See CARB Resolution No. 13–39.

The SIP submittals include proof of publication for notices of the Districts' and CARB's public hearings, as evidence that all hearings were properly noticed. We find, therefore, that the submittals meet the procedural requirements of CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires that EPA determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will become complete six months after the date of submittal by operation of law. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The Sacramento Ozone Plan submittals were deemed complete by operation of law on the dates listed in table 4.

TABLE 4—SUBMITTALS AND COMPLETENESS DETERMINATIONS FOR SACRAMENTO OZONE PLAN

| Submittal | Submittal date | Completeness date |
|---|---|---|
| 2002–2008 RFP Plan | February 24, 2006 | August 24, 2006. |
| 2007 State Strategy | November 16, 2007 | May 16, 2008. |
| 2009 Sacramento Regional 8-Hour Ozone Attainment Plan and RFP Plan. | April 19, 2009 | October 29, 2009. |
| Revised 2007 State Strategy | August 12, 2009 | February 12, 2010. |
| 2013 Sacramento Regional 8-Hour Ozone Attainment Plan and RFP Plan. | December 31, 2013 | May 31, 2014. |

## IV. Review of the Sacramento Ozone Plan and the Sacramento Portion of the State Strategy

We provide our evaluation of the Sacramento Ozone Plan's compliance with applicable CAA and EPA regulatory requirements below. A more detailed evaluation can be found in the technical support document (TSD) for this proposal, which is available online at *www.regulations.gov* under docket number EPA–R09–OAR–2014–0178, or from the EPA contact listed at the beginning of this notice.

*A. Summary of EPA's Proposed Actions*

EPA is proposing to approve the 2002–2008 RFP Plan, 2009 Ozone Attainment and RFP Plan, those portions of the 2007 State Strategy and Revised 2007 State Strategy specific to ozone attainment in the SMA, and the 2013 Ozone Attainment and RFP Plan Update.

We are proposing to approve the emissions inventories in these SIP revisions as meeting the applicable requirements of the CAA and ozone implementation rule. We are also proposing to approve the Districts' commitments to specific measures in these SIP revisions as strengthening the SIP.

We are proposing to approve the air quality modeling analysis on which the Sacramento Ozone Plan's attainment, RACM, and RFP demonstrations are based because the Sacramento Ozone Plan includes sufficient documentation and analysis for EPA to determine the modeling's adequacy.

We are proposing to approve the RACM analysis and the RFP and attainment demonstrations and related contingency measures as meeting the applicable requirements of the CAA and ozone implementation rule.

We are proposing to approve new transportation conformity motor vehicle emissions budgets for 2017 and 2018.[16]

We are proposing to approve the Sacramento VMT emissions offset demonstration as meeting the applicable requirements in section 182(d)(1)(A) of the Clean Air Act.

EPA's analysis and findings are summarized below and are described in more detail in the TSD for this proposal which is available online at *www.regulations.gov* in the docket, EPA–R09–OAR–2014–0178, or from the EPA contact listed at the beginning of this notice.

*B. Emissions Inventories*

1. Requirements for Emissions Inventories

CAA section 182(a)(1) requires each state with an ozone nonattainment area classified under subpart 2 to submit a ''comprehensive, accurate, current inventory of actual emissions from all sources'' of the relevant pollutants in

[16] Motor vehicle emission budgets (MVEBs) for 2011, 2014, and 2017 were previously found adequate by EPA on July 28, 2009 (74 FR 37210). New MVEBs for 2014, 2017, and 2018 in the 2013 Plan Update were determined to be adequate on July 25, 2014. The adequacy finding was published on August 8, 2014 (79 FR 46436) with an effective date of August 25, 2014.

accordance with guidance provided by the Administrator. Emissions inventories for ozone need to contain VOC and $NO_X$ emissions because these pollutants are precursors to ozone formation. The inventories should meet the data requirements of EPA's Consolidated Emissions Reporting Rule (codified at 40 CFR part 51 subpart A).

A baseline emissions inventory is required for the attainment demonstration and for meeting RFP requirements. The baseline year for the SIP planning emissions inventory is identified as 2002 by EPA guidance memorandum.[17] Additional EPA emission inventory guidance and the federal 8-hour ozone implementation rules set specific planning requirements pertaining to future milestone years for reporting RFP and to attainment demonstration years.[18] [19] Key RFP analysis years in the RFP demonstration include 2008 and every subsequent 3 years out to the attainment date. The federal 8-hour ozone implementation rule also requires that for purposes of defining the data elements in emissions inventories for ozone nonnattainment areas, 40 CFR part 51 subpart A applies.

2. Emissions Inventories in the Sacramento Ozone Plan

The baseline planning inventories for the SMA ozone nonattainment area together with additional documentation for the inventories are found in Section 5 and Appendix A of the 2013 Plan Update and in Appendix C of CARB's Staff Report on Proposed Revisions to the 8-Hour Ozone State Implementation Plan for the Sacramento Federal Nonattainment Area, October 22, 2013 (''CARB 2013 Staff Report''). The average summer weekday emissions typical of the ozone season are used for the 2002 base year planning inventory, RFP milestone years (e.g., 2014) and the 2018 attainment year. These inventories incorporate reductions from federal, State, and Districts control measures adopted through January 2012 for mobile sources and through mid-2011 for stationary and area-wide sources.[20]

Table 5 provides a summary of the average summer weekday $NO_X$ and VOC emissions inventories for the 2002 baseline year and the 2018 attainment year. All inventories include $NO_X$ and VOC emissions from stationary, area, off-road mobile, and on-road mobile sources.

The on-road motor vehicles inventory category consists of trucks, automobiles, buses, and motorcycles. California's model for estimating emissions from on-road motor vehicles operating in California is referred to as ''EMFAC'' (short for EMission FACtor). EMFAC has undergone many revisions over the years, and the current on-road motor vehicles emission model is EMFAC2011, the CARB model approved by EPA for estimating on-road motor source emissions.[21] Appendix A1 of the 2013 Plan Update contains the latest on-road motor vehicle summer planning VOC and $NO_X$ inventories, vehicle population, Vehicle Miles Traveled (VMT) and trips for each EMFAC vehicle class category for the Sacramento Metro nonattainment area. The motor vehicle emissions in the Sacramento Ozone Plan are based on CARB's EMFAC2011 emission factor model and the latest planning assumptions from SACOG's 2013/2016 Metropolitan Transportation Improvement Program (MTIP).[22]

The 2013 Plan Update contains off-road VOC and $NO_X$ inventories developed by CARB using category-specific methods and models.[23] The off-road mobile source category includes aircraft, trains, ships, and off-road vehicles and equipment used for construction, farming, commercial, industrial, and recreational activities. Appendix A4 of the 2013 Plan Update contains the summary of in-use off-road equipment emissions, horsepower, population and activity data for the SMA using data outputs from CARB's 2011 In-Use Off-Road Equipment model. For those off-road emissions categories not updated with new methods and data, such as lawn and garden equipment, data outputs from CARB's OFFROAD2007 model were used.

The stationary source category of the emissions inventory includes non-mobile, fixed sources of air pollution comprised of individual industrial, manufacturing, and commercial facilities. Examples of stationary sources (a.k.a., point sources) include fuel combustion (e.g., electric utilities), waste disposal (e.g., landfills), cleaning and surface coatings (e.g., printing), petroleum production and marketing, and industrial processes (e.g., chemical). Stationary source operators report to the Districts the process and emissions data used to calculate emissions from point sources. The Districts then enter the information reported by emission sources into the California Emission Inventory Development and Reporting System (CEIDARS) database.[24]

The area sources category includes aggregated emissions data from processes that are individually small and widespread or not well-defined point sources. The area source subcategories include solvent evaporation (e.g., consumer products and architectural coatings) and miscellaneous processes (e.g., residential fuel combustion and farming operations). Emissions from these sources are calculated from product sales, population, employment data, and other parameters for a wide range of activities that generate air pollution across the Sacramento nonattainment region.[25]

The emission inventories in the 2013 Plan Update were derived from the California Emission Projection Analysis Model (CEPAM).[26] The CEPAM model run used in the Sacramento Ozone Plan is based on a 2005 baseline inventory developed using the methods or databases described above (e.g.,

[17] ''2002 Base Year Emission Inventory SIP Planning: 8-Hour Ozone, $PM_{2.5}$ and Regional Haze Programs'' (EPA Memorandum from L. Wegman and P. Tsirigotis, November 18, 2002).

[18] ''Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (EPA–454/R–05–001, August 2005, updated November 2005).

[19] ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2'' (70 FR 71612, November 29, 2005).

[20] See 2013 Plan Update, Appendix A5: Recent Emission Inventory Adjustments, pages A5–1 through A5–5.

[21] See 78 FR 14533 (March 6, 2013) regarding EPA approval of the 2011 version of the California EMFAC model and announcement of its availability. The software and detailed information on the EMFAC vehicle emission model can be found on the following CARB Web site: *http://www.arb.ca.gov/msei/msei.htm.*

[22] Final 2013/16 Metropolitan Transportation Improvement Program, Amendment #1 to the MTP/SCS 2035, and Air Quality Conformity Analysis. August 16, 2012. Federal Highway Administration approval December 14, 2012.

[23] Detailed information on CARB's off-road motor vehicle emissions inventory methodologies is found at: *http://www.arb.ca.gov/msei/categories.htm#offroad_motor_vehicles.*

[24] The CEIDARS database consists of two categories of information: source information and utility information. Source information includes the basic inventory information generated and collected on all point and area sources. Utility information generally includes auxiliary data, which helps categorize and further define the source information. Used together, CEIDARS is capable of generating complex reports based on a multitude of category and source selection criteria.

[25] Detailed information on the area-wide source category emissions is found on the CARB Web site: *http://www.arb.ca.gov/ei/areasrc/areameth.htm.*

[26] Appendix A2 of the 2013 Plan Update Appendices contains the estimated VOC and $NO_X$ stationary, area-wide and off-road forecast summaries by Emission Inventory Code categories for the Sacramento nonattainment area in CEPAM. (Appendix A2 is available separately in electronic file format.) A CEPAM inventory tool was created to support the development of the 2012 $PM_{2.5}$ SIPs due at that time. The tool was designed to support all of the modeling, planning, and reporting requirements due at that time and includes updates for all the pollutants (e.g., $NO_X$ and VOC).

EMFAC2011, CIEDERS, CARB's 2011 In-Use Off-Road Equipment model). The inventory was calibrated to 2005 emissions and activity levels, and inventories for other years are back-cast (e.g., 2002) or forecast (e.g., 2018) using CEPAM from that base inventory.

TABLE 5—SMA $NO_X$ AND VOC EMISSIONS INVENTORY SUMMARIES FOR THE 2002 BASE YEAR AND 2018 ATTAINMENT YEAR

[Average summer weekday emissions in tons per day, tpd] [a]

| Category | $NO_X$ | | VOC | |
|---|---|---|---|---|
| | 2002 | 2018 | 2002 | 2018 |
| Stationary Sources | 12.2 | 10.9 | 17.5 | 22.6 |
| Area Sources | 3.1 | 3.1 | 32.5 | 30.5 |
| On-Road Mobile Sources | 99.1 | 36.6 | 51.9 | 17.1 |
| Off-Road Mobile Sources | 50.4 | 25.9 | 40.7 | 24.4 |
| Inventory Adjustments by CARB | 0 | 0.3 | 4.1 | 4.0 |
| Totals | 164.8 | 76.9 | 146.7 | 98.7 |

[a] CARB 2013 Staff Report, tables C1–4. Because of rounding conventions, totals may not add up to exact estimates in categories.

3. Proposed Action on the Emissions Inventories

We have reviewed the emissions inventories in the Sacramento Ozone Plan and the inventory methodologies used by the Districts and CARB for consistency with CAA section 182(a)(1), the ozone implementation rule, and EPA's guidance. We find that the base year and projected attainment year inventories are comprehensive, accurate, and current inventories of actual or projected emissions of $NO_X$ and VOC in the SMA nonattainment area as of the date of their submittal. We propose, therefore, to approve these inventories as meeting the requirements of CAA section 172(c)(3), the ozone implementation rule and applicable EPA guidance.

*C. Reasonably Available Control Measures and Adopted Control Strategy*

1. RACM Requirements

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.''

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 [27] and in a memorandum entitled ''Guidance on Reasonably Available Control Measures (RACM) Requirements and Attainment Demonstration Submissions for the Ozone NAAQS,'' John Seitz, November 30, 1999.[28] (Seitz memo). In summary, EPA guidance provides that to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more. See Seitz memo and General Preamble at 13560; See also ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas,'' 44 FR 20372 (April 4, 1979) and Memorandum dated December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.''

Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586, at 20614.[29]

CAA section 172(c)(6) requires nonattainment plans to ''include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date.'' See also CAA section 110(a)(2)(A). The ozone implementation rule requires that all control measures needed for attainment be implemented no later than the beginning of the attainment year ozone season. 40 CFR 51.908(d). The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's attainment date. 40 CFR 51.900(g).

The purpose of the RACM analysis is to determine whether or not control measures exist that are technically reasonable and that provide emissions reductions that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered

[27] The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[28] Available at *www.epa.gov/ttn/oarpg/t1pgm.html.*

[29] For ozone nonattainment areas classified as moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which EPA has issued a Control Techniques Guideline (CTG). CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of $NO_X$. In severe areas, a major source is a stationary source that emits or has the potential to emit at least 25 tons of VOC or $NO_X$ per year. CAA section 182(d). Under the 8-hour ozone implementation rule, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 27 months after designation for the 8-hour ozone standard (September 15, 2006 for areas designated in April 2004) and to implement the required RACT measures no later than 30 months after that submittal deadline. See 40 CFR 51.912(a). California has submitted CAA section 182 RACT SIPs for the Districts comprising the Sacramento Metro ozone nonattainment area, and the status of the submittals is described in the TSD for this action. While any evaluation of a RACM demonstration needs to consider the potential effect of CAA section 182(b)(2) RACT on expeditious attainment, it does not require that there first be an approved RACT demonstration.

RACM and must be included in the SIP to ensure that the attainment is achieved ''as expeditiously as practicable.'' RACM is defined by EPA as any potential control measure for application to point, area, on-road and non-road emission source categories that meets the following criteria: (1) Technologically feasible; (2) economically feasible; (3) does not cause ''substantial widespread and long-term adverse impacts''; (4) is not ''absurd, unenforceable, or impracticable''; and (5) can advance the attainment date by at least one year. General Preamble at 13560.

2. RACM Demonstration in the SIP

CARB and the Districts have rulemaking processes for development, adoption and implementation of RACM. The State and Districts have adopted numerous measures since 2002, the base year for the Sacramento Ozone Plan, and included enforceable commitments for measures that are scheduled to be adopted in the future. The RACM analysis for the Sacramento Ozone Plan includes an evaluation of the State's, Districts', and the Sacramento Area Council of Governments' (SACOG) new stationary, area and mobile sources measures that have been adopted since the base year and commitments for future adoption, as discussed in more detail below. See 2009 Plan and the 2013 Plan Update, Appendix H—Reasonably Available Control Measures (for stationary and area sources) and Appendix D—Transportation Control Measures (for transportation control measures), and 2007 State Strategy, Appendix G.

For the Sacramento Ozone Plan, the Districts, CARB, and SACOG each undertook a process to identify and evaluate potential RACM that could contribute to expeditious attainment of the 8-hour ozone standards in the SMA. We describe each agency's efforts below.

a. Districts' RACM Analysis and Adopted Control Strategy

The Districts' RACM analysis, which focuses on stationary and area source controls, is briefly described in Chapter 7 and detailed in Appendix H of both the 2009 Plan and the 2013 Plan Update.

Since the 1970s, the Districts have adopted stationary source control rules that have resulted in significant improvement of air quality in the SMA. These regulations and strategies have yielded significant emissions reductions from sources under the Districts' jurisdiction. The Districts are also using economic incentive approaches, such as the Carl Moyer program,[30] to achieve additional reductions.

To identify all available RACM, the Districts conducted a thorough process that involved public meetings to solicit input, evaluation of EPA-suggested RACM and RACT, and evaluation of other air agencies' regulations. See 2009 Plan and 2013 Plan Update, Appendix H—Reasonably Available Control Measures. The Districts' staffs conducted internal reviews, consulted with CARB staff, solicited ideas from technical consultants, and attended a technology forum summit at the South Coast Air Quality Management District. In addition, the Districts' staff reviewed the following documents:

- ''Final 2007 Air Quality Management Plan,'' South Coast Air Quality Management District, June 2007;
- ''2007 Ozone Plan,'' San Joaquin Valley Air Pollution control District, April 30, 2007; and
- ''Bay Area 2005 Ozone Strategy—Appendix C, Stationary and Mobile Source Control Measure Descriptions,'' Bay Area Air Quality Management District, January 4, 2006.

District staff compared requirements in place in the SMA with adopted rules in the following air districts:

- South Coast Air Quality Management District;
- Bay Area Air Quality Management District;
- Ventura County Air Pollution Control District; and
- San Joaquin Valley Air Pollution Control District.

Each of the Districts was responsible for preparing the RACM analysis for the stationary measures in its jurisdiction. The regional mobile source and land use measures were evaluated by technical consultants for the Districts on behalf of the region.

From these analyses, staff compiled the proposed control measures, ''Sacramento Regional 8-hour Ozone Attainment Plan—Control Measures: Draft, October 2006.'' The Districts' staffs conducted public workshops at four locations throughout the Sacramento region to solicit comments on the proposed control measures and ideas for additional control measures to be considered. Following the public workshops, staff evaluated public comments and suggestions, reviewed the final plan documents noted above, and compiled the proposed control measures included in this plan.

The following is a summary of the Districts' staff's findings:

1. The Districts' staff evaluated and analyzed all reasonable control measures that were currently available for inclusion in the Sacramento Ozone Plan.

2. The Districts' staff identified new or amended stationary control measures, and mobile source and land use control measures that are included in the Sacramento Ozone Plan.

3. The Sacramento Ozone Plan includes all RACM provided by the public and experts.

4. The available control measures that are not included collectively would not advance the attainment date or contribute to RFP for the SMA because of the insignificant or non-quantifiable amount of emissions reductions that they may potentially generate. Tables H–1 through H–6 of Appendix H of the 2009 Plan and 2013 Plan Update contain a list of the measures and a brief discussion of the conclusions.

5. The RACM demonstration for transportation control measures was prepared by SACOG and is discussed separately in Appendix D—Transportation Control Measures of the 2009 Plan and 2013 Plan Update.

In general, EPA finds that with respect to emissions of ozone precursors the Districts' current rules and regulations are equivalent to or more stringent than those developed by other air districts, with a few exceptions where more stringent controls are technically feasible but not cost effective and/or would not advance attainment.

Based on their RACM evaluations, the Districts committed to approximately twenty-two new or revised stationary source control measures for development and adoption, including measures at least as stringent as those identified in other California districts, as well as some new innovative measures. The Districts determined that the few available measures that were not included in the attainment strategy would not advance the attainment date or contribute to RFP due to the insignificant or unquantifiable emissions reductions they would potentially generate. See Appendix H in both the 2009 Plan and 2013 Plan Update for additional discussion of cost and advancement of attainment considerations used in the RACM analysis.

[30] The Carl Moyer Memorial Air Quality Standards Attainment Program (''Carl Moyer Program'') provides incentive grants for engines, equipment and other sources of pollution that are cleaner than required, providing early or extra emission reductions. Eligible projects include cleaner on-road, off-road, marine, locomotive and stationary agricultural pump engines. The program achieves near-term reductions in emissions of $NO_X$, PM, and VOC or reactive organic gas (ROG) which are necessary for California to meet its clean air commitments under the SIP.

Since 2002, the Districts have adopted or amended approximately fifty-seven $NO_X$ and VOC rules. In the context of the SIP, these can be broken into three groups: Thirty-six have been approved into the SIP; thirteen have been submitted and are awaiting processing (e.g., approval into the SIP); and thirteen have not yet been submitted by the State. Reductions from rules not approved into the SIP will not receive credit towards attainment. A detailed summary of the Districts' $NO_X$ and VOC rules adopted between 2002 and 2013 is provided in the TSD. These rules include controls on various $NO_X$ and VOC emissions from sources such as: Boilers, process heaters, and steam generators; internal combustion engines; various coating operations; and solvent cleaning operations.

The 2009 Plan includes commitments by the Districts ''to adopt and implement new control measures that satisfy federal Reasonably Achievable Control Measure requirements and achieve, collectively with measures adopted by [the Districts], total emission reductions of 3 tons per day VOC and 3 tons per day $NO_X$ in the [SMA].'' [31] The 2009 Plan also includes a commitment by SMAQMD ''to adopt and implement the Regional On-road Mobile Incentive Program that achieves total emission reductions of 0.1 ton per day of VOC and 0.7 ton per day of $NO_X$ in 2011; 0.1 ton per day of VOC and 0.8 ton per day of $NO_X$ in 2014; 0.9 ton per day of $NO_X$ in 2017 and 2018 in the [SMA].'' [32] In 2013, the Districts updated the list of control measures that they committed to adopt and implement. The update reflected progress since adoption of the 2009 Plan and changes resulting from the revised attainment demonstration in the 2013 Plan Update. Tables 6 and 7 list rule commitments by the Districts in the 2013 Plan Update. The Districts' rule commitments in the 2013 Plan Update are expected to achieve emissions reductions of approximately 1 tpd of $NO_X$ and 3 tpd of VOC. See 2013 Plan Update, Section 7, Table 7–5. The commitments include new or amended rules for categories such as: Architectural coatings, degreasing/solvent cleaning, automotive refinishing, and large water heaters and small boilers, and a mobile source incentive program. The 2009 Plan and 2013 Plan Updates also explain that if a particular measure or a portion thereof is found infeasible or does not get its expected emission reductions, the Districts still commit to achieving the total emission reductions necessary to attain the 1997 8-hour ozone standard. The specific control measures as adopted may provide more or less reductions than estimated in the 2013 Plan Update, and if ''future air quality modeling or air quality improvements indicate that all of the emission reductions from the new measures are not necessary for attainment and an infeasibility finding is made for a control measure or a portion thereof, the region's SIP commitment can be adjusted downward.'' [33] Tables 6 and 7 show that the Districts have already adopted and implemented several new rules that help fulfill their commitments, and of these, EPA has approved or proposed to approve submitted measures achieving approximately 1.0 tpd of $NO_X$ and 0.3 tpd of VOC. See table 10 in today's notice.

TABLE 6—DISTRICTS' RULE ADOPTION COMMITMENTS AND EXPECTED REDUCTIONS FOR $NO_X$ IN SACRAMENTO OZONE PLAN

| Title | District | Rule No. | Adoption year | Expected reduction (tpd) | Status |
|---|---|---|---|---|---|
| Boilers, Steam Generator, and Process Heaters. | YSAQMD | 2.27 | 2016 | 0.2 | Not yet adopted. |
| IC Engines | FRAQMD | 3.22 | 2010 | <0.1 | 77 FR 12493 (March 1, 2012). |
| Large Water Heaters and Small Boilers. | EDCAQMD | 239 | 2015 | <0.1 | Not yet adopted. |
| | FRAQMD | 3.23 | 2016 | 0.0 | Not yet adopted. |
| | PCAPCD | CM2 (247) | 2015 | <0.1 | Proposed rulemaking and direct Final notices signed on September 5, 2014 and pending publication. |
| | YSAQMD | 2.37 | 2009 | 0.2 | 75 FR 25778 (May 10, 2010). |
| Regional Non-regulatory and Incentive Measures [a]. | SMAQMD | various | various | 0.5 | Not yet adopted. |
| Total | | | | 1.1 | |

[a] Includes Regional Mobile Incentive Programs for On-Road (e.g., SECAT) and Off-Road sources, SACOG Transportation Control Measures, Spare the Air Program, and Urban Forest Development Program.

[31] See Resolution 2009–001, Board of Directors of the SMAQMD, January 22; 2009; Resolution 021–2009, Board of Directors of the EDCAQMD, February 10, 2009; Resolution 2009–002, Board of Directors of the FRAQMD, April 7, 2009; Resolution 09–01, Board of Directors of the PCAQMD, February 19, 2009; Resolution 09–02, Board of Directors of the YSAQMD, February 11, 2009.

[32] See Resolution 2009–001, Board of Directors of the SMAQMD, January 22; 2009. The FRAQMD and PCAPCD also adopted this commitment. See Resolution 2009–002, Board of Directors of the FRAQMD, April 7, 2009, and Resolution 09–01, Board of Directors of the PCAQMD, February 19, 2009. SMAQMD administers the Sacramento Emergency Clean Air & Transportation Grant Program (SECAT), which is expected to be the primary source of emission reductions for the Regional On-road Mobile Incentive Program. The emission reductions commitment for Regional On-road Mobile Incentive Program is also part of the commitment for new control measures to achieve emissions reductions of 3 tons per day VOC and 3 tons per day $NO_X$ in the SMA.

[33] See page 7–13 of the 2013 Plan Update. Table 7–5 in the 2013 Plan Update provides additional details regarding the Districts commitments.

TABLE 7—DISTRICTS' RULE ADOPTION COMMITMENTS AND EXPECTED VOC REDUCTIONS IN THE SACRAMENTO OZONE PLAN

| Title | District | Rule No. | Adoption year | Expected reduction (tpd) | Status |
|---|---|---|---|---|---|
| Architectural Coatings | EDCAQMD | 215 | 2013 | 0.1 | Not yet adopted. |
| | FRAQMD | 3.15 | 2014 | <0.1 | Not yet adopted. |
| | PCAPCD | 218 | 2012 | 0.2 | 76 FR 75795 (December 5, 2011). |
| | SMAQMD | 442 | 2014 | 0.9 | Not yet adopted. |
| | YSAQMD | 2.14 | 2014 | 0.2 | Not yet adopted. |
| Automotive Refinishing | FRAQMD | 3.19 | 2016 | <0.1 | Not yet adopted. |
| | PCAPCD | 234 | 2015 | <0.1 | Not yet adopted |
| | SMAQMD | 459 | 2011 | 0.1 | 77 FR 47536 (August 9, 2012). |
| | YSAQMD | 2.26 | 2008 | <0.1 | Adopted but not yet submitted to EPA. |
| Degreasing/Solvent Cleaning | FRAQMD | 3.14 | 2011 | <0.1 | Submitted to EPA on February 10, 2014. |
| | YSAQMD | 2.24/2.31 | 2008 | 0.7 | Submitted to EPA on February 10, 2014. |
| Graphic Arts | YSAQMD | 2.29 | 2016 | not available | Not yet adopted. |
| Miscellaneous Metal Parts | PCAPCD | 245 | 2008 | <0.1 | 76 FR 30025 (May 24, 2011). |
| Natural Gas Production and Processing. | SMAQMD | 461 | 2014 | 0.1 | Not yet adopted. |
| Regional Non-regulatory and Incentive Measures [a]. | SMAQMD | various | various | 0.1 | Not yet adopted. |
| Total | | | | 2.7 | |

[a] Includes Regional Mobile Incentive Programs for On-Road (e.g., SECAT) and Off-Road sources, SACOG Transportation Control Measures, Spare the Air Program, and Urban Forest Development Program.

b. CARB's RACM Analysis and Adopted Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels. 2007 State Strategy, p. 37. The State is also working with EPA on goods movement activities and is implementing programs to reduce emissions from ship auxiliary engines, locomotives, harbor craft and new cargo handling equipment. In addition, the State has standards for lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98 percent cleaner than their uncontrolled counterparts. *Id.* Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance (I/M) or ''Smog Check'' requirements, truck and bus idling restrictions, and various incentive programs. Since 1994 alone, the State has taken more than 45 rulemaking actions and achieved most of the emissions reductions needed for attainment in the State's nonattainment areas. See 2007 State Strategy, pp. 36–40. As is noted in the 2007 State Strategy, EPA has approved California's mobile source program as representing best available control measures.[34]

CARB developed its 2007 State Strategy after an extensive public consultation process to identify potential SIP measures.[35] From this process, CARB identified and committed to propose 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. Many, if not most, of these measures have been adopted or are being proposed for adoption for the first time anywhere in the nation. They build on CARB's already comprehensive program described above that addresses emissions from all types of mobile sources and consumer products, through both regulations and incentive programs.

During its March 2009 adoption of the 2009 Plan, CARB committed to ''achieve reductions of nitrogen oxide ($NO_X$) emissions of 13 tons per day (tpd) and reductions or reactive organic gas (ROG) emissions of 11 tpd through the implementation of measures identified in the 2007 State Strategy.'' See Resolution 09–19, CARB, March 26, 2009.

In April 2009, CARB adopted the Revised 2007 State Strategy. This submittal updated the 2007 State Strategy to reflect its implementation during 2007 and 2008 and calculated emission reductions in the SMA from implementation of the State Strategy. See Revised 2007 State Strategy, pages 12 and 19. Reductions in the SMA from the statewide measures in the 2007 State Strategy had not been quantified at that time and were not reflected in the Revised 2007 State Strategy. Table 8

[34] See 2007 State Strategy, Appendix G, and 69 FR 5412 (February 4, 2004), 69 FR 30006 (May 26, 2004) (proposed and final approval of San Joaquin Valley $PM_{10}$ plan). Also see 76 FR 57872 at 57879 (September 16, 2011), 77 FR 12674 at 12693 (March 1, 2012) (proposed and final approval of South Coast 2007 Air Quality Management Plan for attainment of the 1997 8-hour ozone standard).

[35] More information on this public process, including presentations from the workshops and symposium that preceded the adoption of the 2007 State Strategy, can be found at *www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

below lists the defined measures and expected reductions in the Revised 2007 State Strategy, including a measure from the California Bureau of Automotive Repair.[36] The Revised 2007 State Strategy indicates that the State expects to achieve these emission reductions by the projected attainment year of 2018. In the Revised 2007 State Strategy, CARB provided estimated emissions reductions for each measure to show that, when considered together, these measures can meet the total commitment. CARB states, however, that its enforceable commitment is to achieve specific emissions reductions for each pollutant by the given dates and not for a specific level of reductions from any specific measure. See Revised 2007 State Strategy, p. 13. A summary of the estimated and expected reductions from the proposed measures is provided in table 8 below.[37] As shown, the State has already adopted almost all of the measures.

TABLE 8—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE REVISED 2007 STATE STRATEGY AS APPLICABLE TO SMA, CARB ADOPTION DATE, EXPECTED EMISSIONS REDUCTIONS (2018 PLANNING INVENTORY, TPD) AND CURRENT STATUS

| Defined State measure | Adoption date | 2018 $NO_X$ | 2018 VOC | Current status |
|---|---|---|---|---|
| Smog Check Improvements | August 31, 2009 | 1.4 | 1.3 | Elements approved, 75 FR 38023 (July 1, 2010). |
| Expanded Vehicle Retirement | June 26, 2009 | 0.3 | 0.2 | Not submitted to EPA. |
| Modifications to Reformulated Gasoline Program. | June 14, 2007 | | 1.1 | Approved, 75 FR 26653 (May 12, 2010). |
| Cleaner In-use Heavy Duty Trucks | December 16, 2010 | 9.5 | 0.8 | Approved, 77 FR 20308, April 4, 2012. |
| Clean Up Existing Harbor Crafts | November 15, 2007 | 0.2 | 0.0 | Authorization granted, 76 FR 77521, December 13, 2011. |
| Cleaner In-Use Off-Road Equipment (over 25 hp). | December 17, 2010 | 1.9 | 0.4 | Authorization granted, 78 FR 58090, September 20, 2013. |
| New Emissions Standards for Recreational Boats. | February 2015 | 0.3 | 3.0 | Not yet adopted. |
| Expanded Off-Road Recreational Vehicle Emissions Standards. | July 25, 2013 | 0.0 | 2.7 | Not yet approved by California's Office of Administrative Law. |
| Additional Evaporative Emission Standards (for Off-Road Sources) (e.g., Portable Outboard Marine Tanks and Components). | September 25, 2008 | | 0.4 | Similar to federal requirement at 40 CFR 1060.105. |
| Consumer Products Program | November 17, 2007 | | 1.9 | Approved, 74 FR 57074, November 4, 2009. |
| | June 26, 2008 | | | Approved, 76 FR 27613, May 12, 2011. |
| | September 24, 2009 | | | Approved, 77 FR 7535, February 13, 2012. |
| | November 18, 2010 | | | Proposed rulemaking and direct final notices signed on August 5, 2014 and pending publication. |
| Total Emissions Reduction Commitment From CARB Measures | | 13 | 11 | |

The TSD includes a list of all measures adopted by CARB between 1990 and 2013. These measures, reductions from which are reflected in the Sacramento Ozone Plan's baseline inventories, fall into two categories: Measures that are subject to a waiver of federal preemption or authorization to adopt under CAA section 209 (''waiver or authorization measures'') and those for which the State is not required to obtain a waiver or authorization (''non-waiver or non-authorization measures''). Emissions reductions from waiver or authorization measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. See EPA's proposed approval of the San Joaquin Valley 1-hour ozone plan at 74 FR 33933, 33938 (July 14, 2009) and final approval at 75 FR 10420 (March 8, 2010). The State's baseline non-waiver or non-authorization measures have generally all been approved by EPA into the SIP and as such are fully creditable for meeting CAA requirements. Based on CARB's adoption and implementation of measures in table 8 and emissions inventory estimates provided in CARB's 2013 Staff Report, EPA has determined that CARB has essentially met its commitments in Resolution 09–19.[38]

c. The Local Jurisdiction's RACM Analysis

The local jurisdiction's RACM analysis was conducted by the metropolitan planning organization (MPO) for the Sacramento Metro region, the Sacramento Area Council of Governments (SACOG). This analysis, which focused on transportation control measures (TCMs), and its results are described in Appendix D of the 2009 Plan and 2013 Plan Update.

SACOG and SMAQMD jointly compiled a list of potential control measures from the following sources: Clean Air Act Section 108(f) measures; Measures considered in the San Francisco Bay Area, San Joaquin Valley and South Coast Air Quality Management District RACM analyses; a SMAQMD Workshop; and the Metropolitan Transportation Plan 2035 Draft Project List. The TCM development process and draft lists of potential TCMs were presented at public meetings on ten different dates from September 10, 2007–March 6,

[36] See Staff Report, Analysis of Sacramento Metro Area's 2009 State Implementation Plan for Ozone, CARB, March 12, 2009 (''CARB 2009 Staff Report'').

[37] The 2013 Plan Update and CARB's 2013 Staff Report include ''Accelerated Introduction of Cleaner Line-Haul Locomotives'' as a State measure in the Sacramento ozone nonattainment area, but this measure was not included in the Revised 2007 State Strategy and CARB 2009 Staff Report as part of the State's original commitment.

[38] The only remaining commitment measure in CARB's Revised 2007 State Strategy as applicable in the SMA is a measure for new emissions standards for recreational boats. This measure is currently scheduled for a CARB Board hearing in February 2015.

2008. These included discussions at SACOG's Regional Planning Partnership; Land Use, Housing and Air Quality Committee;[39] Transportation Committee; Flood Management Committee; Government Relations and Public Affairs Committee; and by the Board of Directors. This process resulted in a thorough list of control measures for consideration as potential TCMs, which could be considered as RACM.

Attachment A–2 in Appendix D of the 2013 Plan Update lists the potential control measures, organized by category, and notes whether they are considered RACM, and if not, the reasoned justification they were not found to be RACM. The measures that have been determined to be RACM were included in the Sacramento Ozone Plan as TCMs.

3. Proposed Actions on RACM and Adopted Control Strategy

The State, Districts, and SACOG have identified and otherwise provided for the implementation of a comprehensive set of measures that are among the most stringent in the nation, and we are proposing to approve the RACM demonstration in the Sacramento Ozone Plan.

Because they will strengthen the California SIP and were included in the Districts' list of RACM measures, we are proposing to approve the Districts' commitments to adopt and implement specific control measures, to the extent that these commitments have not already been fulfilled, by the specific years described in tables 6 and 7 above and in Section 7 of the 2013 Plan Update.

Based on our review of the State's RACM analysis and adopted rules, we propose to find that the Sacramento Ozone Plan provides for implementation of all RACM necessary to demonstrate expeditious attainment of the 1997 8-hour ozone standard and to meet any related RFP requirements in the SMA, consistent with the applicable requirements of CAA section 172(c)(1) and 40 CFR 51.912.

*D. Attainment Demonstration*

1. Requirements for Attainment Demonstrations

CAA section 172(c) and 182 requires a state to submit a plan for each of its subpart 2 nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. Under the ozone implementation rule, an attainment demonstration must meet the requirements of 40 CFR 51.112. The adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective. CAA section 182(c)(2)(A). For each nonattainment area, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.

2. Air Quality Modeling

CAA section 182(c)(2)(A) requires SIPs for ozone nonattainment areas to include a ''demonstration that the plan, as revised, will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' Air quality modeling is used to establish emissions attainment targets, that is, the combination of emissions of ozone precursors that the area can accommodate without exceeding the relevant standard, and to assess whether the proposed control strategy will result in attainment of that standard. Air quality modeling is performed for a base year and compared to air quality monitoring data from that year in order to evaluate model performance. Once the performance is determined to be acceptable, future year changes to the emissions inventory are simulated to determine the relationship between emissions reductions and changes in ambient air quality throughout the air basin. The procedures for modeling ozone as part of an attainment demonstration are contained in EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze''[40] (''Guidance'').

The air quality modeling that underpins the 2013 Plan Update is described in Chapter 6 and documented in Appendix B. We provide a brief description of the modeling and a summary of our evaluation of it below. More detailed information about the modeling and our evaluation are available in section V of the TSD.

The 2013 Plan Update uses the same model results, including the modeling protocol,[41] air quality modeling selection, episode selection, model domain and spatial resolution, boundary and initial conditions, meteorological model selection and set-up, and emission inventory set-up as was used in the 2007 San Joaquin Valley (SJV) Ozone Plan approved by EPA on March 1, 2012 (77 FR 12652). The 2007 SJV Ozone Plan also includes an extensive meteorological and air quality model performance evaluation over the modeling domain.

The 2013 Plan Update, Appendix B, includes an additional air quality model performance evaluation over the Sacramento nonattainment area, including a statistical analysis demonstrating adequate overall model performance. The attainment demonstration for a given monitoring location used only those days that satisfied a number of performance criteria.

The 2013 Plan Update's Appendix B also includes documentation on the Relative Reduction Factors, which are the key results from the model for use in the attainment test. Additionally, results of modeling runs with various combinations of VOC and $NO_X$ reductions are included to illustrate alternative control strategies and establish a ''carrying capacity,'' a combination of VOC and $NO_X$ emissions consistent with attainment of the ozone standard. Emission reductions using an updated baseline and future emission inventory were also compared to existing model results and found sufficient to achieve attainment. EPA proposes to conclude that the attainment tests are adequate and consistent with EPA guidance.

In addition to a modeled attainment demonstration, which focuses on locations with an air quality monitor, EPA generally requires an unmonitored area analysis. The unmonitored area analysis uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if monitors were located there. It ensures that a control strategy leads to reductions in ozone in unmonitored locations that might have baseline (and future) ambient ozone levels exceeding the NAAQS. In order to examine unmonitored areas in all portions of the modeling domain, EPA recommends use

[39] The Land Use, Housing and Air Quality Committee subsequently became the Climate and Air Quality Committee and later became part of Land Use and Natural Resource Committee.

[40] ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze'', EPA–454/B–07–002, April 2007. Additional EPA modeling guidance can be found in ''Guideline on Air Quality Models'' in 40 CFR part 51, Appendix W.

[41] ''Photochemical Modeling Protocol for Developing Strategies to Attain the Federal 8-hour Ozone Air Quality Standard in Central California,'' California Air Resources Board, May 22, 2007.

of interpolated spatial fields of ambient data combined with gridded modeled outputs. Guidance, p. 29. The CARB Staff Report, Appendix F includes an unmonitored area analysis using EPA's MATS software. Based on this analysis CARB concluded that there are no unmonitored ozone peaks in the modeling domain that would violate the 1997 8-hour ozone standards.

Finally, the 2013 Ozone Plan's Chapter 10 includes a ''weight-of-evidence demonstration,'' containing supplemental analyses in support of the attainment demonstration. These analyses include ozone air quality trends, meteorologically adjusted ozone trends, and precursor emission trends, all of which show continued progress and support the conclusion that the attainment demonstration is sound.

Based on our review, EPA proposes to find that the air quality modeling provides an adequate basis for the RACM/RACT, RFP, and attainment demonstrations in the Sacramento 2013 8-Hour Ozone SIP.

3. Attainment Demonstration

EPA's review and analysis of the State's attainment demonstration involves evaluating measures adopted and approved by EPA (through rulemaking, waiver, or authorizations) and measures not yet submitted to EPA. Tables 9 and 10 show State and Districts measures approved by EPA and credited towards attainment.[42]

Although the majority of the measures in the State's Revised 2007 State Strategy have been approved by EPA, a small number of measures have not, including Expanded Vehicle Retirement, Expanded Off-Road Recreational Vehicle Emissions Standards, and New Emissions Standards for Recreational Boats.[43] Of these, only the latter measure has not yet been adopted by CARB. In Resolution 13–39 to adopt the 2013 Plan Update, the CARB Board indicated that the State and the Districts had completed adoption of regulations that achieve emissions reductions necessary to demonstrate attainment. The State did not rely on reductions from the three aforementioned measures in its attainment demonstration.

TABLE 9—CREDITABLE STATE MEASURES APPLICABLE TO SMA, ADOPTION DATES, AND CURRENT STATUS

| Defined State measures | Adoption date | EPA approval |
|---|---|---|
| Smog Check Improvements | August 31, 2009 | Elements approved, 75 FR 38023 (July 1, 2010). |
| Modifications to Reformulated Gasoline Program | June 14, 2007 | Approved, 75 FR 26653 (May 12, 2010). |
| Cleaner In-use Heavy Duty Trucks | December 16, 2010 [a] | Approved 77 FR 20308, April 4, 2012. |
| Clean Up Existing Harbor Crafts | November 15, 2007 | Authorization granted; 76 FR 77521, December 13, 2011. |
| Cleaner In-Use Off-Road Equipment (over 25 hp) | December 17, 2010 | Authorization granted; (78 FR 58090, 9/20/13). |
| Additional Evaporative Emission Standards (for Off-Road Sources) (e.g., Portable Outboard Marine Tanks and Components). | September 25, 2008 | Similar to federal requirement at 40 CFR 1060.105. |
| Consumer Products Program | November 17, 2007 | Approved, 74 FR 57074, November 4, 2009. |
| | June 26, 2008 | Approved, 76 FR 27613, May 12, 2011. |
| | September 24, 2009 | Approved, 77 FR 7535, February 13, 2012. |
| | November 18, 2010 | Proposed rulemaking and direct final notices signed on August 5, 2014 and pending publication. |

[a] On April 25, 2014, the CARB Board approved Resolution 14–3 to revise CARB's Truck and Bus Rule. The final rulemaking package with the revisions to the Truck and Bus Rule has not yet been submitted to the State's Office of Administrative Law (OAL) for their approval.

The Districts have made progress in adopting measures committed to in the 2009 Plan and 2013 Plan Update. Table 10 lists the Districts' prior commitment measures in the 2013 Plan Update that have been adopted and subsequently approved by EPA. These prior commitment measures provide reductions that EPA is now crediting in the State's attainment demonstration below in table 11.

TABLE 10—CREDITABLE REDUCTIONS FROM NEW DISTRICTS MEASURES APPROVED BY EPA, ESTIMATED EMISSIONS REDUCTIONS (2018 PLANNING INVENTORY, TPD), AND CURRENT STATUS

| Rule No. | Rule title | Reductions | | EPA approval |
|---|---|---|---|---|
| | | $NO_X$ | VOC | |
| YSAQMD 2.37 | Large Water Heaters and Small Boilers. | 0.5 | – | 75 FR 25778 (May 10, 2010). |
| PCAPCD 218 | Architectural Coatings | – | 0.2 | 75 FR 18068 (December 5, 2011). |
| PCAPCD 245 | Surface Coating of Metal Parts and Products. | – | <0.1 | 76 FR 30025 (May 24, 2011). |

[42] The 2013 Plan Update and CARB's 2013 Staff Report describe nonregulatory programs providing emissions reductions through agreements resulting in replacement of older locomotives with cleaner engines. The Union Pacific (UP) rail yard located in Roseville has benefitted from programs targeting $NO_X$ and Particulate Matter (PM) emissions. ARB utilized Proposition 1B Goods Movement Emission Reduction Program (''Prop 1B'') funding for 15 Tier 2 ''regional'' line haul locomotives. UP also operates six ultra-low emitting genset switch locomotives within the Roseville rail yards. The UP 9900, an experimental Tier 3+ locomotive (Tier 4 PM, and Tier 3+ $NO_X$), has been assigned to UP Roseville and operates primarily in Northern California. CARB's 2013 Staff Report indicates 0.07 tpd of $NO_X$ reduction from the State's Prop 1B. EPA is not crediting the 0.07 tpd $NO_X$ reduction associated with Prop 1B in the Sacramento attainment demonstration because an enforceable measure supporting the reductions has not been submitted to and approved by EPA for inclusion in the SIP. EPA has adopted federal engines standards for locomotives and the resulting reductions from the federal standards are credited in the 2018 inventory. *See* 73 FR 37096 (June 30, 2008) and 40 CFR part 1033, 1065, and 1068 for more details regarding the federal locomotive standards.

[43] On July 25, 2013, the CARB Board adopted a measure to reduce emissions from off-highway recreational vehicles. The final rulemaking package has not been approved by State's OAL. For additional information about this measure and its status, see *http://www.arb.ca.gov/regact/2013/ohrv2013/ohrv2013.htm.*

TABLE 10—CREDITABLE REDUCTIONS FROM NEW DISTRICTS MEASURES APPROVED BY EPA, ESTIMATED EMISSIONS REDUCTIONS (2018 PLANNING INVENTORY, TPD), AND CURRENT STATUS—Continued

| Rule No. | Rule title | Reductions | | EPA approval |
|---|---|---|---|---|
| | | $NO_X$ | VOC | |
| SMAQMD 459 | Automotive Refinishing | – | 0.1 | 77 FR 47536 (August 9, 2012). |
| FRAQMD 3.22 | Internal Combustion Engines | <0.1 | – | 77 FR 12493 (March 1, 2012). |
| PCAPCD 247 | Natural Gas-Fired Water Heaters, Small Boilers, and Process Heaters. | 0.5 | – | Proposed rulemaking and direct final notices signed on September 5, 2014 and pending publication. |
| Totals | | 1.0 | 0.3 | |

Table 11 below summarizes the attainment demonstration and associated reductions that are relied upon in the SMA to demonstrate attainment by June 15, 2019. Lines A and B are the 2002 and 2018 baseline inventories in CARB's 2013 Staff Report. Line C1 in table 11 represents adjustments made by EPA to remove credit for reductions for measures that are not yet in the SIP but for which the State had taken credit for in the baseline inventory in line B. Line C2 represents adjustments made by EPA for reductions from recent measures approved into the SIP that were not credited by the State in Line B. The attainment target in line E was derived from the Sacramento Ozone Plan's air quality modeling analysis. After accounting for all creditable measures and then comparing the remaining inventory against the attainment target, the $NO_X$ and VOC targets have been met. Therefore, the Sacramento Ozone Plan adequately demonstrates attainment of the 1997 ozone NAAQS by June 15, 2019.

TABLE 11—SUMMARY OF SMA ATTAINMENT DEMONSTRATION FOR 8-HOUR OZONE NAAQS

[Tons per average summer weekday]

| | $NO_X$ | VOC |
|---|---|---|
| A. CARB adjusted 2002 emissions inventory with existing controls [a] | 164.8 | 146.7 |
| B. CARB adjusted 2018 emissions inventory with existing controls [a] | 76.9 | 98.7 |
| C1. EPA adjustments for measures credited by State in Line B for which EPA has determined are not creditable at this time [b] | +0.5 | +1.5 |
| C2. EPA adjustments for measures approved by EPA (see table 10) but not credited by State in adjusted 2018 inventory in Line B. | −1.0 | −0.3 |
| D. EPA adjusted 2018 inventory with controls (Line B + Line C1 + Line C2) | 76.4 | 99.9 |
| E. 2018 attainment target [c] | 76.5 | 107.1 |
| Attainment target met? (Is Line D less than Line E?) | Yes | Yes |

[a] CARB 2013 Staff Report, tables C3 and C4, CARB, October 22, 2013.
[b] See TSD.
[c] CARB 2013 Staff Report, table B2.

4. Proposed Action on the Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings and approve the plan's proposed attainment date.

First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in sections IV.B and IV.D.2, we are proposing to approve the emissions inventories and air quality modeling on which the Sacramento Ozone Plan's attainment demonstration and other provisions are based.

Second, we must find that the SIP submittal provides for expeditious attainment through the implementation of all RACM. As discussed above in section IV.C.2, we are proposing to approve the RACM demonstration in the Sacramento Ozone Plan as meeting the requirements of CAA section 172(c)(1).

Third, EPA must find that the emissions reductions that are relied on for attainment are creditable. As discussed above in section IV.D.3, and detailed in the TSD, control measures providing creditable emission reductions sufficient to demonstrate attainment in the SMA have been approved by EPA.

For the foregoing reasons, we are proposing to approve the attainment demonstration in the Sacramento Ozone Plan.

*E. Rate of Progress and Reasonable Further Progress Demonstrations*

1. Requirements for Rate of Progress

Section 182(b)(1) requires, for areas classified as moderate or above, a SIP revision providing for rate of progress (ROP), defined as a reduction from the adjusted 1990 baseline emissions of at least 15% actual emissions of VOC, taking into account growth, during the first 6 years following 1990 (i.e., 3 percent per year reduction from 1990 to 1996). In addition, 40 CFR 51.905(a)(iii) provides that ''If the area has an outstanding obligation for an approved 1-hour ROP SIP, it must develop and submit to EPA all outstanding 1-hour ROP plans.'' Because EPA has not yet approved the entire 1-hour ROP plan for the SMA, we are addressing the remaining requirement as part of today's action.[44]

The CAA outlines and EPA guidance details the method for calculating the requirements for the 1990–1996 period. Section 182(b)(1) requires that reductions: (1) Be in addition to those needed to offset any growth in emissions between the base year and the milestone year; (2) exclude emission reductions from four prescribed federal programs (i.e., the federal motor vehicle

[44] In its March 18, 1996 proposed rulemaking, EPA proposed to approve the Sacramento post-1996 ROP plan, and on January 8, 1997 EPA finalized the Sacramento post-1996 ROP. See 62 FR 1174.

control program (FMVCP), the federal Reid vapor pressure (RVP) requirements, any RACT corrections previously specified by EPA, and any Inspection and Maintenance (I/M) program corrections necessary to meet the basic I/M level); and (3) be calculated from an ''adjusted'' baseline relative to the year for which the reduction is applicable.

The adjusted base year inventory excludes the emission reductions from fleet turnover between 1990 and 1996 and from Federal RVP regulations promulgated by November 15, 1990 or required under section 211(h) of the Act. The net effect of these adjustments is that states are not able to take credit for emissions reductions that would result from fleet turnover of current federal standard cars and trucks, or from already existing federal fuel regulations. However, the SIP can take full credit for the benefits of any new (i.e., post-1990) vehicle emissions standards, as well as any other new federal or state motor vehicle or fuel program that will be implemented in the nonattainment area, including Tier I exhaust standards, new evaporative emissions standards, reformulated gasoline, enhanced inspection and maintenance, California low emissions vehicle program, transportation control measures, etc.

2. ROP Demonstration

On November 15, 1993, in response to the 15 percent ROP requirements in section 182(b)(1)(A) of the Act, the State submitted ROP plans for Sacramento and other moderate and above nonattainment areas in California. The 1993 submittal was superseded by revised ROP plans submitted one year later. On November 15, 1994, CARB submitted a revision to the ''State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards.'' [45] The SIP revision included: (a) The State's comprehensive ozone plan; (b) the State's previously adopted regulations; and (c) local plans addressing the ozone attainment demonstration and ROP requirements, including the ''Sacramento Area Proposed Attainment and Rate-of-Progress Plans.'' On December 29, 1994, the State replaced the Sacramento proposed Attainment and ROP Plan with the ''Sacramento Area Attainment and Rate-of-Progress Plans.''

In its March 18, 1996 notice of proposed rulemaking on the State's submittals (See 61 FR 10920), EPA indicated they would defer action on the portion of the Sacramento ROP plan applying to the initial 15 percent demonstration. On January 8, 1997, EPA finalized its actions on the State's ROP submittals, and again deferred action the portion of the Sacramento ROP plan addressing the 15 percent reduction for the 1990–1996 time frame (See 62 FR 1174).

On February 24, 2006, the State submitted the 2002–2008 RFP Plan, which included Appendix F, ''1990–1996 15 Percent Reduction Demonstration'' for the Sacramento ozone nonattainment area (''15 percent ROP demonstration'').[46] The revised 15 percent ROP demonstration uses a 1990 average summer weekday emissions inventory as the base year inventory and addresses 1990–1996. A summary of the 15 percent ROP demonstration is provided below in table 12. As the table shows, the Sacramento nonattainment area exceeds the required 15 percent reduction for 1990–1996 timeframe. Significant measures put in place prior to or during the 1990–1996 period and relied upon in 15 percent ROP Plan included: Reformulated Gasoline—Phases I and II, Low Emission Vehicles and Clean Fuels, Consumer Products—Phases I and II, and Antiperspirants/Deodorants. In addition, the Districts adopted and implemented numerous solvent and coatings rules to reduce VOC emissions. The TSD for today's action includes compilations of CARB's and the Districts' measures adopted since 1990.

TABLE 12—15% RATE-OF-PROGRESS ANALYSIS (1-HOUR OZONE)

| VOC emission calculations | Tons/day [a] |
|---|---|
| 1. 1990 baseline VOC inventory | 236 |
| 2. Non-creditable FMVCP/RVP adjustments | 7 |
| 3. Adjusted 1990 baseline VOC inventory (Line 1 − Line 2) | 229 |
| 4. 1996 VOC inventory forecast with existing controls + ERCs | 189 |
| 5.a. 1996 Reductions from adjusted 1990 baseline (Line 3 − Line 4) | 40 |
| 5.b. Non-creditable RACT & I/M adjustments | 3 |
| 6. 1996 Forecasted VOC creditable reductions since 1990 (Line 5.a—Line 5.b) | 37 |
| 7. 1996 Forecasted % VOC creditable reductions since 1990 (Line 6 ÷ Line 3) | 16% |
| 8. RFP % Reduction required from 1990 adjusted baseline VOC inventory | 15% |
| 9. Forecasted % VOC surplus (Line 8 − Line 7) | 1% |

[a] Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008, February 2006, Appendix F: 1990–1996 15 Percent Reduction Demonstration.

3. Requirements for Reasonable Further Progress

CAA sections 172(c)(2) and 182(b)(1) require plans for nonattainment areas to provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

The ozone implementation rule requires submittal of an RFP plan at the same time as the attainment demonstration. CAA section 182(c)(2)(B) requires that ozone nonattainment areas classified as serious or higher to submit no later than 3 years after designation for the 8-hour ozone NAAQS an RFP SIP providing for an average of 3 percent per year of VOC and/or $NO_X$ emissions reductions for (*1*) the 6-year period immediately following the baseline year; and (*2*) all remaining 3-year periods after the first 6-year period out to the area's attainment date.

The RFP plan must describe the control measures that provide for meeting the reasonable further progress milestones for the area, the timing of implementation of those measures, and the expected reductions in emissions of attainment plan precursors. See 40 CFR 51.910(a).

a. $NO_X$ substitution

The implementation rule interprets the RFP requirements for the 1997 ozone standard, and requires that 8-hour nonattainment areas classified under subpart 2 as moderate and above achieve a 15 percent VOC emission reduction, accounting for growth, in the first 6 years after the baseline. 40 CFR

[45] See CARB Executive Order G–125–335 (February 24, 2006) and letter from Catherine Witherspoon, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, letter with enclosures (February 13, 2013).

[46] The February 24, 2006 submittal letter from Catherine Witherspoon, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, highlights the 15 percent ROP demonstration as a significant part of the 2002–2008 RFP Plan submittal. See Executive Order G–125.335. In addition, the resolutions adopted by the Districts boards include language approving the 15% ROP demonstration. E.g., See SMAQMD Resolution No. 2006–010.

51.910(a)(1). CAA Section 182(c)(2)(C) allows for the substitution of $NO_X$ emission reductions in place of VOC reductions to meet the RFP requirements. Because Sacramento is classified as Severe-15, if the State intends to use $NO_X$ substitution to meet its RFP milestones, it must demonstrate, and EPA must approve, a demonstration showing a 15 percent VOC reduction in the first six years after the baseline for the Sacramento Area. See 40 CFR 51.910(a)(1)(ii). Upon EPA approval of the 15 percent VOC reduction, any VOC reduction shortfalls in the RFP demonstration can be met by using $NO_X$ emission reductions. According to EPA's $NO_X$ Substitution Guidance,[47] the substitution of $NO_X$ reductions for VOC reductions must be done on a percentage basis, rather than a straight ton-for-ton exchange. There are two steps for substituting $NO_X$ for VOC. First, an equivalency demonstration must show that the cumulative RFP emission reductions are consistent with the $NO_X$ and VOC emission reductions determined in the ozone attainment modeling demonstration. Second, specified reductions in $NO_X$ and VOC emissions should be accomplished in the interim period between the 2002 base year and the attainment date, consistent with the continuous RFP emission reduction requirement.

4. RFP Demonstrations

The RFP demonstrations for the 1997 ozone standard are found in three documents: The 2002–2008 RFP Plan, 2009 Plan, and the 2013 Plan Update. The demonstrations address VOC and $NO_X$ for 2011, 2014, 2017 milestone years and the 2018 attainment year, and use the 2002 average summer weekday emissions inventory as the base year inventory. The most significant State measures providing reductions during the 2002–2018 time frame and relied upon for the RFP demonstration include Low Emission Vehicles II and III standards, Zero Emissions Vehicle standards, California Reformulated Gasoline Phase 3, and Cleaner In-Use Heavy-Duty Trucks. The TSD for today's action includes a compilation of CARB measures adopted between 1990–2013. State measures adopted since 2007 and the estimated reductions, are described in the IV.C and IV.D of this notice. Additional information regarding implementation and expected reductions from CARB's adopted measures is also available on CARB's rulemaking activity Web site.[48]

The RFP demonstration is expressed in terms of cumulative emissions reductions and percent of emissions reductions per year. For example, see table 13–1 in the 2013 Ozone Plan. The demonstration in the 2013 Plan Update supersedes the previously submitted demonstration for 2014, 2017, and 2018 in the 2009 Plan. For 2008 and 2011, EPA adjusted and revised the demonstrations in the 2002–2008 RFP Plan and 2009 Plan. This was necessary because the State's 2013 Plan Update did not include RFP demonstrations for the milestones years that had already passed (i.e., 2008 and 2011). The corrections are detailed in the TSD supporting today's action.

The RFP demonstrations indicate the combination of VOC and $NO_X$ reductions for each of the milestone years are in excess of the RFP targets. The excess serves as a contingency measure reserve and provides the 3 percent of emission reductions necessary to meet the contingency measure requirement for each milestone year. See table 13–1 of 2013 Plan Update. We discuss this contingency reserve below in the section on contingency measures. For the purposes of our evaluation of the RFP demonstration as presented in table 13 below, we have included the contingency reserve on Line 24. This allows us to evaluate if the 2013 Ozone Plan would demonstrate the required RFP with the contingency reserve. We note that the RFP demonstration presented in table 13 is based on the State's estimate of the emissions levels needed for attainment in the 2013 Plan Update.

TABLE 13—CALCULATION OF RFP DEMONSTRATIONS FOR SMA

| VOC emission calculations (tons/day) | 2002 | 2008 [a] | 2011 [b] | 2014 [c] | 2017 [c] | 2018 [c] |
|---|---|---|---|---|---|---|
| 1. 2002 Baseline VOC inventory [c] | 147 | 147 | 147 | 147 | 147 | 147 |
| 2. Non-creditable FMVCP/RVP adjustments [d] | 0 | 13 [e] | 11 [e] | 11 | 12 | 12 |
| 3. Adjusted 2002 baseline VOC inventory (Line 1 − Line 2) | | 134 | 136 | 136 | 135 | 135 |
| 4. VOC emissions forecast with existing controls + ERCs | | 120 [e] | 120 [e] | 106 | 100 | 99 |
| 5. Adjustments to remove reductions from measures not yet approved by EPA [f]. | | — | 2 | 2 | 2 | 2 |
| 6. RFP commitment for VOC reductions from new measures | | — | 0 | 0 | 0 | 0 |
| 7. Forecasted VOC creditable reductions since 2002 (ine 3 − Line 4 − Line 5 + Line 6). | | 15 | 15 | 28 | 33 | 34 |
| 8. Forecasted % VOC reductions since 2002 (Line 7 ÷ Line 3) | | 11% | 11% | 21% | 25% | 26% |
| 9. RFP % reduction required from 2002 adjusted baseline VOC inventory [g]. | | 18% | 27% | 36% | 45% | 48% |
| 10. Forecasted % VOC shortfall (Line 9 − Line 8) | | 7% | 16% | 15% | 20% | 22% |
| 11. VOC shortfall previously addressed provided by $NO_X$ substitution %. | | — | 7% | 16% | 16% | 20% |
| 12. Actual VOC shortfall | | 7% | 9% | 0% | 4% | 2% |
| $NO_X$ Emission Calculations (tons/day) | | | | | | |
| 13. 2002 Baseline $NO_X$ inventory [a] | 165 | 165 | 165 | 165 | 165 | 165 |
| 14. Non-creditable FMVCP adjustments [d] | 0 | 7 [e] | 11 [e] | 10 | 11 | 11 |
| 15. Adjusted 2002 baseline $NO_X$ inventory (Line 13 − Line 14) | | 158 | 154 | 155 | 154 | 154 |
| 16. $NO_X$ emissions forecast with existing controls + ERCs | | 126 [e] | 126 [e] | 93 | 80 | 77 |
| 17. Adjustments to remove reductions from measures not yet approved by EPA [f]. | | | 0 | 3 | 1 | 1 |
| 18. RFP commitment for $NO_X$ reductions from new measures | | | 0 | 0 | 0 | 0 |
| 19. Forecasted $NO_x$ creditable reductions since 2002 (Line 15 − Line 16 − Line 17 + Line 18). | | 32 | 29 | 59 | 74 | 76 |
| 20. Forecasted % $NO_X$ reductions since 2002 (Line 19 ÷ Line 16). | | 21% | 19% | 38% | 48% | 50% |

[47] Environmental Protection Agency (OAQPS), ''$NO_X$ Substitution Guidance'', December 1993.

[48] See *http://www.arb.ca.gov/regact/regact.htm.*

TABLE 13—CALCULATION OF RFP DEMONSTRATIONS FOR SMA—Continued

| VOC emission calculations (tons/day) | 2002 | 2008 [a] | 2011 [b] | 2014 [c] | 2017 [c] | 2018 [c] |
|---|---|---|---|---|---|---|
| 21. $NO_X$ previously used for VOC shortfall by $NO_X$ substitution %. | ..... | 0% ..... | 7% ..... | 16% ..... | 16% ..... | 20% |
| 22. $NO_X$ available for VOC shortfall by $NO_X$ substitution and contingency %. | ..... | 21% ..... | 12% ..... | 22% ..... | 32% ..... | 30% |
| 23. $NO_X$ substitution needed for VOC shortfall % (Same as Line 12). | ..... | 7% ..... | 9% ..... | 0% ..... | 4% ..... | 2% |
| 24. Forecasted % $NO_X$ reduction surplus (Line 22 − Line 23) .... | ..... | 14% ..... | 3% ..... | 22% ..... | 28% ..... | 27% |
| 25. Contingency measure reserve achieved? ..... | ..... | Yes ..... | Yes ..... | Yes ..... | Yes ..... | Yes |
| 26. RFP achieved? ..... | ..... | Yes ..... | Yes ..... | Yes ..... | Yes ..... | Yes |

[a] Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008, February 2006, Chapter 6, table 6–1.
[b] Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan, December 19, 2008, Chapter 5, tables 5–2 and 5–3, adjusted by EPA.
[c] Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan, September 26, 2013, Chapter 13, table 13–1.
[d] CARB provided the non-creditable FMVCP/RVP adjustments in documents listed immediately above.
[e] Adjusted by EPA for consistency with baseline in 2013 Ozone Plan. See TSD.
[f] See TSD. Does not include EPA adjustments for measures approved by EPA (see table 10) but not yet credited by State in RFP demonstration.
[g] RFP reduction requirements contained in EPA's Final Rule to Implement the 8-Hour Ozone NAAQS (Phase 2) published in the November 29, 2005 **Federal Register**. See 70 FR 70612.
Note: Because of rounding convention, values in table may not reflect sum of underlying numbers.

5. Proposed Action on the ROP and RFP Demonstrations

EPA has reviewed the ROP and RFP demonstrations in the 2002–2008 RFP Plan, 2009 Plan, and the 2013 Plan Update and has determined that they were prepared consistent with applicable EPA regulations and policies. As seen in table 12, the Sacramento nonattainment area achieves the 15 percent VOC ROP for the 1990–1996 timeframe. Because the Sacramento area has achieved a 15 percent VOC emission reduction, accounting for growth, in the first 6 years after the 1990 baseline, the area is eligible to use $NO_X$ substitution in its RFP demonstration for the 1997 ozone standard. As seen in table 13, emissions reductions for VOC and $NO_X$, after setting aside a 3 percent contingency measures reserve, are below the RFP percent reduction targets for 2008, 2011, 2014, 2017, and 2018 and demonstrate that the SMA has met its RFP targets.

Based on our evaluation above, we propose to find that: Appendix F of the 2002–2008 RFP Plan provides for VOC reductions of at least 15 percent from 1990 baseline emissions as required by CAA section 182(b)(1); the 2002–2008 RFP Plan provides for at least an 18 percent reduction (VOC with $NO_X$ substitution) from 2002 baseline emissions as required by CAA section 182(b)(1) and 40 CFR 51.910; and (3) the 2009 Plan and 2013 Plan Update provide for at least a 3 percent annual reduction (VOC with $NO_X$ substitution) averaged over a consecutive 3-year period for the SMA to meet its RFP milestones for 2011, 2014, 2017, and 2018 as required by CAA section 182(c)(2)(B) and 40 CFR 51.910.

*F. Contingency Measures*

1. Requirements for Contingency Measures

Under the CAA, ozone nonattainment areas classified under subpart 2 as moderate or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional measures to be implemented in the event the area fails to meet an RFP milestone or fails to attain by the applicable attainment date. These contingency measures must be fully adopted rules or control measures that are ready to be implemented upon failure to meet the milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or by EPA. See 68 FR 32802 at 32837 and 70 FR 71612 at 71650.

Additional guidance on the CAA contingency measure provisions is found in the General Preamble, 57 FR 13498, 13510–13512 and 13520. The guidance indicates that states should adopt and submit contingency measures sufficient to provide a 3 percent emissions reduction from the adjusted RFP baseline. EPA concludes this level of reductions is generally acceptable to offset emission increases while states are correcting their SIPs. These reductions should be beyond what is needed to meet the attainment and/or RFP requirement. States may use reductions of either VOC or $NO_X$ or a combination of both to meet the contingency measure requirements. 57 FR at 13520, footnote 6.

EPA guidance provides that contingency measures may be implemented early, *i.e.,* prior to the milestone or attainment date.[49] Consistent with this policy, states are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a state from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997) (approval of the Indiana portion of the Chicago area 15 percent ROP plan); 62 FR 66279 (December 18, 1997) (approval of the Illinois portion of the Chicago area 15 percent ROP plan); 66 FR 30811 (June 8, 2001) (proposed approval of the Rhode Island post-1996 ROP plan); 66 FR 586 and 66 FR 634 (January 3, 2001) (approval of the Massachusetts and Connecticut 1-hour ozone attainment demonstrations). In the only adjudicated challenge to this approach, the court upheld it. See *LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). 70 FR 71612 at 71651.

[49] Memorandum, G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch to Air Directors, ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' June 1, 1992.

2. Contingency Measures in the Sacramento Ozone Plan

The Sacramento Ozone Plan relies on emission reductions in excess of RFP as contingency measures if the SMA fails to meet RFP requirements. If the SMA fails to attain by June 15, 2019, the Sacramento Ozone Plan relies on additional incremental emissions reductions in 2019 from fleet turnover resulting from continued implementation of measures in the Revised 2007 State Strategy.

*Contingency measures for failure to make RFP.* To provide for contingency measures for failure to make RFP, the SIP relies on surplus $NO_X$ reductions in the RFP demonstration. Table 13 demonstrates that milestone years (i.e., 2008, 2011, 2014, 2017) and the attainment year (i.e., 2018) have $NO_X$ reductions exceeding what is required for RFP and the 3 percent contingency.

*Contingency measures for failure to attain.* To provide contingency measures for failure to attain, the SIP relies on the additional incremental emissions reductions resulting from fleet turnover in calendar year 2019 (the year after the attainment year). Additional emissions reductions resulting from turnover in the on- and off-road mobile source fleet in 2019 may be used to meet the attainment contingency measure requirement. Table 14 below demonstrates that the Sacramento Ozone Plan has sufficient VOC reductions in 2019 to provide at least a three percent reserve for use as a possible attainment contingency measure. In addition, the Sacramento Ozone Plan also provides $NO_X$ reductions in 2019 that are available for use in support of the attainment contingency measure, although the $NO_X$ reductions alone do not provide a three percent reserve unless combined with a portion of the VOC reductions.

TABLE 14—CALCULATION OF POST-2018 ATTAINMENT CONTINGENCY MEASURE

| Emission calculations | VOC tpd | $NO_X$ tpd |
|---|---|---|
| A. 2018 Attainment Year Inventory Target | 107.1 | 76.5 |
| B. CARB 2019 Emissions Forecast | 99.8 | 74.4 |
| C. EPA Adjustments to 2019 Inventory | +1.5 | +0.5 |
| D. Adjusted 2019 Inventory (Line B + Line C) | 101.3 | 74.9 |
| E. Forecasted 2019 Creditable Reductions (Since 2018) Exceeding the Attainment Target Since 2018 (Line A − Line D). | 5.8 | 1.6 |
| F. Forecasted Percent Reductions Since 2018 (Line E ÷ Line D) | 5.7% | 2.1% |
| G. Percent Reduction Required From 2018 Adjusted Baseline Inventory | 3% | na [a] |
| H. Attainment Contingency Measure Met? (Is Line F > or = Line G?) | Yes | na [a] |

[a] not applicable (na) because requirement already met by VOC reductions.

These reductions are from fully creditable measures. They are not relied on to demonstrate either attainment or RFP. For these reasons, these post-2018 emissions reductions may be used to fulfill the attainment contingency measure requirement.

As discussed above, EPA is proposing to approve both the RFP and attainment demonstrations in the Sacramento Ozone Plan because we have determined the Sacramento Ozone Plan provides sufficient VOC emissions reductions to meet these requirements.

3. Proposed Action on the Contingency Measures

*Contingency measures for failure to make RFP.* As discussed above in section IV.D, we are proposing to approve the SMA's RFP demonstration. As shown in the RFP demonstration in table 13, there are excess $NO_X$ reductions of 3 percent or greater in each milestone year. These excess reductions are beyond those needed to meet the next RFP percent reduction requirement and address the RFP contingency measure requirement for 2008, 2011, 2014, 2017, and 2018.

*Contingency measures for failure to attain.* The incremental additional emissions reductions that will occur in 2019 (the year after the attainment year) from the continuing implementation of both on- and off-road motor vehicle controls may be used to meet the contingency measure requirement for failure to attain. As shown in table 14, there is excess VOC reductions of 3 percent or greater in 2019. These excess reductions fulfill the attainment contingency measure requirement for 2019.

The Sacramento Ozone Plan includes measures and reductions that collectively meet the CAA's minimum requirements (e.g., no additional rulemaking, surplus to attainment and RFP needs) and allow us to determine the reductions are at least equivalent to the current estimate of one year's worth of RFP. Therefore, we are proposing to approve the RFP and attainment contingency measure provisions in the Sacramento Ozone Plan.

*G. Motor Vehicle Emissions Budgets for Transportation Conformity*

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires federal actions in nonattainment and maintenance areas to conform to the goals of SIPs. This means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions that involve Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to EPA's transportation conformity rule, which is codified in 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs or ''budgets'') contained in the SIP. An attainment, maintenance, or RFP SIP establishes MVEBs for the attainment year, each required RFP year or last year of the maintenance plan, as appropriate. MVEBs are generally established for specific years and specific pollutants or precursors.

Ozone attainment and RFP plans establish MVEBs for $NO_X$ and VOC. See 40 CFR 93.102(b)(2)(i).

Before an MPO may use MVEBs in a submitted SIP, EPA must first either determine that the MVEBs are adequate or approve the MVEBs. In order for us to find the MVEBs adequate and approvable, the submittal must meet the conformity adequacy requirements of 40

CFR 93.118(e)(4) and (5) and be approvable under all pertinent SIP requirements. To meet these requirements, the MVEBs must be consistent with the approvable attainment and RFP demonstrations and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations. See 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy. See 40 CFR 93.118.

2. Motor Vehicle Emissions Budgets in the 2009 Plan

On July 16, 2009, we found the budgets in the 2009 Plan to be adequate for the 2011, 2014, and 2017 milestone years and inadequate for the 2018 attainment year for transportation conformity purposes.[50] We determined that the attainment year budgets were inadequate because they lacked specificity and were not fully enforceable and, therefore, did not meet the criteria for adequacy in 40 CFR § 93.118(e)(4).[51] We published a notice of our findings at 74 FR 37210 (July 28, 2009).

3. Revised Vehicle Emissions Budgets in 2013 Plan Update

The 2013 Plan Update includes revised VOC and $NO_X$ MVEBs for 2014, 2017, and 2018. See table 11–1 in the 2013 Plan Update. The MVEBs in the 2013 Plan Update replaced the original MVEBs in the 2009 Plan and account for changes in emission reductions associated with the revised 2007 State Strategy, an updated version of EMFAC (i.e., EMFAC2011), and the latest planning assumptions from the Sacramento Area Council of Governments (SACOG).

The MVEBs contained in the 2013 Plan Update are shown in table 15. The MVEBs are the projected on-road mobile source VOC and $NO_X$ emissions for the SMA for 2014, 2017, and 2018. They include the projected on-road mobile source emissions and safety margins and are rounded up to the next whole number tpd. The conformity rule allows for a safety margin to be included in the budgets. The overall emissions in the SMA with the addition of a small safety margin added to the on-road emissions are consistent with RFP and attainment of the 1997 8-hour ozone standard. See 40 CFR 93.124(a). The derivation of the MVEBs is discussed in section 11 of the 2013 Plan Update. The MVEBs incorporate on-road motor vehicle emission inventory factors of EMFAC2011, updated vehicle activity data from SACOG, and recent amendments to the Metropolitan Transportation Improvement Plan (2013/16 MTIP).[52]

TABLE 15—MOTOR VEHICLE EMISSIONS BUDGETS IN THE SACRAMENTO OZONE PLAN

[Tpd, average summer weekday]

| | $NO_X$ | | | VOC | | |
|---|---|---|---|---|---|---|
| | 2014 | 2017 | 2018 | 2014 | 2017 | 2018 |
| On-Road Inventory [a] | 46 | 37 | 34 | 21 | 17 | 16 |
| Safety Margin | 3 | 2 | 3 | 2 | 1 | 1 |
| MVEBs [b] | 49 | 39 | 37 | 23 | 18 | 17 |

[a] Includes adjustments for measures not reflected in EMFAC2011.
[b] Rounded up to nearest ton.
Source: Table 11–1 on page 11–4 of the 2013 Plan Update.

The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on May 20, 2014, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm,* which provided a 30-day public comment period that ended on June 19, 2014. EPA received no comments from the public. On July 25, 2014, EPA determined the 2014, 2017, and 2018 MVEBs were adequate.[53] On August 8, 2014, the notice of adequacy was published in the **Federal Register**. See 79 FR 46436. The new MVEBs became effective on August 25, 2014. After the effective date of the adequacy finding, the new MVEBs must be used in future transportation conformity determinations in the SMA area. EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them, but in this instance, we have completed the adequacy review of these budgets prior to our final action on the 2013 Plan Update.

In today's notice, EPA is proposing to approve the 2017 and 2018 MVEBs in the 2013 Plan Update for transportation conformity purposes. EPA has determined through its thorough review of the submitted 2013 Plan Update that the 2017 and 2018 MVEBs are consistent with emission control measures in the SIP, RFP, and attainment in the SMA for the 1997 8-hour ozone NAAQS. EPA previously found the 2017 and 2018 MVEBs adequate and is now proposing to approve those budgets. The 2017 and 2018 MVEBs are used in SACOG's conformity determination for the 2015/2018 Metropolitan Transportation Improvement Program[54] and will be used in future conformity

[50] See letter from Deborah Jordan, Director, Air Division, EPA Region 9, to James N. Goldstene, Executive Officer, CARB, July 16, 2009, with enclosure.

[51] See letter, Deborah Jordan, Air Division Director, EPA Region 9, to James M. Goldstene, Executive Officer, CARB, ''RE: Adequacy Status of Sacramento 8-Hour Reasonable Further Progress and Attainment Plan Motor Vehicle Emissions Budgets,'' dated July 16, 2009.

[52] Final 2013/16 MTIP, Amendment #1 to the Metropolitan Transportation Plan/Sustainable Communities Strategy 2035, and Air Quality Conformity Analysis, August 16, 2012. FHWA approval December 14, 2012. *http://www.sandag.org/uploads/2050RTP/F2050rtp_all.pdf.*

[53] See July 25, 2014 letter from Deborah Jordan, Director, Air Division, USEPA Region 9, to Richard W. Corey, Executive Officer, CARB. On August 8, a notice of adequacy was published in the **Federal Register** notifying the public that the Agency had found that the MVEBs for ozone for the years 2014, 2017, and 2018 adequate for transportation conformity purposes. See 79 FR 46436.

[54] On September 18, 2014, the SACOG Board of Directors approved the 2015/18 Metropolitan Transportation Improvement Program, Amendment #4 to the Metropolitan Transportation Plan/Sustainable Communities Strategy 2035, and Air Quality Conformity Analysis.

determinations. The 2014 MVEBs are not used in SACOG's conformity determination and will not be used in future conformity determinations because SACOG is not required to address any year prior to 2017. Therefore, EPA has determined that not approving the 2014 MVEBs would have no practical impact on the transportation planning agencies in the SMA.

The details of EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) were provided in a separate adequacy letter [55] included in the docket of this rulemaking.

4. Proposed Action on the Budgets

As part of its review of the budgets' approvability, EPA has evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4) and (5). We found that the 2017 and 2018 budgets meet each adequacy criterion. We have completed our detailed review of the 2013 Plan Update, and are proposing to approve the SIP's attainment and RFP demonstrations. We have also reviewed the proposed budgets submitted with the 2013 Plan Update and have found that the 2017 and 2018 budgets are consistent with the attainment and RFP demonstrations, were based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). Therefore, we are proposing to approve the 2017 and 2018 budgets as shown in table 15.

As described above, the 2017 and 2018 budgets were determined to be adequate on July 25, 2014 and became effective on August 25, 2014. The new budgets replace the budgets previously found adequate in 2009, and SACOG and the U.S. Department of Transportation are required to use the new budgets in transportation conformity determinations as of August 25, 2014. If EPA later finalizes the approval of the 2017 and 2018 budgets, it will not affect SACOG and the U.S. Department of Transportation because they already are required to use the new budgets as of August 25, 2014. For conformity determinations, the plan emissions should be used at the same level of accuracy as in the revised updated budgets from the 2013 Plan Update.

CARB requested that EPA limit the duration of its approval of the budgets submitted on December 31, 2013 as part of the 2013 Plan Update to last only until the effective date of EPA's adequacy finding for any subsequently submitted budgets. See letter, Richard W. Corey, Executive Officer, California Air Resources Board, December 31, 2013.

The transportation conformity rule allows EPA to limit the approval of budgets. See 40 CFR 93.118(e)(1). However, we can only consider a state's request to limit an approval of its MVEB if the request includes the following elements:

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

See 67 FR 69141 (November 15, 2002) (limiting our prior approval of MVEB in certain California SIPs).

Because CARB's request does not include all of these elements, we cannot address it at this time. Once CARB has adequately addressed them, we intend to propose to limit the duration of our approval of the MVEBs in the 2013 Plan Update and provide the public an opportunity to comment. The duration of the approval of the budgets, however, is not limited until we complete such a rulemaking.

*H. Vehicle Miles Travelled Emissions Offset Demonstration*

CAA section 182(d)(1)(A) requires a state with areas classified as ''Severe'' or ''Extreme'' to ''submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area.'' Herein, we use ''VMT'' to refer to vehicle miles traveled and refer to the related SIP requirement as the ''VMT emissions offset requirement.'' In addition, we refer to the SIP revision intended to demonstrate compliance with the VMT emissions offset requirement as the ''VMT emissions offset demonstration.'' Moreover, the SMA is subject to the VMT emissions offset requirement for the 1997 8-hour ozone standard by virtue of its classification as ''Severe'' for the 1997 ozone standard. See 75 FR 24409 (May 5, 2010); and 40 CFR 51.902(a).

CAA section 182(d)(1)(A) also includes two additional elements requiring that the SIP include: (1) Transportation control strategies and transportation control measures as necessary to provide (along with other measures) the reductions needed to meet the applicable RFP requirement, and (2) include strategies and measures to the extent needed to demonstrate attainment.

1. Evaluation of Revised Sacramento VMT Emissions Offset Demonstrations

a. Section 182(d)(1)(A) and EPA's August 2012 VMT Emissions Offset Demonstration Guidance

As noted previously, the first element of CAA section 182(d)(1)(A) requires that areas classified as ''Severe'' or ''Extreme'' submit a SIP revision that identifies and adopts transportation control strategies and transportation control measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips. In response to the Court's decision in *Association of Irritated Residents* v. *EPA,* EPA issued a memorandum titled *Guidance on Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled* (herein referred to as the ''August 2012 guidance'').[56]

The August 2012 Guidance discusses the meaning of the terms, ''transportation control strategies'' (TCSs) and ''transportation control measures'' (TCMs), and recommends that both TCSs and TCMs be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCSs is a broad term that encompasses many types of controls including, for example, motor vehicle emission limitations, inspection and maintenance (I/M) programs, alternative fuel programs, other technology-based measures, and TCMs, that would fit within the regulatory definition of ''control strategy.'' See, e.g., 40 CFR 51.100(n). TCMs are defined at 40 CFR 51.100(r) as meaning ''any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to those listed in section 108(f) of the Clean Air Act[,]'' and generally refer to programs intended to reduce the VMT, the number of vehicle

[55] See footnote #53.

[56] Memorandum from Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edland, Director, Multimedia Planning and Permitting Division, EPA Region 6, and Deborah Jordan, Director, Air Division, EPA Region 9, August 30, 2012.

trips, or traffic congestion, such as programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles (HOVs), trip reduction ordinances, and the like.

The August 2012 guidance explains how states may demonstrate that the VMT emissions offset requirement is satisfied in conformance with the Court's ruling. States are recommended to estimate emissions for the nonattainment area's base year and the attainment year. One emission inventory is developed for the base year, and three different emissions inventory scenarios are developed for the attainment year. For the attainment year, the state would present three emissions estimates, two of which would represent hypothetical emissions scenarios that would provide the basis to identify the ''growth in emissions'' due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. See the August 2012 guidance for specific details on how states might conduct the calculations.

The base year on-road VOC emissions should be based on VMT in that year and it should reflect all enforceable TCSs and TCMs in place in the base year. This would include vehicle emissions standards, state and local control programs such as I/M programs or fuel rules, and any additional implemented TCSs and TCMs that were already required by or credited in the SIP as of that base year.

The first of the emissions calculations for the attainment year would be based on the projected VMT and trips for that year, and assume that no new TCSs or TCMs beyond those already credited in the base year inventory have been put in place since the base year. This calculation demonstrates how emissions would hypothetically change if no new TCSs or TCMs were implemented, and VMT and trips were allowed to grow at the projected rate from the base year. This estimate would show the potential for an increase in emissions due solely to growth in VMT and trips. This represents a ''no action'' taken scenario. Emissions in the attainment year in this scenario may be lower than those in the base year due to the fleet that was on the road in the base year gradually being replaced through fleet turnover; however, provided VMT and/or numbers of vehicle trips will in fact increase by the attainment year, they would still likely be higher than they would have been assuming VMT had held constant.

The second of the attainment year's emissions calculations would also assume that no new TCSs or TCMs beyond those already credited have been put in place since the base year, but would also assume that there was no growth in VMT and trips between the base year and attainment year. This estimate reflects the hypothetical emissions level that would have occurred if no further TCMs or TCSs had been put in place and if VMT and trip levels had held constant since the base year. Like the ''no action'' attainment year estimate described above, emissions in the attainment year may be lower than those in the base year due to the fleet that was on the road in the base year gradually being replaced by cleaner vehicles through fleet turnover, but in this case they would not be influenced by any growth in VMT or trips. This emissions estimate would reflect a ceiling on the attainment emissions that should be allowed to occur under the statute as interpreted by the Court because it shows what would happen under a scenario in which no offsetting TCSs or TCMs have yet been put in place and VMT and trips are held constant during the period from the area's base year to its attainment year. This represents a ''VMT offset ceiling'' scenario. These two hypothetical status quo estimates are necessary steps in identifying the target level of emissions from which states would determine whether further TCMs or TCSs, beyond those that have been adopted and implemented in reality, would need to be adopted and implemented in order to fully offset any increase in emissions due solely to VMT and trips identified in the ''no action'' scenario.

Finally, the state would present the emissions that are actually expected to occur in the area's attainment year after taking into account reductions from all enforceable TCSs and TCMs that in reality were put in place after the baseline year. This estimate would be based on the VMT and trip levels expected to occur in the attainment year (i.e., the VMT and trip levels from the first estimate) and all of the TCSs and TCMs expected to be in place and for which the SIP will take credit in the area's attainment year, including any TCMs and TCSs put in place since the base year. This represents the ''projected actual'' attainment year scenario. If this emissions estimate is less than or equal to the emissions ceiling that was established in the second of the attainment year calculations, the TCSs or TCMs for the attainment year would be sufficient to fully offset the identified hypothetical growth in emissions.

If, instead, the estimated projected actual attainment year emissions are still greater than the ceiling which was established in the second of the attainment year emissions calculations, even after accounting for post-baseline year TCSs and TCMs, the state would need to adopt and implement additional TCSs or TCMs to further offset the growth in emissions and bring the actual emissions down to at least the ''had VMT and trips held constant'' ceiling estimated in the second of the attainment year calculations, in order to meet the VMT offset requirement of section 182(d)(1)(A) as interpreted by the Court.

b. Sacramento VMT Emissions Offset Demonstrations

For the Sacramento VMT emissions offset demonstrations, the State used EMFAC2011, the latest EPA-approved motor vehicle emissions model for California. The EMFAC2011 model estimates the on-road emissions from two combustion processes (i.e., running exhaust and start exhaust) and four evaporative processes (i.e., hot soak, running losses, diurnal losses, and resting losses). The EMFAC2011 model combines trip-based VMT data from the regional transportation planning agencies (i.e., SACOG), starts data based on household travel surveys, and vehicle population data from the California Department of Motor Vehicles. These sets of data are combined with corresponding emission rates to calculate emissions.

Emissions from running exhaust, start exhaust, hot soak, and running losses are a function of how much a vehicle is driven. As such, emissions from these processes are directly related to VMT and vehicle trips, and the State included emissions from them in the calculations that provide the basis for the revised Sacramento VMT emissions offset demonstration. The State did not include emissions from resting loss and diurnal loss processes in the analysis because such emissions are related to vehicle population, not to VMT or vehicle trips, and thus are not part of ''any growth in emissions from growth in *vehicle miles traveled or numbers of vehicle trips* in such area'' (emphasis added) under CAA section 182(d)(1)(A).

The Sacramento VMT emissions offset demonstration addresses the 1997 8-hour ozone standard and includes a 2002 ''base year'' scenario for the purpose of the VMT emissions offset demonstration for the 1997 8-hour ozone standard. The ''base year'' for VMT emissions offset demonstration

purposes should generally be the same ''base year'' used for nonattainment planning purposes. In today's action, EPA is proposing to approve the 2002 base year inventory for the SMA for the purposes of the 1997 8-hour ozone standard, and thus, the State's selection of 2002 as the base year for the revised Sacramento VMT emissions offset demonstration for the 1997 8-hour ozone standard is appropriate.

The demonstration also includes the previously described three different attainment year scenarios (i.e., no action, VMT offset ceiling, and projected actual) for 2018. The State's selection of 2018 is appropriate given that the Sacramento Ozone Plan demonstrates attainment by the applicable attainment date of June 15, 2019 based on the 2018 controlled emissions inventory.[57] See 76 FR 57872, at 57885 (September 16, 2011) and 77 FR 12674, at 12693 (March 1, 2012).

Table 16 summarizes the relevant distinguishing parameters for each of the emissions scenarios and show the State's corresponding VOC emissions estimates. Table 16 provides the parameters and emissions estimates for the revised VMT emissions offset demonstration for the 1997 8-hour ozone standard.

TABLE 16—VMT EMISSIONS OFFSET INVENTORY SCENARIOS AND RESULTS FOR 1997 8-HOUR OZONE STANDARD

| Scenario | VMT | | Starts | | Controls | VOC Emissions |
|---|---|---|---|---|---|---|
| | Year | 1000/day | Year | 1000/day | Year | tpd |
| Base Year | 2002 | 52,595 | 2002 | 7,935 | 2002 | 45 |
| No Action | 2018 | 64,709 | 2018 | 10,640 | 2002 | 28 |
| VMT Offset Ceiling | 2002 | 52,595 | 2002 | 7,935 | 2002 | 19 |
| Projected Actual | 2018 | 64,709 | 2018 | 10,640 | 2018 | 14 |

Source: CARB's Technical Supplement, July 24, 2014.

For the ''base year'' scenario, the State ran the EMFAC2011 model for the 2002 base year using VMT and starts data corresponding to those years. As shown in table 16, the State estimates SMA VOC emissions at 45 tpd in 2002.

For the ''no action'' scenario, the State first identified the on-road motor vehicle control programs (i.e., TCSs or TCMs) put in place since the base year and incorporated into EMFAC2011 and then ran EMFAC2011 with the VMT and starts data corresponding to the applicable attainment year (i.e., 2018 for the 1997 8-hour ozone standard) without the emissions reductions from the on-road motor vehicle control programs put in place after the base year. Thus, the ''no action'' scenario reflects the hypothetical VOC emissions that would occur in the attainment year in the SMA if the State had not put in place any additional TCSs or TCMs after 2002. As shown in table 16, the State estimates ''no action'' SMA VOC emissions at 28 tpd in 2018.

For the ''VMT offset ceiling'' scenario, the State ran the EMFAC2011 model for the attainment year but with VMT and starts data corresponding to base year values. Like the ''no action'' scenario, the EMFAC2011 model was adjusted to reflect the VOC emissions levels in the attainment year without the benefits of the post-base-year on-road motor vehicle control programs. Thus, the ''VMT offset ceiling'' scenario reflect hypothetical VOC emissions in the SMA if the State had not put in place any TCSs or TCMs after the base year and if there had been no growth in VMT or vehicle trips between the base year and the attainment year.

The hypothetical growth in emissions due to growth in VMT and trips can be determined from the difference between the VOC emissions estimates under the ''no action'' scenario and the corresponding estimate under the ''VMT offset ceiling'' scenario. Based on the values in table 16, the hypothetical growth in emissions due to growth in VMT and trips in the SMA would have been 9 tpd (i.e., 28 tpd minus 19 tpd) for the purposes of the revised VMT emissions offset demonstration for the 8-hour ozone standard. This hypothetical difference establishes the level of VMT growth-caused emissions that need to be offset by the combination of post-baseline year TCMs and TCSs and any necessary additional TCMs and TCSs.

For the ''projected actual'' scenario calculation, the State ran the EMFAC2011 model for the attainment year with VMT and starts data at attainment year value and with the full benefits of the relevant post-baseline year motor vehicle control programs. For this scenario, the State included the emissions benefits from TCSs and TCMs put in place since the base year.

The most significant State on-road and fuels measures providing reductions during the 2002 to 2018 time frame and relied upon for the VMT emissions offset demonstration include Low Emission Vehicles II and Zero Emissions Vehicle standards, California Reformulated Gasoline Phase 3, and Cleaner In-Use Heavy-Duty Trucks. Some of these measures were adopted prior to 2002, but all or part of their implementation occurred after 2002. The TSD for today's action includes a list of TCSs and TCMs adopted by the State since 2002.[58] State measures adopted since 2007, as part of the revised 2007 State Strategy, and their reductions are also described in the IV.C and IV.D of this notice. Additional information regarding implementation and expected reductions from CARB's adopted measures is also available on CARB's rulemaking activity Web site.[59]

As shown in table 16, the results from these calculations establish projected actual attainment-year VOC emissions of 14 tpd for the 1997 8-hour standard demonstration. The State then compared these values against the corresponding VMT offset ceiling value to determine whether additional TCMs or TCSs would need to be adopted and implemented in order to offset any increase in emissions due solely to VMT and trips. Because the ''projected actual'' emissions are less than the corresponding ''VMT Offset Ceiling'' emissions, the State concluded that the demonstration shows compliance with

[57] In this context, ''attainment year'' refers to the ozone season immediately preceding a nonattainment area's attainment date. In the case of the SMA, the applicable attainment date is June 15, 2019, and the ozone season immediately preceding that date will occur in year 2018.

[58] The docket for today's action includes a list of the post-1990 transportation control strategies. Per section 209 of the CAA, the EPA has previously waived (for control of emissions from new motor vehicles of new motor vehicle engines prior to March 30, 1966) or authorized (for control emissions of nonroad engines or vehicles) all such TCSs and TCMs relied upon for the VMT emissions offset demonstration.

[59] See *http://www.arb.ca.gov/regact/regact.htm.*

the VMT emissions offset requirement and that there are sufficient adopted TCSs and TCMs to offset the growth in emissions from the growth in VMT and vehicle trips in the SMA for 1997 8-hour standard. In fact, taking into account of the creditable post-baseline year TCMs and TCSs, the State showed that they offset the hypothetical differences by 14 tpd for the 1997 8-hour standard, rather than merely the required 9 tpd.[60]

Based on our review of the State's submittal, including the technical supplement, we find the State's analysis to be acceptable and agree that the State has adopted sufficient TCSs and TCMs to offset the growth in emissions from growth in VMT and vehicle trips in the SMA for the purposes of the 1997 8-hour ozone standard. As such, we find that the revised SMA VMT emissions offset demonstration, complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A), and therefore, we propose approval of the revised SMA VMT emissions offset demonstration for the 1997 8-hour ozone standards as a revision to the California SIP.

Regarding the two additional elements in 182(d)(1)(A), as discussed above in section IV.D, we are proposing to find that the Sacramento Ozone Plan provides for RFP consistent with all applicable CAA and EPA regulatory requirements. Therefore, we also propose to find that the SIP meets requirement in CAA section 182(d)(1)(A) to include TCSs and TCMs as necessary to provide (along with other measures) the reductions needed to meet the applicable RFP requirement.

Finally, based on the discussion in sections IV.B and IV.C above, we are proposing to find that the Sacramento Ozone Plan provides for expeditious attainment of the 1997 8-hour ozone standard. Therefore, we propose to find that the SIP meets the requirement in CAA section 182(d)(1)(A) to include strategies and measures to the extent needed to demonstrate attainment.

Under CAA section 110(k)(3), and for the reasons set forth above, EPA is proposing to approve CARB's 2013 Plan Update submittal, dated December 31, 2013, of the Sacramento VMT emissions offset demonstration for the 1997 8-hour ozone standards, as supplemented by CARB on June 19, 2014, as a revision to the California SIP. We are proposing to approve this SIP revision because we believe that it demonstrates that California has put in place specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from the growth in VMT and vehicle trips in the SMA for the 1997 8-hour ozone standard, and thereby meets the applicable requirements in section 182(d)(1)(A) of the Clean Air Act.

## V. EPA's Proposed Actions

### *A. EPA's Proposed Approvals*

For the reasons discussed above, EPA is proposing to approve California's attainment SIP for the Sacramento Metro Area for the 1997 8-hour Ozone NAAQS. This SIP is comprised of the Sacramento Regional Nonattainment Area 8-Hour Ozone Reasonable Further Progress Plan 2002–2008 (February 2006), Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (March 26, 2009), CARB's 2007 State Strategy and Revised 2007 State Strategy (specifically the portions applicable to the SMA), and the Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan (September 26, 2013).

EPA is proposing to approve under CAA section 110(k)(3) the following elements of the Sacramento Ozone Plan:

1. The revised 2002 base year emissions inventory as meeting the requirements of CAA section 182(a)(1) and 40 CFR 51.915;
2. The reasonably available control measure demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);
3. The rate of progress and reasonable further progress demonstrations as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910 and 51.905;
4. The attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.908;
5. The contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);
6. The demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide for RFP and attainment, as meeting the requirements of CAA section 182(d)(1)(A);
7. The revised motor vehicle emissions budgets for 2017 and for the attainment year of 2018, because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA sections 176(c) and 40 CFR part 93, subpart A; and
8. The Districts' commitments to adopt and implement certain defined measures, as listed in table 7–2 on pages 7–5 and 7–6 of the 2013 Plan Update.

### *B. Request for Public Comments*

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

## VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

[60] The offsetting VOC emissions reductions from the TCSs and TCMs put in place after the respective base year can be determined by subtracting the ''projected actual'' emissions estimates from the ''no action'' emissions estimates in table 16. For the purposes of the 8-hour ozone demonstration, the offsetting emissions reductions, 14 tpd (28 tpd minus 14 tpd), exceed the growth in emissions from growth in VMT and vehicle trips (9 tpd).

application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

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

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

Dated: September 24, 2014.

**Jared Blumenfeld,**

*Regional Administrator, EPA Region IX.*

[FR Doc. 2014–24487 Filed 10–14–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R09–OAR–2012–0781; FRL–9917–86–Region 9]**

## Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; $PM_{2.5}$; Redesignation of Yuba City-Marysville to Attainment; Approval of $PM_{2.5}$ Redesignation Request and Maintenance Plan for Yuba City-Marysville

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, as a revision of the California state implementation plan (SIP), the State's request to redesignate the Yuba City-Marysville nonattainment area to attainment for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard. EPA is also proposing to approve the $PM_{2.5}$ maintenance plan and the associated motor vehicle emissions budgets for use in transportation conformity determinations necessary for the Yuba City-Marysville area. Finally, EPA is proposing to approve the attainment year emissions inventory. EPA is proposing this action because the SIP revision meets the requirements of the Clean Air Act and EPA guidance for such plans and motor vehicle emissions budgets.

**DATES:** Comments must be received on or before November 14, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R09–OAR–2012–0781, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: ungvarsky.john@epa.gov.*

3. *Mail or deliver:* John Ungvarsky (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

*Docket:* The index to the docket and documents in the docket for this action are generally available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3963, *ungvarsky.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' or ''our'' refer to EPA. This supplementary information section is arranged as follows:

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### I. Summary of Today's Proposed Action

Under Clean Air Act (CAA or ''the Act'') section 107(d)(3)(D), EPA is proposing to approve the State's request to redesignate the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS or ''standard''). We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E): (1) That the area has attained the 24-hour $PM_{2.5}$ NAAQS in the 2009–2011 time period and that the area continues to attain the $PM_{2.5}$ standard since that time; (2) that relevant portions of the California SIP are fully approved; (3) that the improvement in air quality is due to permanent and enforceable reductions in emissions; (4) that California has met all requirements applicable to the Yuba

City-Marysville $PM_{2.5}$ nonattainment area with respect to section 110 and part D of the CAA; and (5) that the *Yuba City-Marysville $PM_{2.5}$ Redesignation Request and Maintenance Plan* (''Yuba City-Marysville $PM_{2.5}$ Plan'' or ''Plan'') [1] meets the requirements of section 175A of the CAA.

In addition, under section 110(k)(3) of the CAA, EPA is proposing to approve the Yuba City-Marysville $PM_{2.5}$ Plan including the motor vehicle emissions budgets (MVEBs) as a revision to the California SIP because we find the MVEBs meet the applicable transportation conformity requirements under 40 CFR 93.118(e). EPA finds that the maintenance demonstration shows how the area will continue to attain the 24-hour $PM_{2.5}$ NAAQS for at least 10 years beyond redesignation (i.e., through 2023) and that the contingency provisions describing the actions that the Feather River Air Quality Management District (FRAQMD) will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in section 175A of the CAA. Finally, EPA is proposing to approve the attainment year emissions inventory under section 172(c)(3) of the CAA.

EPA is proposing these actions because the SIP revision meets the requirements of the CAA and EPA guidance for such plans and budgets.

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

### *A. The $PM_{2.5}$ NAAQS*

Under section 109 of the CAA, EPA has established national ambient air quality standards for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. EPA sets the NAAQS for certain ambient air pollutants at levels required to protect public health and welfare. $PM_{2.5}$ is one of these ambient air pollutants for which EPA has established health-based standards.

On July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for $PM_{2.5}$, using $PM_{2.5}$ as the indicator for the pollutant. EPA established primary and secondary [2] annual and 24-hour standards for $PM_{2.5}$ (62 FR 38652). The annual standard was set at 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour standard was set at 65 $\mu g/m^3$, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area.

On October 17, 2006 (71 FR 61144), EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA also retained the 1997 annual $PM_{2.5}$ standard at 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, but with tighter constraints on the spatial averaging criteria.

### *B. Designation of $PM_{2.5}$ Nonattainment Areas*

Effective December 14, 2009, EPA established the initial air quality designations for most areas in the United States for the 2006 24-hour $PM_{2.5}$ NAAQS. See 74 FR 58688, (November 13, 2009). Among the various areas designated in 2009, EPA designated the Yuba City-Marysville area in California as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.[3] The boundaries for this area are described in 40 CFR 81.305.[4]

On January 10, 2013, at 78 FR 2211, EPA issued a determination that the Yuba City-Marysville nonattainment area attained the 2006 24-hour $PM_{2.5}$ standard based on complete, quality-assured, and certified ambient air monitoring data for the 2009–2011 monitoring period.

### *C. $PM_{2.5}$ Planning Requirements*

Beginning in the 1970's and continuing to the present, the Feather River Air Quality Management District [5] and the California Air Resources Board (CARB) have adopted a number of rules to address planning requirements under the CAA, as amended in 1977. CARB submitted these rules and plans to EPA at various times, and EPA approved a number of them into the California SIP. An example of a rule adopted by FRAQMD and approved by EPA as a revision to the California SIP as part of the $PM_{2.5}$ control strategy in the Yuba City-Marysville $PM_{2.5}$ nonattainment area is Rule 3.22—Internal Combustion Engines. Examples of rules adopted by CARB and approved by EPA as revisions to the California SIP that have reduced $PM_{2.5}$ in the Yuba City-Marysville $PM_{2.5}$ nonattainment area include: California Code of Regulations (CCR) Title 13, Section 1956.8—Heavy Duty Vehicle Exhaust Emission Standards; CCR, Section 2262—California Reformulated Gasoline Phase 2 and Phase 3 Standards; and CCR, Sections 2420–2427—Heavy Duty Diesel Cycle Engines.

Within three years of the effective date of designations, states with areas designated as nonattainment for the 2006 $PM_{2.5}$ NAAQS are required to submit SIP revisions that, among other elements, provide for implementation of reasonably available control measures (RACM), reasonable further progress (RFP), attainment of the standard as expeditiously as practicable but no later than five years from the nonattainment designation (in this instance, no later than December 14, 2014), as well as contingency measures. See CAA section 172(a)(2), 172(c)(1), 172(c)(2), and 172(c)(9). Prior to the due date for submittal of these SIP revisions, the State of California requested that EPA make determinations that the Yuba City-Marysville [6] nonattainment area has attained the 2006 $PM_{2.5}$ NAAQS and that attainment-related SIP submittal requirements are not applicable for as long as the area continues to attain the standard. As described above, on January 10, 2013, at 78 FR 2211, EPA issued a final determination that the Yuba City-Marysville nonattainment area had attained the 2006 24-hour $PM_{2.5}$ standard. Pursuant to 40 CFR 51.1004(c) and based on this determination, the requirements for the Yuba City-Marysville nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of either the 2006 24-hour $PM_{2.5}$ NAAQS are suspended until such time as: The area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the area has again violated any of the standards, at which time such plans are required to

[1] See letter from Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated May 23, 2013, with attachments.

[2] For a given air pollutant, ''primary'' national ambient air quality standards are those determined by EPA as requisite to protect the public health, and ''secondary'' standards are those determined by EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

[3] With respect to the annual $PM_{2.5}$ NAAQS, this area is designated as ''unclassifiable/attainment.''

[4] The Yuba City-Marysville $PM_{2.5}$ nonattainment area includes Sutter County and the southwestern two-thirds of Yuba County. This nonattainment area lies within the Sacramento Valley Air Basin and lies between the Chico $PM_{2.5}$ nonattainment area to the north and the Sacramento $PM_{2.5}$ nonattainment area to the south.

[5] In 1991, the Sutter County Air Pollution Control District (APCD) and the Yuba County APCD combined to form the FRAQMD.

[6] On June 8, 2010, James Goldstene, Executive Officer of the California Air Resources Board, submitted a request to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, to find the Yuba City-Marysville $PM_{2.5}$ nonattainment area had attained the 2006 24-hour $PM_{2.5}$ NAAQS.

be submitted. However, a determination of attainment does not preclude states from submitting and EPA from approving a SIP revision for the 2006 $PM_{2.5}$ standard.

On May 23, 2013, CARB submitted the Yuba City-Marysville $PM_{2.5}$ Plan and requested that EPA redesignate the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. On February 20, 2014, CARB submitted to EPA a technical supplement to the Yuba City-Marysville $PM_{2.5}$ Plan (''technical supplement'').[7] We are proposing action today on CARB's May 23, 2013 submittal, including the Yuba City-Marysville $PM_{2.5}$ Plan, as supplemented by CARB on February 20, 2014.

In this proposed rulemaking action, EPA takes into account a 2013 decision by the United States Court of Appeals, District of Columbia Circuit (D.C. Circuit). On January 4, 2013, in *Natural Resources Defense Council (''NRDC'')* v. *EPA,* the D.C. Circuit remanded to EPA the ''Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, the ''$PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013).

## III. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4 of Part D of Title I of the Clean Air Act

### *A. Background*

As discussed above, on January 4, 2013, in *NRDC* v. *EPA,* the D.C. Circuit remanded to EPA the $PM_{2.5}$ Implementation Rule. The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4).

Prior to the January 4, 2013 decision, the states had worked towards meeting the air quality goals of the 1997 and 2006 $PM_{2.5}$ NAAQS in accordance with the EPA regulations and guidance derived from subpart 1 of Part D of Title I of the CAA. In rulemaking that responds to the Court's remand, EPA takes this history into account by setting a new deadline for any remaining submissions that may be required of moderate nonattainment areas as a result of the Court's decision regarding subpart 4. See 78 FR 69806 (November 21, 2013). On June 2, 2014, EPA finalized the $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule, which identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ standards. See 79 FR 31566. EPA's final rulemaking also sets deadlines for states to submit attainment-related and NSR SIP elements required for these areas pursuant to subpart 4, and identifies the EPA guidance that is currently available regarding subpart 4 requirements. See 78 FR 69806 (November 21, 2013). This final rule sets a deadline for States to submit attainment plans and meet other subpart 4 requirements. The final rule specifies December 31, 2014 as the deadline for the states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. Therefore, for California, any additional attainment-related SIP elements that may be needed for the Yuba City-Marysville nonattainment area to meet the requirements of subpart 4 were not due at the time that California submitted the Yuba City-Marysville $PM_{2.5}$ Plan.

### *B. Proposal on This Issue*

In this portion of the proposed redesignation, EPA addresses the effect of the Court's January 4, 2013 ruling and the $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule (79 FR 31566, June 2, 2014) on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Yuba City-Marysville nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Yuba City-Marysville $PM_{2.5}$ Plan and disregards the provisions of its $PM_{2.5}$ Implementation Rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling and the $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule (79 FR 31566, June 2, 2014) on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

#### 1. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating California's redesignation request for the Yuba City-Marysville nonattainment area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Yuba City-Marysville redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum

[7] On February 20, 2014, CARB submitted to EPA a technical supplement to the Yuba City-Marysville $PM_{2.5}$ Plan (''technical supplement''). The technical supplement included: a Staff Report titled ''Minor Updates to Yuba City-Marysville $PM_{2.5}$ Maintenance Plan and Redesignation Request'' (''CARB 2014 Staff Report''); a letter from Christopher D. Brown, Air Pollution Control Officer, FRAQMD to Deborah Jordan, Director, Air Division, USEPA Region 9, and Richard Corey, Executive Officer, CARB, clarify the contingency plan; a notice of February 20, 2014 public meeting to consider approval of minor updates to the Yuba City-Marysville $PM_{2.5}$ Maintenance Plan and Redesignation Request; transcripts from February 20, 2014 CARB Board meeting ; and Board Resolution 14–6.

from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[8] In this case, at the time that California submitted its redesignation request, requirements under subpart 4 were not due.

EPA's view that, for purposes of evaluating the Yuba City-Marysville $PM_{2.5}$ Plan, the subpart 4 requirements were not due at the time the State submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements'', for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E) of the CAA.

EPA's interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013 decision in *NRDC* v. *EPA* and EPA's $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule (79 FR 31566, June 2, 2014) compound the consequences of imposing requirements that come due after the redesignation request is submitted. The State submitted its redesignation request on May 23, 2013, which is prior to the deadline by which the Yuba City-Marysville nonattainment area is required to meet the attainment plan and other requirements pursuant to subpart 4.

To evaluate the State's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013, would be to give retroactive effect to such requirements and contravene EPA's longstanding interpretation of applicable requirements for purposes of redesignation. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[9] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the State of California by rejecting its redesignation request for an area that is already attaining the 2006 24-hour $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the State did not expressly address subpart 4 requirements which have not yet come due and for which it had little to no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

[8] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. CAA section 175A(c).

[9] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

2. Subpart 4 Requirements and California's Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of a pending redesignation for the 2006 24-hour $PM_{2.5}$ standard, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Yuba City-Marysville area still qualifies for redesignation to attainment of the 2006 24-hour $PM_{2.5}$ standard. As explained below, EPA believes that the redesignation request for the Yuba City-Marysville nonattainment area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Yuba City-Marysville nonattainment area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for $PM_{10}$ [10] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific $PM_{10}$ requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule (79 FR 31566, June 2, 2014), we are considering the Yuba City-Marysville nonattainment area to be a ''moderate'' $PM_{2.5}$ nonattainment area. As EPA explained in its June 2, 2014 rule, section 188 of the CAA provides that all designated nonattainment areas under subpart 4 are initially be classified by operation of law as ''moderate'' nonattainment areas, and remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to $PM_{10}$, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[11] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment'' (''Nichols memorandum''). *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[12] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

''The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' 57 FR 13564.

The General Preamble also explained that ''[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' *Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [13] and, or prior to December 31, 2014 and, thus, were due prior to the State's redesignation request, those requirements do not apply to an area that is attaining the 1997 and 2006 $PM_{2.5}$ standards, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of

[10] $PM_{10}$ refers to particulates nominally 10 micrometers in diameter or smaller.

[11] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[12] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[13] As EPA has explained previously, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

EPA's authority to interpret ''applicable requirements'' in the redesignation context. See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 2006 24-hour $PM_{2.5}$ standard. EPA's prior ''Clean Data Policy'' rulemakings for the $PM_{10}$ NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. See ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed $PM_{10}$ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

On January 10, 2013, at 78 FR 2211, EPA issued a final determination that the Yuba City-Marysville nonattainment area attained the 2006 24-hour $PM_{2.5}$ standard based on complete, quality-assured, and certified ambient air monitoring data for the 2009–2011 monitoring period. Elsewhere in this notice, EPA proposes to determine that the area continues to attain the 2006 24-hour $PM_{2.5}$ standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation requests.

3. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for $PM_{10}$ has allowed for control of $PM_{10}$ precursors such as oxides of nitrogen ($NO_X$) from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct $PM_{10}$ shall also apply to $PM_{10}$ precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors (e.g., volatile organic compounds (VOCs)) applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed,

''Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and $PM_{10}$. For a $PM_{10}$ nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. 7513a(e) [section 189(e)].'' *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Yuba City-Marysville nonattainment area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a $PM_{10}$ area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's $PM_{2.5}$ Implementation Rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors (and any similar provisions reflected in the guidance for the 2006 $PM_{2.5}$ standard), the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Yuba City-Marysville nonattainment area, EPA believes that doing so is consistent with proposing redesignation of the area for the 2006 24-hour $PM_{2.5}$ standard. The Yuba City-Marysville nonattainment area has attained the 2006 24-hour $PM_{2.5}$ standard without any specific additional controls of VOC and ammonia emissions from any major sources in the area.[14]

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of $PM_{10}$ precursors.[15] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are

[14] The southern portion of Sutter County is also within the Sacramento Metro ozone nonattainment area (SMA), which is classified as Severe-15 for the 1997 and 2008 8-hour ozone standards. In 40 CFR 81.305, the portion of Sutter County within the SMA boundaries includes the portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County. Sources within the SMA are subject to CAA requirements for $NO_X$ and VOC that may be in addition to any requirements relating to the 2006 24-hour $PM_{2.5}$ standard.

[15] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions that are deemed reasonably available.

required under section 189(e) of subpart 4 in order to redesignate the area for the 2006 24-hour $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. In this proposed rulemaking action, EPA proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed determination is based on our findings that (1) the Yuba City-Marysville nonattainment area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[16] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 2006 24-hour $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 2006 24-hour $PM_{2.5}$ standard in the Yuba City-Marysville nonattainment area.[17] *See* 57 FR 13539–42.

EPA notes that its $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring California to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for $PM_{10}$ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[18] Courts have upheld this approach to the requirements of subpart 4 for $PM_{10}$.[19] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Yuba City-Marysville area has already attained the 2006 24-hour $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating these redesignation requests, to consider additional precursors under subpart 4, it would not affect EPA's approval here of California's requests for redesignation of the Yuba City-Marysville nonattainment area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Yuba City-Marysville nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS at this time.

In sum, even if California were required to address precursors for the Yuba City-Marysville nonattainment area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ Implementation Rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

## IV. Procedural Requirements for Adoption and Submittal of SIP Revisions

Sections 110(a)(1) and 110(l) of the Act require states to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on CARB's May 23, 2013 submittal of the Yuba City-Marysville $PM_{2.5}$ Plan, dated April 1, 2013, as a revision to the California SIP. The submittal documents the public review process followed by FRAQMD and CARB in adopting the Yuba City-Marysville $PM_{2.5}$ Plan prior to submittal to EPA as a revision to the California SIP. The documentation provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption.

CARB's submittal includes a letter dated April 2, 2013 from David Valler, Air Pollution Control Officer to the Board of Directors for the FRAQMD. In addition, Enclosure 1, Attachment 3 of CARB's submittal includes a copy of the notice to the public published on March 2, 2013, announcing a public hearing to be held on April 1, 2013. These materials document the public review process followed by FRAQMD in adopting the Yuba City-Marysville $PM_{2.5}$ Plan prior to transmittal to CARB and provide evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, the notice for the Board hearing was published in the Appeal-Democrat, a newspaper of general circulation, on March 2, 2013. The Yuba City-Marysville $PM_{2.5}$ Plan was also made available for viewing on the District's Web site and at the District office on March 2, 2013.

Resolution 2013–01 in CARB's submittal documents the adoption of the Yuba City-Marysville $PM_{2.5}$ Plan by the FRAQMD Board of Directors. On April 1, 2013, the FRAQMD Board of

[16] The Yuba City-Marysville area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

[17] In the Plan, FRAQMD and CARB indicate that based on analyses of inventories and the area attaining without the need for additional measures to control of ammonia and VOCs, emissions of ammonia and VOCs from sources in the Yuba City-Marysville nonattainment area are an insignificant contributor to secondary particulate formation in the Yuba City-Marysville $PM_{2.5}$ nonattainment area. See pages VI–1 in the Yuba City-Marysville $PM_{2.5}$ Plan.

[18] See, e.g., ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a $PM_{10}$ attainment plan that impose controls on direct $PM_{10}$ and $NO_X$ emissions and did not impose controls on $SO_X$, VOC, or ammonia emissions).

[19] See, e.g., *Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

Directors approved the Yuba City-Marysville $PM_{2.5}$ Plan and directed FRAQMD staff to forward the Plan to CARB, the Governor of California's designee for SIP matters.

CARB's submittal includes CARB Board Resolution 14–13, which was adopted on April 25, 2013 and directed the Executive Officer to forward the Yuba City-Marysville $PM_{2.5}$ Plan to EPA for inclusion in the SIP. On May 23, 2013, CARB submitted the Yuba City-Marysville $PM_{2.5}$ Plan to EPA. On February 20, 2014, CARB submitted to EPA a technical supplement to the Yuba City-Marysville $PM_{2.5}$ Plan.[20]

Based on the documentation included in CARB's submittal, we find that the submittal of the Yuba City-Marysville $PM_{2.5}$ Plan as a SIP revision satisfies the procedural requirements of sections 110(l) of the Act for revising SIPs.

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that we have not affirmatively determined to be complete or incomplete will become complete six months after the day of submittal by operation of law. A completeness review allows us to determine if the submittal includes all the necessary items and information we need to act on it.

We make completeness determinations using criteria we have established in 40 CFR part 51, Appendix V. These criteria fall into two categories: administrative information and technical support information. The administrative information provides documentation that the State has followed basic administrative procedures during the SIP-adoption process and thus we have a legally-adopted SIP revision in front of us. The technical support information provides us the information we need to determine the impact of the proposed revision on attainment and maintenance of the air quality standards.

We notify a state of our completeness determination by letter unless the submittal becomes complete by operation of law. A finding of completeness does not approve the submittal as part of the SIP nor does it indicate that the submittal is approvable. It does start a 12-month clock for EPA to act on the SIP submittal. See CAA section 110(k)(2). The Yuba City-Marysville $PM_{2.5}$ Plan became complete by operation of law on November 7, 2013.

[20] *Ibid.*

## V. Substantive Requirements for Redesignation

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble, the Calcagni memorandum, the Nichols memorandum, and a document entitled ''State Implementation Plans for Serious $PM_{10}$ Nonattainment Areas, and Attainment Date Waivers for $PM_{10}$ Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994) ($PM_{10}$ Addendum).

In this proposed rulemaking action, EPA applies these policies to the Yuba City-Marysville $PM_{2.5}$ Plan, taking into consideration the specific factual issues presented. For the reasons set forth below in section VI of this document, we propose to approve CARB's request for redesignation of the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

## VI. Evaluation of the State's Redesignation Request for the Yuba City-Marysville $PM_{2.5}$ Nonattainment Area

### *A. Determination That the Area Has Attained the $PM_{2.5}$ NAAQS*

CAA section 107(d)(3)(E)(i) states that for an area to be redesignated to attainment, EPA must determine that the area has attained the relevant NAAQS. In this case, the relevant NAAQS is the 2006 24-hour $PM_{2.5}$ NAAQS.

Generally, EPA determines whether an area's air quality is meeting the 24-hour $PM_{2.5}$ NAAQS based upon complete,[21] quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state, local, or tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.13; 40 CFR part 50, appendix L; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, appendices A, C, D, and E. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided those stations meet the federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. See 40 CFR 58.14 (2006) and 58.20 (2007);[22] 71 FR 61236, 61242; (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix N.

Under EPA regulations in 40 CFR part 50, section 50.13 and in accordance with appendix N, the 2006 24-hour $PM_{2.5}$ standard is met when the design value is less than or equal to 35 $\mu g/m^3$ (based on the rounding convention in 40 CFR part 50, appendix N) at each monitoring site within the area.[23] The $PM_{2.5}$ 24-hour average is considered valid if at least 75 percent of the hourly averages (i.e. 18 hourly values) for the 24-hour period are available.

Generally, three consecutive years of complete air quality data are required to show attainment of the 2006 24-hour $PM_{2.5}$ standard. See 40 CFR part 50, appendix N, section 4.2.

As described earlier, on January 10, 2013, at 78 FR 2211, EPA issued a final determination that the Yuba City-Marysville nonattainment area attained

[21] For $PM_{2.5}$, a year meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75 percent. Three years of valid annual $PM_{2.5}$ 98th percentile mass concentrations are required to produce a valid 24-hour $PM_{2.5}$ NAAQS design value. See 40 CFR part 50, Appendix N, section 4.2.

[22] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. (See 71 FR 61236.) The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

[23] The $PM_{2.5}$ 24-hour standard design value is the 3-year average of annual 98th percentile 24-hour average $PM_{2.5}$ mass concentration values recorded at each eligible monitoring site [see 40 CFR part 50, appendix N, section 1.0(c)(2)].

the 2006 24-hour $PM_{2.5}$ standard, based on complete, quality-assured, and certified ambient air monitoring data for the 2009–2011 monitoring period.

1. What is EPA's analysis of the relevant air quality data?

a. Monitoring Network and Data Considerations

The CARB and local Air Pollution Control Districts and Air Quality Management Districts (''Districts'') operate ambient monitoring stations throughout the State. CARB is the lead monitoring agency in the Primary Quality Assurance Organization (PQAO) that includes all the monitoring agencies in the State with a few exceptions.[24] [25] CARB is responsible for monitoring ambient air quality within the Yuba City-Marysville nonattainment area. In addition, CARB oversees the quality assurance of all data collected within the CARB PQAO. CARB submits annual monitoring network plans to EPA that describe the monitoring sites CARB operates. These plans discuss the status of the air monitoring network, as required under 40 CFR part 58.10.

Since 2007, EPA has regularly reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to $PM_{2.5}$, EPA has found that CARB's network plans meet the applicable requirements under 40 CFR part 58. See EPA letters to CARB approving its annual network plans for years 2011 through 2013.[26] EPA also concluded from its Technical System Audit of the CARB PQAO (conducted during the summer of 2011) that the ambient air monitoring network operated by CARB currently meets or exceeds the requirements for the minimum number of SLAMS for $PM_{2.5}$ in the Yuba City-Marysville nonattainment area.[27] Also, CARB annually certifies that the data it submits to AQS are complete and quality-assured.[28]

The existing $PM_{2.5}$ monitoring network in the Yuba City-Marysville nonattainment area includes a $PM_{2.5}$ Federal Reference Method (FRM) monitor operating on a daily schedule and a non-Federal Equivalent Method Beta Attenuation Monitor (BAM) running in parallel to the FRM. The two instruments complement each other in the monitoring network as the FRM monitor provides accurate and precise data for purposes of area designation, while the BAM provides real-time data used by the District and CARB for Air Quality Index reporting, forecasting, and the allocation of agricultural burning. For purposes of today's action, EPA is relying on data from the FRM monitor. There was one $PM_{2.5}$ FRM SLAMS monitor operating during the 2009–2013 period in the Yuba City-Marysville $PM_{2.5}$ nonattainment area. The site is operated by CARB and has been monitoring $PM_{2.5}$ concentrations since 1998. EPA defines specific monitoring site types and spatial scales of representativeness to characterize the nature and location of required monitors. With respect to the Yuba City-Marysville site, the spatial scale is neighborhood scale,[29] [30] and the monitoring objective (site type) is population exposure.[31]

Consistent with the requirements contained in 40 CFR part 50, we have reviewed the quality-assured, and certified $PM_{2.5}$ ambient air monitoring data as recorded in AQS for the applicable monitoring period collected at the monitoring site in the Yuba City-Marysville nonattainment area and have found the data to be complete.

b. Evaluation of Continued Attainment

EPA's evaluation of whether the Yuba City-Marysville $PM_{2.5}$ nonattainment area has continued to attain the 2006 24-hour $PM_{2.5}$ NAAQS is based on our review of the monitoring data and takes into account the adequacy [32] of the $PM_{2.5}$ monitoring network in the nonattainment area and the reliability of the data collected by the network as discussed in the previous section of this document.

Table 1 shows the $PM_{2.5}$ design values for the Yuba City-Marysville nonattainment area monitor based on ambient air quality monitoring data for the most recent complete five-year period (2009–2013).[33] The data show that the design values for the 2009–2011, 2010–2012, and 2011–2013 periods were equal to or less than 35 $\mu g/m^3$ at the monitor. Therefore, we are proposing to determine, based on the complete, quality-assured data for 2011–2013, that the Yuba City-Marysville area continues to attain the 2006 24-hour $PM_{2.5}$ standard. Preliminary data available in AQS for 2014 indicate that the area continues to attain the standard.[34]

[24] A primary quality assurance organization is defined as a monitoring organization or a coordinated aggregation of such organizations that is responsible for a set of stations that monitors the same pollutant and for which data quality assessments can logically be pooled (40 CFR 58, Appendix A, section 3.1).

[25] The Bay Area Air Quality Management District, the South Coast Air Quality Management District, and the San Diego Air Pollution Control District are each designated as the PQAO for their respective ambient air monitoring programs.

[26] Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB (November 1, 2011) (approving CARB's ''2011 Annual Monitoring Network Plan for the Small Districts in California''). Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB (September 13, 2013) (approving CARB's ''2012 Annual Monitoring Network Plan for the Small Districts in California''). Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB (March 7, 2014) (approving CARB's ''Annual Monitoring Network Report for Twenty-Three Districts in California'').

[27] See letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to James Goldstene, Executive Officer, CARB, transmitting ''System Audit of the Ambient Monitoring Program: California Resources Board, June-September: 2011,'' with enclosure, October 22, 2012.

[28] See, e.g., letter from Ravi Ramalingham, Chief, Consumer Products and Air Quality Assessment Branch, Planning and Technical Support Division, CARB, to Meredith Kurpius, Manager, Air Quality Analysis Office, Air Division, U.S. EPA Region IX, certifying calendar year 2013 ambient air quality data and quality assurance data, July 2, 2014.

[29] In this context, ''neighborhood'' spatial scale defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range. See 40 CFR part 58, appendix D, section 1.2.

[30] See CARB's *2013 Annual Monitoring Network Report for Twenty-three Districts in California* (July, 2013); EPA Air Quality System, Monitor Description Report, September 14, 2012.

[31] EPA Air Quality System, Monitor Description Report, September 14, 2012.

[32] Meets the requirements of 40 CFR part 58.

[33] Quicklook Report and Design Value Report, EPA, July 25, 2014.

[34] Ibid.

TABLE 1—2009–2013 24-HOUR $PM_{2.5}$ MONITORING SITE AND DESIGN VALUE FOR THE YUBA CITY-MARYSVILLE NONATTAINMENT AREA.

| Monitoring site | AQS site identification number | 98th Percentile (μg/m³) | | | | | Design value (μg/m³) | | |
|---|---|---|---|---|---|---|---|---|---|
| | | 2009 | 2010 | 2011 | 2012 | 2013 | 2009–2011 | 2010–2012 | 2011–2013 |
| Yuba City–Marysville ..... | 06–101–0003 | 28 | 17 | 37 | 24 | 25 | 27 | 26 | 29 |

*B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation Under Clean Air Act Section 110 and Part D*

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.

1. Basic SIP Requirements Under Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provision for the implementation of part C requirements for PSD provisions; provisions for the implementation of part D requirements for nonattainment new source review (nonattainment NSR) permit programs; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). The section 110(a)(2) (and part D) requirements that are linked to a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. Requirements that apply regardless of the designation of any particular area on the State are not applicable requirements for the purposes of redesignation, and the State will remain subject to these requirements after the Yuba City-Marysville $PM_{2.5}$ nonattainment area is redesignated to attainment.

For example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state, known as ''transport SIPs.'' Because the section 110(a)(2)(D) requirements for transport SIPs are not linked to a particular nonattainment area's designation and classification but rather apply regardless of the area's attainment status, these are not applicable requirements for the purposes of redesignation under section 107(d)(3)(E).

Similarly, EPA believes that other section 110(a)(2) (and part D) requirements that are not linked to nonattainment plan submissions or to an area's attainment status are not applicable requirements for purposes of redesignation. EPA believes that the section 110 (and part D) requirements that relate to a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This view is consistent with EPA's existing policy on applicability of the conformity SIP requirement for redesignations. *See* discussion in 75 FR 36023, 36026 (June 24, 2010).

On numerous occasions, CARB and FRAQMD have submitted and we have approved provisions addressing the basic CAA section 110 provisions. The Yuba City-Marysville portion of the California SIP [35] contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that Yuba City-Marysville is unable to meet its CAA obligations. There are no outstanding or disapproved applicable SIP submittals with respect to the Yuba City-Marysville portion of the SIP that prevent redesignation of the Yuba City-Marysville $PM_{2.5}$ nonattainment area for the 24-hour $PM_{2.5}$ standard. Therefore, we propose to conclude that CARB and FRAQMD have met all SIP requirements for Yuba City-Marysville applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

2. SIP Requirements Under Part D

Subparts 1 and 4 of part D, title 1 of the CAA contain air quality planning requirements for $PM_{2.5}$ nonattainment areas. Subpart 1 contains general requirements for all nonattainment areas of any pollutant, including $PM_{2.5}$, governed by a NAAQS. The subpart 1 requirements include, among other things, provisions for the RACM, RFP, emissions inventories, contingency measures, and conformity. Although we describe in detail in section III of this action the effect of the January 4, 2013, D.C. Circuit decision on subpart 4 of part D requirements, the subpart 4 requirements are briefly discussed below. Subpart 4 contains specific planning and scheduling requirements for $PM_{2.5}$ nonattainment areas. Section 189(a), (c), and (e) requirements apply specifically to moderate $PM_{2.5}$ nonattainment areas and include: (1) An approved permit program for construction of new and modified major stationary sources; (2) provisions for RACM; (3) an attainment demonstration; (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and (5) provisions to ensure that the control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors except where the Administrator has determined that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.

As noted previously, in 2013, EPA determined that the Yuba City-Marysville $PM_{2.5}$ nonattainment area attained the 24-hour $PM_{2.5}$ NAAQS based on 2009–2011 data. See 78 FR 2211 (January 10, 2013). In accordance with EPA's Clean Data Policy, we determined that the following requirements do not apply to the State for so long as Yuba City-Marysville continues to attain the $PM_{2.5}$ standard or until the area is redesignated to attainment: an attainment demonstration under section

[35] See *http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&count=100&state=California.*

189(a)(1)(B); RACM provisions under sections 172(c) and 189(a)(1)(C); reasonable further progress provisions under section 189(c)(1); and contingency measures under section 172(c)(9). For other rulemaking actions applying the Clean Data Policy in the context of $PM_{2.5}$, see 77 FR 31271–72 (proposed Determination of Attainment for Paul Spur/Douglas, Arizona); 76 FR 10821–22 (proposed Determination of Attainment for Truckee Meadows, Nevada); 75 FR 13712–14 (proposed Determination of Attainment for Coso Junction, California); 75 FR 36027 (proposed Redesignation for Coso Junction, California); 73 FR 22313 (proposed Redesignation for San Joaquin Valley). *See also,* 40 CFR 51.918.

Moreover, in the context of evaluating the area's eligibility for redesignation, there is a separate and additional justification for finding that requirements associated with attainment are not applicable for purposes of redesignation. Prior to and independently of the Clean Data Policy, and specifically in the context of redesignations, EPA interpreted attainment-linked requirements as not applicable for purposes of redesignation. In the General Preamble, ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992), EPA stated: [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. *See also* Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

Thus, even if the requirements associated with attainment had not previously been suspended, they would not apply for purposes of evaluating whether an area that has attained the standard qualifies for redesignation. EPA has enunciated this position since the General Preamble was published more than twenty years ago, and it represents the Agency's interpretation of what constitutes applicable requirements under section 107(d)(3)(E). The Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

The remaining applicable Part D requirements for moderate $PM_{2.5}$ areas are: (1) An emission inventory under section 172(c)(3); (2) a permit program for the construction and operation of new and modified major stationary sources of $PM_{2.5}$ under sections 172(c)(5) and 189(a)(1)(A); (3) control requirements for major stationary sources of $PM_{2.5}$ precursors under section 189(e), except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area; (4) requirements under section 172(c)(7) that meet the applicable provisions of section 110(a)(2); and (5) provisions to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP under section 176(c). The Yuba City-Marysville redesignation request, although not expressed in terms of subpart 4 (section 189) requirements, substantively meets the requirement for that subpart for redesignation purposes. We discuss each of these requirements below.

• *Emissions Inventory*

CAA section 172(c)(3) requires states to submit a comprehensive, accurate, current inventory of relevant $PM_{2.5}$ pollutants for the baseline year from all sources within the nonattainment area. The inventory is to address direct and secondary $PM_{2.5}$ emissions, and all stationary (generally referring to larger stationary source or ''point'' sources), area (generally referring to smaller stationary and fugitive sources), and mobile (on-road, non-road, locomotive and aircraft) sources are to be included in the inventory. We interpret the Act such that the emission inventory requirements of section 172(c)(3) are satisfied by the inventory requirements of the maintenance plan. See 57 FR 13498, at 13564 (April 16, 1992). Thus, EPA is proposing to approve the 2011 attainment year inventories submitted as part of the Yuba City-Marysville $PM_{2.5}$ Plan as satisfying the requirements of sections 172(c)(3) for the purposes of redesignation of the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 24-hour $PM_{2.5}$ NAAQS. The 2011 attainment year inventories are described in VI.D.1 of this notice.

• *Permits for New and Modified Major Stationary Sources*

CAA sections 172(c)(5) and 189(a)(1)(A) require the State to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that new major sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the Lowest Achievable Emission Rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area.

The process for reviewing permit applications and issuing permits for new or modified major stationary sources of air pollution is referred to as NSR. With respect to nonattainment pollutants in nonattainment areas, this process is often referred to as ''nonattainment NSR.'' With respect to pollutants for which an area is designated as attainment or unclassifiable, states are required to submit SIP revisions that ensure that major new stationary sources or major modifications of existing stationary sources meet the federal requirements for PSD, including application of ''Best Available Control Technology'' (BACT), for each applicable pollutant emitted in significant amounts, among other requirements.

FRAQMD is responsible for stationary source emissions units, and FRAQMD regulations govern air permits issued for such units. EPA has partially approved and partially disapproved FRAQMD's New Source Review rule (i.e., Rule 10.1). 78 FR 58461 (September 24, 2013). Because of the partial disapproval, FRAQMD does not currently have a fully-approved nonattainment NSR program. The NSR deficiencies identified in EPA's partial approval and partial disapproval of Rule 10.1 are limited to the following issues: (1) Missing a component of the definition for the term ''Regulated NSR Pollutant,'' as it relates to $PM_{2.5}$ condensable emissions; and (2) Rule 10.1 contains certain language in new sections B.4 and B.5 that entirely exempts from regulation certain pollutants when EPA redesignates the area from nonattainment to attainment. As worded, the provision is too broad, in that it exempts such pollutants from all the requirements of section E of the rule, rather than just those provisions applicable to major sources of nonattainment pollutants. FRAQMD is currently working on a revision to Rule 10.1 to correct the deficiencies. If EPA approves a revised Rule 10.1, and the approval becomes effective prior to EPA finalizing the area's redesignation to attainment for $PM_{2.5}$, the 172(c)(5) and

189(a(1)(A) requirements would be fulfilled prior to redesignation.

If EPA does not approve a revised Rule 10.1 prior to EPA finalizing the area's redesignation to attainment for $PM_{2.5}$, it would still not affect EPA approval of the redesignation request because upon redesignation the nonattainment permitting program requirements would shift to the PSD permitting program requirements. Even if EPA later finalizes the actions in today's proposed rulemaking, the federal PSD requirements under 40 CFR 52.21 will not apply to new major sources or major modifications to existing major sources of $NO_X$ and VOC located in the southern portion of Sutter County under FRAQMD's jurisdiction within the Sacramento Metro ozone nonattainment area until that area is redesignated to attainment for the 2008 8-hour ozone standard. Because FRAQMD does not currently have an EPA-approved PSD program, after redesignation the federal PSD requirements under 40 CFR 52.21 would apply to $PM_{2.5}$ and $PM_{2.5}$ precursor emissions from new major sources or major modifications. Thus, new major sources with significant $PM_{2.5}$ emissions and major modifications of $PM_{2.5}$ at major sources as defined under 40 CFR 51.21 will be required to obtain a PSD permit or include $PM_{2.5}$ emissions in their existing PSD permit. Since PSD requirements [36] will apply after redesignation, an area being redesignated to attainment need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation as long as the state demonstrates maintenance of the NAAQS in the area without implementation of nonattainment NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also,* redesignation rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and, Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Based on our review of the Yuba City-Marysville $PM_{2.5}$ Plan, we conclude that the maintenance demonstration does not rely on implementation of nonattainment NSR because the Plan applies standard growth factors to stationary source emissions and does not rely on NSR offsets to reduce the rate of increase in emissions over time from point sources.[37] In addition, the $PM_{2.5}$ Plan adds emission reduction credits (ERCs) for $PM_{10}$,[38] $NO_X$, and oxides of sulfur ($SO_X$) to future projected emissions to ensure that the use of ERCs will not be inconsistent with the future $PM_{2.5}$ maintenance goals. Therefore, EPA concludes that a fully-approved nonattainment NSR program is not necessary for approval of the State's redesignation request for the Yuba City-Marysville $PM_{2.5}$ nonattainment area.

We conclude that Yuba City-Marysville's portion of the California SIP adequately meets the requirements of section 172(c)(5) and 189(a)(1)(A) for purposes of this redesignation.

• *Control Requirements for $PM_{2.5}$ Precursors*

In light of the January 4, 2013, D.C. Circuit decision regarding $PM_{2.5}$ implementation under subpart 4 of Part D of Title I of the CAA, EPA's evaluation of the Yuba City-Marysville $PM_{2.5}$ Plan in the context of the CAA section 189(e) requirements for control of $PM_{2.5}$ precursors is described in depth in sections III and VI.D.3 of this action.

• *Compliance with Section 110(a)(2)*

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we conclude the California SIP meets the requirements of section 110(a)(2) applicable for purposes of this redesignation.

• *General and Transportation Conformity Requirements*

Under section 176(c) of the Clean Air Act Amendments of 1990, states are required to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provides that state conformity provisions must be consistent with federal conformity regulations that the CAA requires EPA to promulgate. EPA's conformity regulations are codified at 40 CFR part 93, subparts A (referred to herein as ''transportation conformity'') and B (referred to herein as ''general conformity''). Transportation conformity applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act, and general conformity applies to all other federally-supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as ''conformity SIPs.''

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001), upholding this interpretation. See also, 60 FR 62748 (December 7, 1995).

The Yuba City-Marysville $PM_{2.5}$ Plan includes $PM_{2.5}$ motor vehicle emissions budgets (MVEBs) for the Yuba City-Marysville nonattainment area. As described in VI.D.6 of today's action, EPA is proposing to approve the emissions inventory and motor vehicle emissions budgets for Yuba City-Marysville $PM_{2.5}$ nonattainment area. Thus, if EPA later finalizes its approval of the Yuba City-Marysville $PM_{2.5}$ Plan described in today's proposal and also finalizes its approval of the emissions inventory and motor vehicle emissions budgets for the Yuba City-Marysville $PM_{2.5}$ nonattainment area, the State has a fully-approved SIP meeting all requirements applicable under section 110 and part D for purposes of redesignation. CAA section 107(d)(3)(E)(v).

*C. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions*

Section 107(d)(3)(E)(iii) requires EPA to determine that the improvement in air quality is due to emission reductions that are permanent and enforceable resulting from the implementation of the applicable SIP and applicable federal air pollution control regulations and other permanent and enforceable regulations in order to approve a redesignation to attainment. Under this criterion, a state must be able to reasonably attribute the improvement in air quality to emissions reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic

[36] PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

[37] Email from Sondra Spaethe, FRAQMD, to John Ungvarsky, US EPA, Region 9, July 18, 2014.

[38] The FRAQMD issues ERCs for $PM_{10}$ and has not identified the $PM_{2.5}$ portion of the ERC. When creating the future year inventories for the maintenance demonstration, the FRAQMD applied the amount of $PM_{10}$ ERCs to the future year inventories of $PM_{2.5}$. As $PM_{2.5}$ is a portion of $PM_{10}$, this approach conservatively estimates the maximum pollutant increase if all ERCs were redeemed within the FRAQMD during the maintenance period.

conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions. Calcagni memorandum, p. 4.

Historically, exceedances of the 24-hour $PM_{2.5}$ NAAQS in the Yuba City-Marysville nonattainment area occur in November through February. Chemical composition data can be used to understand the types of emission sources that contribute to ambient $PM_{2.5}$ in these winter months, however, these measurements are not routinely collected in the Yuba City-Marysville nonattainment area. A limited chemical composition analysis was done on samples collected at the Yuba City-Almond Street monitor (AQS ID: 061010003) in 2004–2006.[39] Archived Teflon filters were analyzed by a combination of X-ray Fluorescence (XRF) to provide elemental concentrations and Ion Chromatography (IC) to estimate ions (sulfate, nitrate, potassium, ammonium, etc.). These data show that $PM_{2.5}$ on days with high concentrations during the cool season[40] was made up predominantly of total carbonaceous mass (TCM) (54%) and ammonium nitrate (38%). The high TCM is linked to smoke from residential wood burning stoves and fireplaces, Sulfate (6%) and crustal materials (2%) account for a smaller portion of the $PM_{2.5}$. See Plan, pp. IV–5—IV–7.

The Yuba City-Marysville $PM_{2.5}$ Plan credits control measures adopted and implemented by FRAQMD and CARB and approved into the SIP by EPA as reducing emissions to attain the 2006 24-hour $PM_{2.5}$ NAAQS. The FRAQMD has jurisdiction over air quality planning requirements for the Yuba City-Marysville nonattainment area and is largely responsible for the regulation of stationary sources and most area sources. Table 2 lists FRAQMD rules adopted since the area's $PM_{2.5}$ nonattainment designation that contribute towards attainment and maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 2—FRAQMD CONTROL MEASURES AND PROGRAMS CONTRIBUTING TOWARDS ATTAINMENT AND MAINTENANCE OF THE 2006 24-HOUR $PM_{2.5}$ NAAQS

| Rule | Title | Adoption date | Status |
|---|---|---|---|
| 2.0 | Open Burning | October 6, 2008 | EPA is currently preparing proposed rulemaking and direct final notices acting on this rule submittal. |
| 3.17 | Wood Heating Devices | October 5, 2009, amended on February 3, 2014. | EPA is currently preparing proposed rulemaking and direct final notices acting on this rule submittal. |
| 3.21 | Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. | June 5, 2006 | Submitted to EPA on February 10, 2014. |
| 3.22 | Internal Combustion Engines | June 1, 2009 | Approved, 77 FR 12493 (March 1, 2012). |
| **Other FRAQMD measures or programs not in the SIP**[41] [42] | | | |
| — | 2011/2012 Wood Stove Change Out Program. | | |
| — | Stoplight: Check Before You Burn Program. | | |

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

Given the need for significant emissions reductions from mobile and area sources to meet the ozone and $PM_{2.5}$ NAAQS in California nonattainment areas, California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels. 2007 State Strategy, p. 37.[43] In addition, the State has standards for lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98 percent cleaner than their uncontrolled counterparts. *Id.* Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance (I/M) or ''Smog Check'' requirements, truck and bus idling restrictions, and various incentive programs. Since 1994 alone, the State has taken more than 45 rulemaking actions and achieved most of the emissions reductions needed for attainment in the State's nonattainment areas. See 2007 State Strategy, pp. 36–

[39] Availability of New Speciation Data for Some Areas that EPA Intends to Designate as Nonattainment, Neil Frank, Office of Air Quality Planning and Standards, September 18, 2008, available at *http://www.epa.gov/ttn/naaqs/pm/docs/available_new_speciation_data_pm2.5_naa.pdf.*

[40] Days > 95th percentile of measured $PM_{2.5}$ during October–April.

[41] FRAQMD estimated the Wood Stove Change Out Program offered in 2009, 2010, and 2011 reduced $PM_{2.5}$ emissions by 2.8 tons per year. Memorandum from David Valler, Air Pollution Control Officer, FRAQMD to the FRAQMD Board of Directors, April 1, 2013.

[42] The Yuba City-Marysville nonattainment area is included in the State's Sacramento Valley Air Basin Smoke Management Program. The program describes the policies and procedures used with hourly and daily measurements of air quality and meteorology to determine how much open biomass burning can be allowed in the Sacramento Valley Air Basin. The program ensures that agricultural burning is prohibited on days meteorologically conducive to potentially elevated $PM_{10}$ concentrations. The area covered by the program is referred to as the Sacramento Valley Air Basin, and includes all or parts of the following counties: Butte, Colusa, Glenn, Placer (portion), Sacramento, Shasta, Solano (portion), Sutter, Tehama, Yolo and Yuba. See Title 17 California Code of Regulations, Subchapter 2, Section 80100 et. seq. The regulations can be viewed at *http://www.arb.ca.gov/smp/regs/RevFinRegwTOC.pdf.*

[43] The 2007 State Strategy was adopted by CARB on September 27, 2007 and submitted to EPA on November 16, 2007. See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter, James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

40. These measures that have resulted in significant reductions in emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors (e.g., $NO_X$) in the Yuba City-Marysville $PM_{2.5}$ nonattainment area and throughout the State.

CARB developed its 2007 State Strategy after an extensive public consultation process to identify potential SIP measures.[44] From this process, CARB identified and committed to propose 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. Many, if not most, of these measures have been adopted or are being proposed for adoption for the first time anywhere in the nation. They build on CARB's already comprehensive program described above that addresses emissions from all types of mobile sources and consumer products, through both regulations and incentive programs.

In April 2009, CARB adopted the Revised 2007 State Strategy. This submittal updated the 2007 State Strategy to reflect its implementation during 2007 and 2008. These measures fall into two categories: Measures that are subject to a waiver of federal preemption or authorization to adopt under CAA section 209 (''waiver or authorization measures'') and those for which the State is not required to obtain a waiver or authorization (''non-waiver or non-authorization measures''). Emissions reductions from waiver or authorization measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. The State's baseline non-waiver or non-authorization measures have generally all been approved by EPA into the SIP and as such are fully creditable for meeting CAA requirements. The Technical Support Document (TSD) includes tables of local and State measures adopted since 1990 and their current status.

Finally, in addition to the local district and State rules discussed above, the Yuba City-Marysville $PM_{2.5}$ nonattainment area has also benefitted from emission reductions from federal measures. These federal measures include EPA's national emissions standards for heavy-duty diesel trucks, certain emissions standards for new construction and farm equipment (i.e., Tier 2 and 3 non-road engines standards, and Tier 4 diesel non-road engine standards), and locomotive engine standards. See 66 FR 5001 (January 18, 2001), 63 FR 56968 (October 23, 1998), 69 FR 38958 (June 29, 2004), 63 FR 18978 (April 16, 1998) and 73 FR 37096 (June 30, 2008).

The on-road and off-road vehicle and engine standards cited above have contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent emissions standards.

Table 3 includes CARB State Strategy measures adopted since 2007 and included in the Yuba City-Marysville Plan as measures contributing towards attainment and maintenance of the 2006 24-hour $PM_{2.5}$ standard in the Yuba City-Marysville nonattainment area.

TABLE 3—CONTROL MEASURES IN CARB'S 2007 STATE STRATEGY CONTRIBUTING TOWARDS ATTAINMENT AND/OR CONTINUED ATTAINMENT OF THE 2006 24-HOUR $PM_{2.5}$ NAAQS IN THE YUBA CITY-MARYSVILLE AREA

| Defined state measure | Adoption date | Current status |
|---|---|---|
| Smog Check Improvements | August 31, 2009 | Elements approved, 75 FR 38023 (July 1, 2010). |
| Expanded Vehicle Retirement | June 26, 2009 | Not submitted to EPA. |
| Modifications to Reformulated Gasoline Program | June 14, 2007 | Approved, 75 FR 26653 (May 12, 2010). |
| Cleaner In-use Heavy Duty Trucks | December 16, 2010 | Approved, 77 FR 20308, April 4, 2012. |
| Clean Up Existing Harbor Crafts | November 15, 2007 | Authorization granted, 76 FR 77521, December 13, 2011. |
| Cleaner In-Use Off-Road Equipment (over 25 hp) | December 17, 2010 | Authorization granted, 78 FR 58090, September 20, 2013. |
| New Emissions Standards for Recreational Boats | February 2015 | Not yet adopted. |
| Expanded Off-Road Recreational Vehicle Emissions Standards. | July 25, 2013 | Not yet approved by California's Office of Administrative Law. |
| Additional Evaporative Emission Standards (for Off-Road Sources) (e.g., Portable Outboard Marine Tanks and Components). | September 25, 2008 | Similar to federal requirement at 40 CFR 1060.105. |
| Consumer Products Program | November 17, 2007 | Approved, 74 FR 57074, November 4, 2009. |
| | June 26, 2008 | Approved, 76 FR 27613, May 12, 2011. |
| | September 24, 2009 | Approved, 77 FR 7535, February 13, 2012. |
| | November 18, 2010 | Proposed rulemaking and direct final notices signed on August 5, 2014 and pending publication. |

We note that many of the control measures cited above and in the Yuba City-Marysville $PM_{2.5}$ Plan have provided emissions reductions after 2007, and thus, the improvement in air quality may reasonably be attributed to them. In addition, as documented in the TSD, CARB adopted and implemented numerous measures during and prior to 2007 that, through fleet turnover, provided reductions in direct $PM_{2.5}$ and in $PM_{2.5}$ precursors that also contributed towards attainment.

Table 4 provides a comparison of 2005 nonattainment year and 2011 attainment year inventories to show the impact of the permanent and enforceable reductions. In 2005, area-wide $NO_X$ and $PM_{2.5}$ emissions in the Yuba City-Marysville $PM_{2.5}$ nonattainment area were estimated to be approximately 26 and 6 tons per day (tpd) (winter day), respectively. In 2011, area-wide emissions had declined to 19 tpd for $NO_X$ and 5 tpd for $PM_{2.5}$, resulting in emissions reductions of 27% in $NO_X$ and 9% in $PM_{2.5}$. In addition, emissions of $SO_X$, ammonia ($NH_3$), and VOC all declined during the 2005 to 2011 timeframe.

[44] More information on this public process, including presentations from the workshops and symposium that preceded the adoption of the 2007 State Strategy, can be found at *www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

TABLE 4—YUBA CITY-MARYSVILLE EMISSIONS INVENTORIES FOR 2005 AND 2011 AND NET CHANGES (TPD) [a]

| Pollutant category | Year | | Net change | |
|---|---|---|---|---|
| | 2005 | 2011 | 2005–2011 | % |
| $NO_x$ | | | | |
| Stationary Sources | 4.5 | 4.4 | −0.1 | −2 |
| Areawide Sources | 1.1 | 1.1 | 0.0 | −2 |
| On-Road Mobile Sources | 12.9 | 8.4 | −4.5 | −35 |
| Other Mobile Sources | 8.0 | 5.4 | −2.6 | −32 |
| Total | 26.5 | 19.3 | −7.3 | −27 |
| $PM_{2.5}$ | | | | |
| Stationary Sources | 1.0 | 0.9 | −0.1 | −11 |
| Areawide Sources | 4.0 | 3.8 | −0.2 | −5 |
| On-Road Mobile Sources | 0.4 | 0.3 | −0.1 | −24 |
| Other Mobile Sources | 0.4 | 0.3 | −0.1 | −30 |
| Total | 5.8 | 5.3 | −0.5 | −9 |
| $SO_X$ | | | | |
| Stationary Sources | 0.1 | 0.1 | 0.0 | −3 |
| Areawide Sources | 0.2 | 0.1 | 0.0 | −5 |
| On-Road Mobile Sources | 0.1 | 0.0 | −0.1 | −72 |
| Other Mobile Sources | 0.2 | 0.1 | −0.1 | −72 |
| Total | 0.6 | 0.4 | −0.2 | −38 |
| $NH_3$ | | | | |
| Stationary Sources | 0.3 | 0.4 | 0.1 | 17 |
| Areawide Sources | 4.6 | 4.5 | −0.1 | −1 |
| On-Road Mobile Sources | 0.2 | 0.2 | 0.0 | −13 |
| Other Mobile Sources | 0.0 | 0.0 | 0.0 | 0 |
| Total | 5.1 | 5.0 | 0.0 | −1 |
| VOC | | | | |
| Stationary Sources | 3.8 | 4.0 | 0.2 | 5 |
| Areawide Sources | 5.8 | 5.5 | −0.3 | −5 |
| On-Road Mobile Sources | 3.7 | 2.8 | −0.9 | −25 |
| Other Mobile Sources | 3.0 | 2.3 | −0.6 | −21 |
| Total | 16.3 | 14.6 | −1.6 | −10 |

[a] Source: Table 1 in CARB's 2014 Staff Report. Net percent change is computed using the original figures having four decimal places, but values in Table 5 for 2005, 2011, and net tpd change are rounded to the nearest tenth of a tpd, and, as a result, adding rounded values may not equal totals in table.

With respect to the connection between the emissions reductions and the improvement in air quality, we also conclude that the air quality improvement in the Yuba City-Marysville $PM_{2.5}$ nonattainment area between 2005 and 2011 was not the result of a local economic downturn or unusual or extreme weather patterns. Despite a significant economic slowdown nationally starting in 2008, gross domestic product in the Yuba City-Marysville Metropolitan Statistical Area grew by approximately 17 percent between 2005 and 2012. We also note the downward trend in $PM_{2.5}$ beginning in 2000 and continuing through 2012.[45] Meteorological conditions (e.g., average temperatures) for the 2005–2007 nonattainment period were similar to the 2009–2011 attainment period,[46] yet the $PM_{2.5}$ design value for the 2009–2011 period was 27 μg/m³, approximately 23% below the 2006 24-hour $PM_{2.5}$ standard.

Thus, we find that the improvement in air quality in the Yuba City-Marysville $PM_{2.5}$ nonattainment area is the result of permanent and enforceable emissions reductions from a combination of EPA-approved local and State control measures and federal control measures. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

*D. The Area Must Have a Fully Approved Maintenance Plan Under Clean Air Act Section 175A*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration plus a commitment to submit a second maintenance plan eight years after redesignation, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memorandum, pages 8 through 13.

Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions that EPA deems necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Based on our review and evaluation of the plan, as

[45] See Table IV–1 on page IV–3 of the Yuba City-Marysville $PM_{2.5}$ Plan and Figure 2 in CARB's 2014 Staff Report.

[46] Temperature data are collected by CARB at the Yuba City-Almond Street monitoring site, and the precipitation data are collected at the Yuba City Airport.

detailed below, we are proposing to approve the Yuba City-Marysville $PM_{2.5}$ Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

Section 172(c)(3) of the CAA requires plan submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area. In demonstrating maintenance in accordance with CAA section 175A and the Calcagni memorandum, the State should provide an attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standard. EPA's primary guidance in evaluating these inventories is the document entitled, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA, OAQPS, EPA–454/R–05–011 (August 2005).[47]

A maintenance plan for the 2006 24-hour $PM_{2.5}$ standard must include an inventory of emissions of $PM_{2.5}$ and its precursors (i.e., $NO_X$, $SO_X$, and VOC) in the area to identify a level of emissions sufficient to attain the 2006 24-hour $PM_{2.5}$ standard. This inventory must be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary point sources, area sources, and mobile sources.

FRAQMD selected year 2011 as the year for the attainment inventory in the Yuba City-Marysville $PM_{2.5}$ Plan. Year 2011 is a current, accurate, and comprehensive inventory during a period which the area continued to attain the 24-hour $PM_{2.5}$ standard prior to adoption and submittal of the redesignation request and maintenance plan. The attainment inventory will generally be the actual inventory during the time period the area attained the standard. EPA previously made an attainment determination for the Yuba City-Marysville $PM_{2.5}$ nonattainment area. See 67 FR 7082, February 15, 2002. Thus, FRAQMD's selection of 2011 for the attainment inventory is acceptable.

Based on our review of the Yuba City-Marysville $PM_{2.5}$ Plan, we find that the emissions inventories in the Plan are comprehensive in that they include estimates of $PM_{2.5}$ and its precursors from all of the relevant source categories, which the Plan divides among stationary, area wide, on-road motor vehicles, and other mobile. The Yuba City-Marysville $PM_{2.5}$ Plan includes 2011 (along with 2017 and 2024) inventories of direct $PM_{2.5}$, $NO_X$, SOx, VOC, and ammonia for the Yuba City-Marysville nonattainment area.[48]

The stationary source category of the emissions inventory includes non-mobile, fixed sources of air pollution comprised of individual industrial, manufacturing, and commercial facilities. Examples of stationary sources (aka, point sources) include fuel combustion (e.g., electric utilities), waste disposal (e.g., landfills), cleaning and surface coatings (e.g., printing), petroleum production and marketing, and industrial processes (e.g., chemical). Stationary source operators report to the Districts the process and emissions data used to calculate emissions from point sources. FRAQMD's 2011 (and subsequent year inventories) for stationary sources were developed using information reported to FRAQMD by emission sources and entered into the California Emission Inventory Development and Reporting System (CEIDARS) database.[49]

The area sources category includes aggregated emissions data from processes that are individually small and widespread or not well-defined point sources. The area source subcategories include solvent evaporation (e.g., consumer products and architectural coatings) and miscellaneous processes (e.g., residential fuel combustion and farming operations). Emissions from these sources are calculated through area source methodologies that rely on emission factors and activity data such as product sales, population, employment data, and other parameters for a wide range of activities that generate air pollution across the Sacramento nonattainment region.[50]

The on-road motor vehicles inventory category consists of trucks, automobiles, buses, and motorcycles. California's model for estimating emissions from on-road motor vehicles operating in California is referred to as ''EMFAC'' (short for EMission FACtor). EMFAC has undergone many revisions over the years, and the current on-road motor vehicles emission model is EMFAC2011, the CARB model approved by EPA for estimating on-road motor source emissions.[51] The on-road emissions inventory estimates in the Yuba City-Marysville $PM_{2.5}$ Plan were prepared by CARB using EMFAC2011. The vehicle miles traveled were developed from Sacramento Area Council of Governments (SACOG) activity data using transportation modeling in Metropolitan Transportation/Sustainable Communities Strategy Plan for 2035.[52]

With respect to off-road mobile sources (or ''other mobile'' as categorized in the $PM_{2.5}$ Plan), the category includes aircraft, trains, boats, and off-road vehicles and equipment used for construction, farming, commercial, industrial, and recreational activities. In general, off-road emissions are calculated using equipment population, engine size and load, usage activity, and emission factors. Off-road mobile source emissions were calculated using CARB category specific methods and inventory models.[53] For unlisted categories, CARB's OFFROAD2007 model was used to calculate emissions.

Table 5 presents the direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions estimates for 2011, 2017, and 2024 in the Yuba City-Marysville $PM_{2.5}$ Plan. Based on the 2011 inventory estimates in Table 4, the on-road and off-road mobile sources accounted for 44% and 28%, respectively, of the $NO_X$ emissions. Areawide sources (e.g., residential wood

[47] This document can be found at *http://www.epa.gov/ttn/chief/eidocs/eiguid/eiguidfinal_nov2005.pdf.*

[48] See Tables V–1 and VI–1 in the Yuba City-Marysville $PM_{2.5}$ Plan. For additional details on the 2011, 2017, and 2024 inventories, see Appendix A to the Yuba City-Marysville $PM_{2.5}$ Plan and 2017 and 2024 on-road mobile source inventories in attachment to email from Binu Abraham, SACOG, to John Ungvarsky, EPA Region 9, December 11, 2013.

[49] The CEIDARS database consists of two categories of information: source information and utility information. Source information includes the basic inventory information generated and collected on all point and area sources. Utility information generally includes auxiliary data, which helps categorize and further define the source information. Used together, CEIDARS is capable of generating complex reports based on a multitude of category and source selection criteria.

[50] Detailed information on the area-wide source category emissions is found on the CARB Web site: *http://www.arb.ca.gov/ei/areasrc/areameth.htm.*

[51] See 78 FR 14533 (March 6, 2013) regarding EPA approval of the 2011 version of the California EMFAC model and announcement of its availability. The software and detailed information on the EMFAC vehicle emission model can be found on the following CARB Web site: *http://www.arb.ca.gov/msei/msei.htm.*

[52] Metropolitan Transportation/Sustainable Communities Strategy Plan, SACOG, adopted April 19, 2013. For more information, go to: *http://www.sacog.org/2035/mtpscs/.*

[53] Available at *http://www.arb.ca.gov/msei/categories.htm#offroad_motor_vehicles.*

burning, farming operations, and managed burning) accounted for 72% of direct $PM_{2.5}$.

TABLE 5—YUBA CITY-MARYSVILLE EMISSIONS INVENTORIES FOR 2011, 2017, AND 2024 AND NET CHANGES BETWEEN 2011 TO 2024 (TPD) [a]

| Pollutant category | Year | | | Net Change | |
|---|---|---|---|---|---|
| | 2011 | 2017 | 2024 | 2011–2024 | % |
| $NO_X$ | | | | | |
| Stationary Sources | 4.4 | 4.8 | 4.3 | −0.1 | −2 |
| Areawide Sources | 1.1 | 1.3 | 1.3 | 0.2 | 17 |
| On-Road Mobile Sources | 8.4 | 5.3 | 3.1 | −5.3 | −63 |
| Other Mobile Sources | 5.4 | 4.6 | 3.4 | −2.1 | −38 |
| Total | 19.3 | 16.0 | 12.1 | −7.2 | −37 |
| $PM_{2.5}$ | | | | | |
| Stationary Sources | 0.9 | 1.0 | 1.1 | 0.3 | 29 |
| Areawide Sources | 3.8 | 4.1 | 4.0 | 0.1 | 4 |
| On-Road Mobile Sources | 0.3 | 0.2 | 0.2 | −0.1 | −26 |
| Other Mobile Sources | 0.3 | 0.2 | 0.1 | −0.1 | −50 |
| Total | 5.3 | 5.5 | 5.4 | 0.2 | 3 |
| $SO_X$ | | | | | |
| Stationary Sources | 0.1 | 0.2 | 0.2 | 0.1 | 90 |
| Areawide Sources | 0.1 | 0.3 | 0.2 | 0.1 | 67 |
| On-Road Mobile Sources | 0.0 | 0.0 | 0.0 | 0.0 | 14 |
| Other Mobile Sources | 0.1 | 0.1 | 0.1 | 0.0 | 1 |
| Total | 0.4 | 0.6 | 0.6 | 0.2 | 61 |
| $NH_3$ | | | | | |
| Stationary Sources | 0.4 | 0.4 | 0.5 | 0.1 | 35 |
| Areawide Sources | 4.5 | 4.3 | 4.3 | −0.2 | −5 |
| On-Road Mobile Sources | 0.2 | 0.2 | 0.2 | 0.0 | −16 |
| Other Mobile Sources | 0.0 | 0.0 | 0.0 | 0.0 | 0 |
| Total | 5.0 | 4.9 | 4.9 | −0.1 | −3 |
| VOCs | | | | | |
| Stationary Sources | 4.0 | 4.5 | 4.1 | 0.1 | 2 |
| Areawide Sources | 5.5 | 6.3 | 6.5 | 1.0 | 19 |
| On-Road Mobile Sources | 2.8 | 1.5 | 1.1 | −1.7 | −60 |
| Other Mobile Sources | 2.3 | 2.0 | 1.7 | −0.6 | −26 |
| Total | 14.6 | 14.2 | 13.4 | −1.2 | −8 |

[a] Source: Table 1 in CARB's 2014 Staff Report. Net percent change is computed using the original figures having four decimal places, but values for 2011, 2017, 2018, and net tpd change are rounded to the nearest tenth of a tpd and, as a result, adding rounded values may not equal totals in table.

Based on our review of the emissions inventories (and related documentation) from the Yuba City-Marysville $PM_{2.5}$ Plan, we find that the inventories for 2011 are comprehensive, that the methods and assumptions used by CARB and FRAQMD to develop the emission inventories are reasonable, and that the 2011 inventory reasonably estimates actual $PM_{2.5}$ emissions in the attainment year. Therefore, we are proposing to approve the 2011 inventory, which serves as the Yuba City-Marysville $PM_{2.5}$ Plan's attainment year inventory, as satisfying the requirements of section 172(c)(3) of the CAA for the purposes of redesignation of the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment of the 24-hour $PM_{2.5}$ NAAQS.

2. Maintenance Demonstration

Section 175A(a) of the CAA requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the 24-hour $PM_{2.5}$ NAAQS by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. A showing that future emissions will not exceed the level of the attainment year inventory can also be used to further support of a maintenance demonstration. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. Calcagni memorandum, page 9.

The Yuba-City Marysville $PM_{2.5}$ Plan's maintenance demonstration is based on the use of proportional rollback to demonstrate maintenance of the 24-hour $PM_{2.5}$ standard until the maintenance year 2024. See Plan, pp. VI–1—VI–3. FRAQMD assumes that the 2011 design value (DV) will change in proportion to the change in the corresponding species components of the emission inventory between 2011 and 2024.

As described previously, exceedances of the 24-hour $PM_{2.5}$ NAAQS in the Yuba City-Marysville nonattainment area have occurred November through February. Chemical composition data can be used to understand the types of emission sources that contribute to ambient $PM_{2.5}$ in these winter months; however, these measurements are not

routinely collected in the Yuba City-Marysville nonattainment area. A limited chemical composition analysis was done on samples collected at the Yuba City-Almond Street monitor (AQS ID: 061010003) in 2004–2006.[54] Archived Teflon filters were analyzed by a combination of X-ray Fluorescence (XRF) to provide elemental concentrations and Ion Chromatography (IC) to estimate ions (sulfate, nitrate, potassium, ammonium, etc.). These data show that $PM_{2.5}$ on days with high concentrations during the cool season[55] was made up of TCM (54%), ammonium nitrate (38%), ammonium sulfate (6%), and crustal materials (2%). See Plan, pp. IV–5—IV–7.

The Yuba-City Marysville $PM_{2.5}$ Plan shows that the $PM_{2.5}$ composition on high concentration days likely did not change between 2004–2006 and the emission inventory year 2011. See CARB 2014 Staff Report p. 8–9. FRAQMD argues that while emission reductions have reduced the frequency and magnitude of high concentration day events, there would be little impact on exceedance day composition due to consistent meteorology and control programs targeting all contributors to $PM_{2.5}$ mass. As additional evidence, data from the Sacramento-T Street site (AQS ID: 060670010), the closest monitor with routine composition data and similar meteorology, is presented. These data shows that despite decreases in emissions over the years the composition in 2010–2012 was very similar to that in 2004–2006. We find the assumption that the chemical composition was consistent between 2004–2006 and 2011 to be reasonable. FRAQMD used the composition data for 2004–2006 to partition the 2011 DV of 27 μg/m³ into its components of 14.6 μg/m³ TCM, 10.3 μg/m³ ammonium nitrate, 1.6 μg/m³ ammonium sulfate, and 0.5 μg/m³ crustal materials.

The Yuba City-Marysville $PM_{2.5}$ Plan demonstrates that the 2024 maintenance year inventory is well below the 2011 attainment year inventory for $NO_X$, the most important $PM_{2.5}$ precursor and about equal for direct $PM_{2.5}$, the largest contributor to $PM_{2.5}$. Emissions for $SO_X$ are projected to increase, but sulfate is a very small contributor. Emissions for VOC and ammonia, the other potential precursors, are projected to decrease. Table 6 presents a summary of the direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions estimates for 2011, 2017, and 2024 in the Yuba City-Marysville $PM_{2.5}$ Maintenance Plan. Emissions are projected to change between 2011 and 2014 for direct $PM_{2.5}$ (+3%), $NH_3$ (−3%), $NO_X$ (−37%), $SO_X$ (+61%), and VOCs (−8%). Since current ambient concentrations are well below the NAAQS, the $NO_X$ decrease together with the slight increase in projected direct $PM_{2.5}$ and $SO_X$ emissions are consistent with maintenance of the NAAQS, as discussed below.

Based on our review of the 2017 and 2024 emissions inventories and related documentation from the Yuba City-Marysville $PM_{2.5}$ Plan, we find that the 2017 and 2024 emissions inventories in the Plan reflect the latest planning assumptions and emissions models available at the time the Plan was developed, and provide a comprehensive and reasonably accurate basis upon which to forecast direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions for years 2017 and 2024.[56] These inventories further support maintenance through 2024.

TABLE 6—SUMMARY OF 2011, 2017 AND 2024 PROJECTED $PM_{2.5}$ AND $PM_{2.5}$ PRECURSOR EMISSIONS IN THE YUBA CITY-MARYSVILLE $PM_{2.5}$ NONATTAINMENT AREA (TONS PER DAY, AVERAGE WINTER DAY), AND 2011–2024 CHANGE [a]

| Pollutants | 2011 | 2017 | 2024 | Net change tpd | Net change % |
|---|---|---|---|---|---|
| $PM_{2.5}$ | 5.3 | 5.5 | 5.4 | 0.2 | 3 |
| $NO_X$ | 19.3 | 16.0 | 12.1 | −7.2 | −37 |
| $SO_X$ | 0.4 | 0.6 | 0.6 | 0.2 | 61 |
| $NH_3$ | 5.0 | 4.9 | 4.9 | −0.1 | −3 |
| VOC | 14.6 | 14.2 | 13.4 | −1.2 | −8 |

[a] Source: Table 1 in CARB's 2014 Staff Report. Net percent change is computed using the original figures having four decimal places, but values 2011, 2017, 2024, and net tpd change are rounded to the nearest tenth of a tpd, and, as a result, adding rounded values may not equal net change in table.

Assuming TCM and crustal material are from directly emitted $PM_{2.5}$, a 3% increase in the estimated 2011 TCM ambient contribution (i.e., 14.6 μg/m³) corresponds to a 0.45 μg/m³ increase in ambient $PM_{2.5}$. Ammonium nitrate and ammonium sulfate are secondary PM, that is, they are formed from chemical reactions in the air, and so do not necessarily scale one-to-one with the precursor $NO_X$, $NH_3$, and $SO_X$ emissions. Assuming a conservative one-to-one $SO_X$ to ammonium sulfate, a 61% increase in $SO_X$ corresponds to a 1.0 μg/m³ $PM_{2.5}$ increase. $NO_X$ emissions are projected to decrease by 37% and $NH_3$ is projected to decrease by 3%. FRAQMD assumes a one-to-one $NO_X$ to ammonium nitrate resulting in a 3.8 μg/m³ $PM_{2.5}$ decrease. The amount of $NO_X$ to ammonium nitrate formation, however, can vary depending on a number of chemical and meteorological factors. Photochemical modeling for the Sacramento region shows that a 1% change in $NO_X$ causes only a 0.7% change in ammonium nitrate. See 78 FR 44494 at 59261 (July 24, 2013). Using this assumption, the 37% $NO_X$ decrease results in a 2.7 μg/m³ $PM_{2.5}$ decrease. Taken together, the changes in precursor emissions from 2011 to 2024 result in an overall decrease of 1.25 μg/m³ in the DV. See Plan, Table VI–4 p. VI–3.

The results of the proportional roll-back analysis show that the Yuba City-Marysville $PM_{2.5}$ nonattainment area will be well below the 24-hour $PM_{2.5}$ NAAQS in 2024, with the projected DV of 25.75 μg/m³. This is higher than the 24.6 μg/m³ in the Plan (based on a one-to-one ammonium nitrate response to $NO_X$ reductions), but is still well below the NAAQS. The effects of the declining $NO_X$ outweigh slight increases in direct $PM_{2.5}$ and $SO_X$.

For the above reasons, EPA believes the area will continue to maintain the

[54] Availability of New Speciation Data for Some Areas that EPA Intends to Designate as Nonattainment, Neil Frank, Office of Air Quality Planning and Standards, September 18, 2008 available at *http://www.epa.gov/ttn/naaqs/pm/docs/available_new_speciation_data_pm2.5_naa.pdf.*

[55] Days with concentrations above the 95th percentile of measured $PM_{2.5}$ during October–April.

[56] The 2024 emission inventory includes emissions reductions from State measures adopted through June 2011 plus reductions from the Advanced Clean Cars Program. Emails from Kasia Turkiewicz, CARB, to John Ungvarsky, EPA, August 20, 2014, and September 8, 2014.

2006 24-hour $PM_{2.5}$ NAAQS at least through 2024 and that the Yuba City-Marysville $PM_{2.5}$ Maintenance Plan shows maintenance for a period of ten years following redesignation. Thus, EPA proposes approval of the Yuba City-Marysville $PM_{2.5}$ Maintenance Plan in 2014, based on a showing, in accordance with section 175A, that the Yuba City-Marysville $PM_{2.5}$ Maintenance Plan provides for maintenance for at least ten years after redesignation.

3. Maintenance Plan and Evaluation of VOC and Ammonia Precursors

With regard to the redesignation of Yuba City-Marysville nonattainment area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 2006 24-hour $PM_{2.5}$ standard and that the State has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA proposes to determine that the State's maintenance plan shows continued maintenance of the 2006 24-hour $PM_{2.5}$ standard by tracking the levels of the precursors whose control brought about attainment of the 2006 24-hour $PM_{2.5}$ standard in the Yuba City-Marysville nonattainment area. EPA, therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013 decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Yuba City-Marysville nonattainment area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the 2006 24-hr $PM_{2.5}$ standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been controlled under SIP requirements related to ozone and other pollutants, and the area has no major stationary sources of ammonia. Second and as described below, available information shows that precursor emissions, including VOC and ammonia, are not expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

In the Yuba City-Marysville nonattainment area, emissions of $NO_X$, $NH_3$, and VOC are projected to decrease over the maintenance period for the 2006 24-hour $PM_{2.5}$ standard. See Tables 5 and 6. Given that the Yuba City-Marysville nonattainment area is already attaining the 2006 24-hour $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 2006 24-hour $PM_{2.5}$ standard indicate that the area should continue to attain the standard following the precursor control strategy that the State has already elected to pursue. Even though direct $PM_{2.5}$ and $SO_X$ are both projected to marginally increase by 0.2 tpd between 2011 and 2024, the overall emissions reductions projected in $NO_X$, $NH_3$, and VOC would be sufficient to offset the very small increase in direct $PM_{2.5}$ and $SO_X$. For these reasons, EPA believes that emissions from potential $PM_{2.5}$ precursors will not cause monitored $PM_{2.5}$ levels to violate the 2006 24-hour $PM_{2.5}$ standard during the maintenance period. In addition, the 2011–2013 design value for the area is 29 $\mu g/m^3$, which is well below the 2006 24-hour $PM_{2.5}$ standard of 35 $\mu g/m^3$. Given that precursor emissions are projected to decrease through 2024, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2024.

Thus, EPA believes that there is ample justification to conclude that the Yuba City-Marysville nonattainment area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. Even if the requirements of section 189(e) were deemed applicable at the time the State submitted the redesignation request, and for the reasons set forth in this notice, EPA proposes to approve the State's maintenance plan and its request to redesignate the Yuba City-Marysville nonattainment area to attainment for the 1997 $PM_{2.5}$ annual standard.

4. Verification of Continued Attainment

In demonstrating maintenance, continued attainment of the NAAQS can be verified through operation of an appropriate air quality monitoring network. The Calcagni memorandum states that the maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Calcagni memorandum, p. 11. As discussed in section VI.A of this document, $PM_{2.5}$ is currently monitored by CARB within the Yuba City-Marysville $PM_{2.5}$ nonattainment area. In the Yuba City-Marysville $PM_{2.5}$ Plan (see Plan, p. VII–1), the District indicates it will work with CARB in the continued operation of the Yuba City-Marysville monitoring site (i.e., AQS site 06–101–0003) and maintain compliance with federal requirements in 40 CFR Part 58. The Plan also indicates that CARB intends to maintain an appropriate $PM_{2.5}$ monitoring network through the maintenance period. We find that the Yuba City-Marysville $PM_{2.5}$ Plan contains adequate provisions for continued operation of air quality monitors that will provide verification of continued attainment.

Second, the transportation conformity process, which would require a comparison of on-road motor vehicle emissions that would occur under new or amended regional transportation plans and programs with the MVEBs in the Plan, represents another means by which to verify continued attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in Yuba City-Marysville nonattainment area.

Lastly, CARB and FRAQMD must inventory emissions sources and report to EPA on a periodic basis under 40 CFR part 51, subpart A (''Air Emissions Reporting Requirements''). These emissions inventory updates will provide a third way to evaluate emissions trends in the area and thereby verify continued attainment of the NAAQS. These methods are sufficient for the purpose of verifying continued attainment.

5. Contingency Provisions

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions, as EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned that were contained in the SIP for the area before redesignation of the area as an attainment area. These contingency provisions are distinguished from those generally required for nonattainment areas under section 172(c)(9) in that they are not required to be fully-adopted measures that will take effect without further action by the state in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the

contingency measures are adopted expeditiously once they are triggered by a specified event.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. As a necessary part of the plan, the State should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, FRAQMD has adopted a contingency plan to address possible future $PM_{2.5}$ air quality problems. The contingency provisions in the Yuba City-Marysville $PM_{2.5}$ Plan are contained in section VII of the Plan and were clarified in a subsequent letter from the District.[57] In the Yuba City-Marysville $PM_{2.5}$ Plan, FRAQMD identifies the contingency plan trigger as a violation of the 2006 24-hour $PM_{2.5}$ NAAQS. If that should occur, FRAQMD commits to the following steps.

(1) Within 60 days of the trigger, FRAQMD will commence an analysis to determine if the violation was caused by a natural event or instrument malfunction, and evaluate meteorological conditions and emissions inventory.

(2) FRAQMD will consult with interested parties, community organizations, and industry to identify and implement, within nine months after the trigger, voluntary and incentive measures to reduce directly emitted $PM_{2.5}$.

(3) If the violation occurred because of emissions from sources within Sutter or Yuba counties, the FRAQMD will promptly adopt and implement, no later than 18–24 months after the violation, new or revised measures necessary to ensure attainment. The measures that FRAQMD would consider and analyze are listed in Table 7. Additional rules may be considered depending on the cause of the violation of the 2006 24-hour $PM_{2.5}$ standard.

TABLE 7—MEASURES FOR CONSIDERATION AND ANALYSIS IN STEP 3 OF THE FRAQMD CONTINGENCY PLAN

| Source category | Control measures |
|---|---|
| Stationary Sources | Combustion Devices (boilers, incinerators, engines, and turbines). |
| | Industrial Processes (manufacturing, industrial, agricultural, oil and gas). |
| Opening Burning Restrictions | Managed Burning (agricultural and residential opening burning). |
| | Prescribed Burning. |
| Fugitive Dust | Paved Roads (truck covering, construction site measures, storm water drainage). |
| | Unpaved Roads (paving and surface improvements, chemical stabilization, speed reduction). |
| | Construction and Demolition (truck covering, access areas, watering). |
| | Storage Piles (wet suppression and dust control). |
| | Agricultural Processes (reducing dust from tilling, harvesting, processing; also conservation). |
| Opacity Restrictions | Visible emissions limitations. |
| Residential Wood Burning Devices | Mandatory curtailment, conversion/upgrade of existing devices, restrictions on new devices. |

In their December 19, 2013 letter, FRAQMD clarified that all three of the aforementioned steps will be completed, including the implementation of additional control measures, within 18–24 months of trigger activation.

Upon our review of the Plan, as summarized above, we find that the contingency provisions of the Yuba City-Marysville $PM_{2.5}$ Plan clearly identify specific contingency measures, contain tracking and triggering mechanisms to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific timelines for action. Thus, we conclude that the contingency provisions of the Yuba City-Marysville $PM_{2.5}$ Plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the CAA. For the reasons set forth above, EPA is proposing to find that the Yuba City-Marysville $PM_{2.5}$ Plan is consistent with the maintenance plan contingency provision requirements of the CAA and EPA guidance.

6. Transportation Conformity and Motor Vehicle Emissions Budgets

a. Requirements for Transportation Conformity and Motor Vehicle Emissions Budgets

Under section 176(c) of the CAA, transportation plans, programs and projects in the nonattainment or maintenance areas that are funded or approved under title 23 U.S.C. and the Federal Transit Laws (49 U.S.C. chapter 53) must conform to the applicable SIP. In short, a transportation plan and program are deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan and program are less than or equal to the motor vehicle emissions budgets (budgets) established in the SIP for the attainment year, maintenance year and other years. See, generally, 40 CFR part 93 for the federal conformity regulations and 40 CFR 93.118 specifically for how budgets are used in conformity.

The budgets serve as a ceiling on emissions that would result from an area's planned transportation system. The budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). Maintenance plan submittals must specify the maximum emissions of transportation-related $PM_{2.5}$ and $NO_X$ emissions allowed in the last year of the maintenance period, i.e., the motor vehicle emissions budgets (MVEBs). (MVEBs may also be specified for additional years during the maintenance period.) The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS.

b. Motor Vehicle Emissions Budgets in the Yuba City-Marysville $PM_{2.5}$ Plan

The Yuba City-Marysville $PM_{2.5}$ Plan contains $PM_{2.5}$ and $NO_X$ MVEBs for the Yuba City-Marysville $PM_{2.5}$ nonattainment area for 2017 and 2024.

[57] Letter from Christopher D. Brown, Air Pollution Control Officer, FRAQMD, to Deborah Jordan, Director, Air Division, US EPA, Region 9, and Richard W. Corey, Executive Officer, CARB, dated December 19, 2013.

The MVEBs are the on-road mobile source primary $PM_{2.5}$ and $NO_X$ (as a $PM_{2.5}$ precursor) emissions for Yuba City-Marysville nonattainment area for 2017 and 2024. The derivation of the MVEBs is discussed in section VIII of the Yuba City-Marysville $PM_{2.5}$ Plan and in SACOG's Regional Planning Partnership Action Item #3, February 20, 2013.[58]

The details for each component of the budgets are shown in Table 9 and are comprised of direct on-road mobile source emissions, safety margins, and an adjustment for reductions from the State's Advanced Clean Car Program. Direct $PM_{2.5}$ emissions from road construction, paved roads and unpaved roads were evaluated by FRAQMD and determined to not be a significant contributor to the $PM_{2.5}$ nonattainment problem, and, as such, do not need to be evaluated as part of a conformity determination.[59] See 40 CFR 93.124(a). A state may choose to apply a safety margin under our transportation conformity rule so long as such margins are explicitly quantified in the applicable plan and are shown to be consistent with attainment or maintenance of the NAAQS (whichever is relevant to the particular plan).[60] In this instance, the safety margin has been explicitly quantified and shown to be consistent with continued maintenance of the $PM_{2.5}$ NAAQS through the applicable maintenance period, through 2024. The State's MVEB analysis considered: (1) On-road motor vehicle emission inventory factors of EMFAC2011; and (2) updated recent vehicle activity data from SACOG's Sacramento Activity-Based Travel Demand Simulation Model transportation modeling system.

TABLE 9—SOURCE CATEGORIES AND EMISSIONS COMPRISING THE MOTOR VEHICLE EMISSIONS BUDGETS

[tons per day, average winter day]

| Category | 2017 | | 2024 | |
|---|---|---|---|---|
| | $NO_X$ | $PM_{2.5}$ | $NO_X$ | $PM_{2.5}$ |
| On-road emissions inventory [a] | 4.6 | 0.15 | 2.7 | 0.15 |
| Safety Margin | 0.7 | — | 0.5 | — |
| Advanced Clean Car Program Adjustment | 0.0 | — | −0.1 | — |
| Totals | 5.3 | 0.2 | 3.1 | 0.2 |

[a] Rounded up to nearest tenth of a ton, includes $PM_{2.5}$ from tire and brake wear.

c. Initial Adequacy Review of Budgets

On May 20, 2014, EPA announced the availability of the Yuba City-Marysville $PM_{2.5}$ Plan with MVEBs and a 30-day public comment period on EPA's Adequacy Web site at: *http://www.epa.gov/otaq/stateresources/transconf/reg9sips.htm#ca.* The comment period for this notification ended on June 19, 2014, and EPA received no comments from the public. On August 25, 2014, EPA published in the **Federal Register** (79 FR 50646) a finding of adequacy for the $PM_{2.5}$ MVEBs for the years 2017 and 2024. The new MVEBs became effective on September 9, 2014. After the effective date of the adequacy finding, the new MVEBs must be used in future transportation conformity determinations in the Yuba City-Marysville nonattainment area. EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them, but in this instance, we have completed the adequacy review of these budgets prior to our action on the Yuba City-Marysville $PM_{2.5}$ Plan.

d. Proposed Actions on the Budgets

EPA is proposing to approve the MVEBs for 2017 and 2024 as part of our approval of Yuba City-Marysville $PM_{2.5}$ Plan. EPA has determined that the MVEB emission targets are consistent with emission control measures in the SIP and that Yuba City-Marysville nonattainment area can maintain attainment of the 24-hour $PM_{2.5}$ NAAQS. Because the budgets EPA found adequate in 79 FR 50646 (August 25, 2014) are the same budgets EPA is proposing to approve in this action, if EPA approves the MVEBs in the final rulemaking action, it would not change the budgets currently in use for future transportation conformity determinations for Yuba City-Marysville County. As discussed in section V.D.2 of this notice, EPA is proposing that if this approval is finalized in 2014 the area will continue to maintain the 2006 24-hour $PM_{2.5}$ NAAQS through at least 2024. Consistent with this proposal, EPA is proposing to approve the MVEBs submitted by the State in the Yuba City-Marysville $PM_{2.5}$ Plan. EPA is proposing that the submitted budgets are consistent with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS through 2024.

## VII. Proposed Action and Request for Public Comment

Based on our review of the Yuba City-Marysville $PM_{2.5}$ Plan submitted by the State, air quality monitoring data, and other relevant materials, EPA is proposing to find that the State has addressed all the necessary requirements for redesignation of the Yuba City-Marysville nonattainment area to attainment of the $PM_{2.5}$ NAAQS, pursuant to CAA sections 107(d)(3)(E) and 175A.

First, under CAA section 107(d)(3)(D), we are proposing to approve CARB's request, which accompanied the submittal of the Yuba City-Marysville $PM_{2.5}$ Plan, to redesignate the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion is based on our proposed determination that the area has attained the 2006 24-hour $PM_{2.5}$ NAAQS; that relevant portions of the California SIP are fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that California has met all requirements applicable to the Yuba City-Marysville $PM_{2.5}$ nonattainment area with respect to section 110 and part D of the CAA; and is based on our proposed approval of the Yuba City-Marysville $PM_{2.5}$ Plan as part of this action.

Second, in connection with the Yuba City-Marysville $PM_{2.5}$ Plan showing maintenance through 2024, EPA is proposing to find that the maintenance demonstration, which documents how the area will continue to attain the 2006 24-hour $PM_{2.5}$ NAAQS for 10 years

[58] Included in the docket for this action.

[59] See section VIII.c. in the Yuba City-Marysville $PM_{2.5}$ Plan.

[60] See 40 CFR 93.124(a).

beyond redesignation (i.e., through 2024) and the actions that FRAQMD will take if a future monitored violation triggers the contingency plan, meets all applicable requirements for maintenance plans and related contingency provisions in section 175A of the CAA. EPA is also proposing to approve the motor vehicle emissions budgets in the Yuba City-Marysville $PM_{2.5}$ Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e). Lastly, EPA is proposing to approve the 2011 inventory, which serves as the Yuba City-Marysville $PM_{2.5}$ Plan's attainment year inventory, as satisfying the requirements of section 172(c)(3) of the CAA.

We are soliciting comments on these proposed actions. We will accept comments from the public on this proposal for 30 days following publication of this proposal in the **Federal Register**. We will consider these comments before taking final action.

## VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these proposed actions:

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. There are no federally recognized tribes located within the Yuba City-Marysville $PM_{2.5}$ nonattainment area.

### List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 29, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2014–24489 Filed 10–14–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2010–0895; FRL–9917–93–OAR]

RIN 2060–AQ11

## National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production

**AGENCY:** Environmental Protection Agency.

**ACTION:** Supplemental notice of proposed rulemaking; correction.

**SUMMARY:** This action corrects our supplemental notice of proposed rulemaking to the national emission standards for hazardous air pollutants for the Ferroalloys Production source category published in the **Federal Register** on October 6, 2014. In that action, there is an incorrect location for the public hearing. This document amends the public hearing location and the date the hearing will be held, if requested.

**DATES:** This correction is made on October 15, 2014.

*Public Hearing.* If anyone contacts the EPA requesting a public hearing by October 20, 2014, the EPA will hold a public hearing on October 30, 2014 from 1:00 p.m. [Eastern Standard Time] to 5:00 p.m. [Eastern Standard Time] at the U.S. Environmental Protection Agency building located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information.

**ADDRESSES:** To request a hearing, register to speak at the hearing or to inquire as to whether or not a hearing will be held, please contact Ms. Virginia Hunt of the Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0832; email address: *hunt.virginia@epa.gov.* The last day to pre-register to speak at the hearing will be October 27, 2014. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations, such as audio description, we ask that you pre-register for the hearing, as we may not be able

to arrange such accommodations without advance notice. The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Again, a hearing will not be held on this rulemaking unless requested. A hearing will be held if requested by October 20, 2014. Please contact Ms. Virginia Hunt of the Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0832; email address: *hunt.virginia@epa.gov,* to request a hearing or to find out if a hearing will be held. Information on the status of the hearing can also be found on the agency's Web site at: *http://www.epa.gov/ttn/atw/ferroa/ferropg.html.*

**SUPPLEMENTARY INFORMATION:** This action amends the public hearing location and the date the hearing will be held, if requested, for the supplemental notice of proposed rulemaking, *National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production,* published in the **Federal Register** on October 6, 2014 (79 FR 60238).

Dated: October 8, 2014.

**Mary E. Henigin,**

*Acting Director for Office of Air Quality Planning and Standards.*

[FR Doc. 2014–24461 Filed 10–9–14; 4:15 pm]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2014–0008; FRL–9917–24]**

## Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before November 14, 2014.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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 Confidential Business Information (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.*

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Rosenblatt, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

**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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

### New Tolerance Exemption

1. *IN 10675.* (EPA–HQ–OPP–2014–0678). Lamberti USA INC, 161 Washington St., Conshohocken, PA 19428, requests to establish an exemption from the requirement of a tolerance for residues for Alkyl polyglucoside esters (AGEs) group, formed by D-Glucopyranose, oligomeric, 6-(dihydrogen 2-hydroxy-1,2,3-propanetricarboxylate), 1-(C8–C20 linear and branched alkyl) ethers, sodium salts (CAS No. 1079993–97–7); D-Glucopyranose, oligomeric, 6-(hydrogen sulfobutanedioate), 1-(C8–C20 linear and branched alkyl) ethers, sodium salts (CAS No. 1079993–92–2); D-Glucopyranose, oligomeric, Propanoic acid, 2-hydroxy-, 1-(C8–C20 linear and branched alkyl) ethers (CAS No. 1079993–94–4), when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

2. *IN 10751.* (EPA–HQ–OPP–2014–0682). Evonik Goldschmidt Corporation, P.O. Box 1299, Hopewell, VA 23860, requests to establish an exemption from the requirement of a tolerance for residues for Oxirane, 2-phenyl-, polymer with oxirane, monooctyl ether (CAS No. 83653–00–3) with a minimum number average molecular weight (in amu) of 1,200, when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

3. *IN 10755.* (EPA–HQ–OPP–2014–0668). Lewis and Harrison, 122 C Street NW., Suite 505, Washington DC 20001, for International Specialty Products, requests to establish an exemption from the requirement of a tolerance for residues of 2,5-Furandione, polymer with methoxyethene, butyl ethyl ester, sodium salt (CAS No. 1471342–08–1) with a minimum number average molecular weight (in amu) of 18,200, when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: October 6, 2014.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2014–24352 Filed 10–14–14; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 79, No. 199

Wednesday, October 15, 2014

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0082]**

### Notice of Request for Approval of an Information Collection; Lacey Act; Definitions for Exempt and Regulated Articles

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** New 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 approval of a new information collection required by the Lacey Act concerning definitions for exempt and regulated articles.

**DATES:** We will consider all comments that we receive on or before December 15, 2014.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0082.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0082, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0082* 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 the Lacey Act definitions for exempt and regulated articles, contact Ms. Parul Patel, Senior Agriculturalist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road, Unit 60, Riverdale, MD 20737; (301) 851–2351. 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:* Lacey Act; Definitions for Exempt and Regulated Articles.

*OMB Control Number:* 0579–0XXX.

*Type of Request:* Approval of a new information collection.

*Abstract:* The Lacey Act, as amended, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported, or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, section 3 of the Act makes it unlawful to import certain plants and plant products without an import declaration, which must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country in which the plant was harvested. In addition, there is a supplemental form that must be completed if additional space is needed to declare additional plants and plant products. Also, records of the import declaration and supplemental form must be retained for at least 5 years. These collection activities have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0349.

Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) maintains a list of common cultivars and common food crops that is available on the APHIS Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.* This list is not exhaustive. In fact, in an interim final rule [1] published in the **Federal Register** on July 9, 2013 (78 FR 40940–40945, Docket No. APHIS–2009–0018), we advised the public that inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list, be sent in writing to APHIS and include information as to the scientific name of the plant (genus, species), common or trade names, annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity, and any other information that will help us make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

When we listed the above information needs, we inadvertently did not obtain OMB approval nor did we add it to OMB control number 0579–0349. We are asking OMB to approve our use of this information collection for 3 years and assign an OMB control number. Eventually, we will combine this collection with OMB control number 0579–0349, subject to OMB approval.

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 1 hour per response.

*Respondents:* Importers of certain plants and plant products.

[1] To view the interim final rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018.*

*Estimated annual number of respondents:* 5.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 5.

*Estimated total annual burden on respondents:* 5 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 8th day of October 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–24530 Filed 10–14–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0080]**

### Notice of Request for Revision to and Extension of Approval of an Information Collection; Endangered Species Regulations and Forfeiture Procedures

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision to and 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 a revision to and extension of approval of an information collection associated with the regulations for protection of endangered species of terrestrial plants and for procedures related to the forfeiture of plants or other property.

**DATES:** We will consider all comments that we receive on or before December 15, 2014.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0080.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0080* 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 the regulations to protect endangered species of terrestrial plants and forfeiture procedures, contact Dr. John Veremis, National CITES Director, PHP, PPQ, APHIS, 4700 River Road, Unit 52, Riverdale, MD 20737; (301) 851–2347. 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:* Endangered Species Regulations and Forfeiture Procedures.

*OMB Control Number:* 0579–0076.

*Type of Request:* Revision to and extension of approval of an information collection.

*Abstract:* Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Department of Agriculture (USDA) is responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that pertain to the importation, exportation, or reexportation of plants.

As part of this mission, USDA's Animal and Plant Health Inspection Services (APHIS) administers the regulations in 7 CFR part 355, ''Endangered Species Regulations Concerning Terrestrial Plants.'' In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the CITES regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit from APHIS. Such entities include importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. The requirement does not apply to persons engaged in business merely as carriers or customhouse brokers.

To obtain a protected plant permit, entities must complete an application (Plant Protection and Quarantine (PPQ) Form 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species of terrestrial plants requires the use of this application process, as well as the use of other information collection activities including, but not limited to, notifying APHIS of the impending importation, exportation, or reexportation of the plants; marking containers used for the importation, exportation, or reexportation of the plants; and creating and maintaining records of importation, exportation, and reexportation.

APHIS also administers regulations at 7 CFR part 356, ''Forfeiture Procedures,'' which sets out procedures for the forfeiture of plants or other property by entities found to be in violation of the Endangered Species Act or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*). Entities whose property is subject to forfeiture may file with APHIS a waiver of forfeiture procedures, a petition for remission or mitigation of forfeiture, or a request for release of property.

The information provided by these information collection activities is critical to APHIS' ability to carry out its responsibilities under the Endangered Species Act and the Lacey Act. These responsibilities include monitoring importation, exportation, and reexportation activities involving endangered species of plants, as well as the investigation of possible violations and the forfeiture of plants or other property. However, since the last approval of this collection, APHIS no longer requires completion of PPQ Form 625 (Claim and Bond) due to implementation of the Civil Asset Forfeiture Reform Act.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities, as described, 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 0.0929 hours per response.

*Respondents:* U.S. importers and exporters of endangered species of terrestrial plants.

*Estimated annual number of respondents:* 16,578.

*Estimated annual number of responses per respondent:* 4.901.

*Estimated annual number of responses:* 81,264.

*Estimated total annual burden on respondents:* 7,552 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 8th day of October 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–24531 Filed 10–14–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Commodity Credit Corporation

### Information Collection; Noninsured Crop Disaster Assistance Program

**AGENCY:** Farm Service Agency, Commodity Credit Corporation, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency and the Commodity Credit Corporation are requesting comments from all interested individuals and organizations on a revision of a currently approved information collection in support of the Noninsured Crop Disaster Assistance Program (NAP). The information collected is needed from producers to determine eligibility for NAP assistance.

**DATES:** We will consider comments that we receive by December 15, 2014.

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to/ *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Daniel McGlynn, Acting Division Director, Production, Emergencies, and Compliance Division, Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503.

**FOR FURTHER INFORMATION CONTACT:** Terry Hill, Section Head, Disaster Assistance Section, Program Policy Branch, (202) 720–3087.

**SUPPLEMENTARY INFORMATION:**

#### Description of Information Collection

*Title:* Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0175.

*Type of Request:* Revision.

*Abstract:* NAP is authorized under 7 U.S.C. 7333 and implemented under regulations issued at 7 CFR part 1437. NAP is administered by FSA for CCC and is carried out by FSA State and County committees. The information collected allows FSA to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) that are produced for food or fiber and for which catastrophic coverage under section 508(b), or additional NAP coverage under sections 508(c) and 508(h) under the Federal Crop Insurance Act (7 U.S.C. 1508) is not available.

NAP coverage is available for crops expressly grown for food (excluding livestock and their by-products); crops planted and grown for livestock consumption; crops grown for fiber (excluding trees grown for wood, paper, or pulp products); aquaculture species crops (including ornamental fish); floriculture; ornamental nursery; Christmas tree crops; turf grass sod; industrial crops; seed crops; and sea grass and sea oats. The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing regulations.

Eligible producers must annually:

(1) Request NAP coverage by completing an application for coverage and paying a service fee by the FSA-established application closing date;

(2) File a report of acreage, inventory, or physical location of the operation, as applicable for the covered crop or commodity; and

(3) Certify harvested production of each covered crop or commodity.

When damage to a covered crop or commodity occurs, which is eligible for NAP, producers must file a notice of loss with the local FSA administrative county office within 15 calendar days of occurrence or 15 calendar days of the date damage to the crop or commodity becomes apparent. Producers must also file an application for payment by the FSA established deadline, and complete a certification of average adjusted gross income and consent for disclosure of tax information with the local FSA County office. The NAP application is also being used to provide a timelier, more accurate, and more reliable delivery of benefits to producers.

FSA is revising a currently approved information collection because the number of producers is expected to increase due to changes to NAP by the Agricultural Act of 2014 (2014 Farm Bill) and additional changes that are under development and will be published in a separate rulemaking.

The 2014 Farm Bill authorizes additional NAP coverage (NAP buy-up coverage) levels ranging from 50 to 65 percent of production at 100 percent of the average market price, and expands NAP coverage to sweet sorghum, biomass sorghum, and industrial crops grown as feedstock for renewable biofuel, renewable electricity, and biobased products. It also expands a waiver of the NAP service fee which was previously available only to limited resource farmers to also include beginning and socially disadvantaged farmers and ranchers.

Based on these changes, FSA is expecting an increase in the annual total number of respondents, and an increase in total burden hours for collection of the information.

The formulas used to calculate the total burden hours is estimated average time per response (includes travel times) hours times total annual responses.

*Type of respondents:* Producers of commercial crops or other agricultural commodities (except livestock).

*Estimated Annual Burden:* Public reporting burden for this information collection is estimated to average 1.33 hours per response. The average travel time, which is included in the total

annual burden, is estimated to be 1 hour per respondent.

*Estimated Annual Number of Respondents:* 298,943.

*Estimated Annual Number of Reponses Per Respondent:* 3.

*Estimated Total Annual Responses:* 1,565,366.

*Estimated Total Annual Burden Hours:* 2,036,452.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) 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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on October 3, 2014.

**Val Dolcini,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

[FR Doc. 2014–24535 Filed 10–14–14; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Klamath National Forest, California, Westside Fire Recovery Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Klamath National Forest will prepare an environmental impact statement (EIS) on a proposal to reduce safety hazards to the public and forest workers, obtain the maximum economic commodity values from burned timber, and increase the likelihood and speed by which burned forested areas are regenerated on about 63,883 acres that burned with high severity in the Beaver Creek, Whites, and Happy Camp Complex fires in 2014. The project area includes 162,264 acres of National Forest System lands and 20,863 acres of private land. Treatments for the project will be limited to National Forest System lands. It is located on the west side of the Forest within the Beaver Creek, Horse Creek-Klamath River, Humbug Creek-Klamath River, Elk Creek, Indian Creek, Lower Scott River, Seiad Creek-Klamath River, Thompson Creek-Klamath River, Ukonom Creek-Klamath River, French Creek-Scott River, North Fork Salmon River, and South Fork Salmon River 5th field watersheds. The legal description of the project area is Township (T) 39 North (N) Range (R) 10 West (W), T39NR11W, T40NR8W, T40NR10W, T40NR11W, T41NR10W, T41NR11W, T43NR12W, T44NR11W, T44NR12W, T45NR10W, T45NR11W, T45NR12W, T46NR8W, T46NR9W, T46NR10W, T46NR11W, T46NR12W, T47NR8W, T47NR9W, and T47NR10W of the Humboldt Meridian and T14NR8 East (E), T15NR7E, T15NR8E, T16NR7E, T16NR8E of the Humboldt Meridian.

**DATES:** The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**. The draft EIS is expected to be completed by March 2015, and the final EIS is expected to be completed by June 2015.

**ADDRESSES:** Send written comments to: Patricia A. Grantham, Forest Supervisor, Klamath National Forest, 1711 South Main Street, Yreka, California 96097, ATTN: Westside Fire Recovery Team Leader, or send facsimile to 530–841–4571. Submit electronic comments at the Klamath National Forest's project Web page: *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=45579* by selecting the ''Comment on Project'' link in the ''Get Connected'' group at the right hand side of the project Web page. Put the project name in the subject line; attachments may be in the following formats: Plain text (.txt), rich text format (.rtf), Word (.doc, .docx), or portable document format (.pdf).

**FOR FURTHER INFORMATION CONTACT:** Wendy Coats, Klamath National Forest, Yreka, California 96097. Phone: 530–841–4470. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need

The purpose of this project is to:

1. Reduce safety hazards to adjacent landowners, the public, and Forest workers from falling trees (i.e. ''hazard trees,'' also known as ''danger trees'') or hazardous fuels conditions. Trees killed or severely burned by wildfire (i.e. snags) are often unstable and at risk for falling or snapping off, especially during high wind events. It is important that safety is maintained and hazardous fuels conditions are abated, where they exist within the Wildland Urban Interface, especially within one-quarter mile of private property in burned areas or within areas that underwent fire suppression-related activity. It is also imperative that infrastructure, especially utility lines, roads, trailheads, campgrounds, fire lookouts, and bridges, are maintained for use by the public and Forest workers. Further, dead and dying trees within proposed salvage harvest areas need to be addressed to minimize safety hazards to the public who recreate in the area, Forest workers (i.e. planting), and firefighters (i.e. to enable future suppression efforts should the area burn again).

2. Obtain the maximum economic commodity and value from burned timber by offering a sale while the wood is still marketable. The Forest Plan directs the Forest to harvest dead or dying trees to produce wood products as consistent with Forest goals. Dead timber loses significant value if left standing beyond two winters and is most profitable if harvested even sooner. Capturing the marketability of the timber provides the agency a viable means of meeting this and other project needs, since the timber sale can be used to fund restoration implementation. If treatment is delayed beyond the marketability period of the timber, the Forest Service will need to pay for the hazard tree abatement and removal of dead and dying trees in order to meet the first need described above. By contrast, if salvage occurs during the marketability period, funds gained from the salvage sale can be used for additional restoration work. Capturing the maximum economic value of the salvaged timber will benefit Siskiyou County and surrounding communities by maintaining and/or creating jobs in forest management by providing timber to the local mills who are major employers of these rural communities.

3. Promote ecosystem sustainability by increasing the likelihood and speed by which burned, forested areas are restored. Although wildfires have some benefits (e.g., snag and downed wood creation), intensely burned forested areas may be slow to recover and heavy fuel loading will result from fallen snags. Following a high severity wildfire, heavy fuel loading predisposes

an area to higher intensity and higher severity wildfires in the future. Such fires would inhibit stand regeneration, resulting in stand type changes to brush or other non-forested vegetation types and delaying these lands from reaching the desired conditions of the Forest Plan.

**Proposed Action**

The proposed action was designed to meet the purpose and need for action. The proposed action will treat a total of about 63,883 acres within the 214,848-acre project boundary (10,600 acres of salvage harvest, 21,872 acres of roadside hazard treatment, 11,411 acres of hazardous fuels treatment and 20,000 acres of site preparation, planting and release). Acres do not account for the overlap in treatment types. Treatment acreages are approximate at this point and will be adjusted and refined following scoping.

**Responsible Official**

Patricia A. Grantham, Forest Supervisor, Klamath National Forest, 1711 South Main Street, Yreka, CA 96097.

**Nature of Decision To Be Made**

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to existing conditions in the Westside Fire Recovery Project Area.

**Scoping Process**

Public participation is important at numerous points during the analysis. The Forest Service seeks information, comments and assistance from federal, state, and local agencies and individuals or organizations that may be interested in or affected by the proposed action.

The Forest Service conducts scoping according to the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7). In addition to other public involvement, this Notice of Intent initiates an early and open process for determining the scope of issues to be addressed in the EIS and for identifying the significant issues related to a proposed action. This scoping process allows the Forest Service to not only identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)).

This project is subject to comment pursuant to 36 CFR 218, Subparts A and B; however, the Forest is requesting an emergency situation determination as provided for in 36 CFR 218.21. If it is determined that an emergency situation exists with respect to all or part of the proposed project or activity, the proposed action shall not be subject to the pre-decisional objection process and implementation may proceed immediately after notification of the decision (§ 218.21(d)(1)). The responsible official shall identify any emergency situation determination made for a project in the notification of the decision (§ 218.21(e)). The Forest is also seeking alternative arrangements with the Council on Environmental Quality; arrangements may include but are not limited to a reduced comment period on the draft EIS and release of the final EIS and record of decision at the same time.

**Comment Requested**

This Notice of Intent initiates the scoping process which guides the development of the EIS. Comments on the proposed action should be submitted within 30 days of the date of publication of this Notice of Intent in the **Federal Register**.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 2015. A draft EIS will be available for comment when the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate during the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. The final EIS is scheduled to be completed in June 2015.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the proposal should be as specific as possible.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 8, 2014.

**Patricia A. Grantham,**

*Forest Supervisor.*

[FR Doc. 2014–24441 Filed 10–14–14; 8:45 am]

BILLING CODE 3411–15–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Oklahoma Advisory Committee for a Meeting To Discuss Potential Project Topics

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Oklahoma Advisory Committee (Committee) will hold a meeting on Friday, October 24, 2014, at 3:30 p.m. for the purpose of discussing potential project topics for the committee to study in the coming year. Committee members will discuss the issues that they believe warrant further investigation.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–329–8877, conference ID: 2711081. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by November 24, 2014.

Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Oklahoma Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Midwestern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions

3:30 p.m. to 3:40 p.m.
Vicki Limas, Chair

Discussion of Current Civil Rights Issues in Oklahoma

3:40 p.m. to 4:15 p.m.
Oklahoma Advisory Committee Members

Future Plans and Actions

4:15 p.m. to 4:30 p.m.

Adjournment

4:30 p.m.

**DATES:** The meeting will be held on Friday, October 24, 2014, at 3:30 p.m.
*Public Call Information:*
Dial: 888–329–8877
Conference ID: 2711081

Dated: October 9, 2014.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2014–24452 Filed 10–14–14; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Missouri Advisory Committee for a Meeting on a Project Proposal on Police Violence in Missouri

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Monday, October 27, 2014, at 12:00 p.m. for the purpose of discussing and voting on a project proposal on police violence in Missouri. The proposal arose in the aftermath of recent events in Ferguson, Missouri.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–466–4462, conference ID: 8151697. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by November 27, 2014. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Missouri Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Midwestern Regional Office at the above email or street address.

**Agenda**

Welcome

12:00 p.m. to 12:05 p.m.
S. David Mitchell, Chairman, Missouri Advisory Committee

Presentation of Project Proposal on Police Violence in Missouri

12:05 p.m. to 12:20 p.m.
Melissa Wojnaroski, Civil Rights Analyst, USCCR

Deliberation and Vote on Proposal

12:20 p.m. to 12:45 p.m.
Missouri Advisory Committee

Planning Next Steps

12:45 p.m. to 1:00 p.m.

Adjournment

1:00 p.m.

**DATES:** The meeting will be held on Monday, October 27, 2014, at 12:00 p.m. CST.
*Public Call Information:*
Dial: 888–466–4462
Conference ID: 8151697

Dated: October 9, 2014.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2014–24465 Filed 10–14–14; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

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

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

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

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

[9/24/2014 through 10/08/2014]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Automated Industrial Machinery, Inc. | 502 Vista Avenue, Addison, IL 60101. | 10/1/2014 | The firm manufactures metal bending machinery for the manufacturing industry. |
| WR Pabich Manufacturing Company, Inc. dba Ideal Stitcher. | 2323 N. Knox, Chicago, IL 60639 | 10/1/2014 | The firm manufactures wire stitching machines for the industrial packaging and book industries. |
| RHKG Holdings, Inc | 10890 Mercer Pike, Meadville, PA 16335. | 10/1/2014 | The firm manufactures metal tool and dies and plastic molds. |
| Transition Composites Engineering, Inc. | 3145 Brown Road, Ferndale, WA 98248. | 10/2/2014 | The firm manufactures composite parts of carbon, fiberglass and some aluminum. |
| Herron Wire Products, Inc | 801 Old Spanish Trail, Slidell LA 70458. | 10/7/2014 | The firm manufactures wire products. |
| Dakota Molding, Inc | 1405 43rd Street North, Fargo, ND 58102. | 10/8/2014 | The firm manufactures a range of large plastic molded products using rotational molding process. |

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

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

Date: October 8, 2014.

**Michael DeVillo,**

*Eligibility Examiner.*

[FR Doc. 2014–24443 Filed 10–14–14; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–981]**

### Utility Scale Wind Towers From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review; 2013–2014

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

**SUMMARY:** The Department of Commerce (''the Department'') is rescinding its administrative review of utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'') for the period February 13, 2013, through January 31, 2014 (''POR''), based on the withdrawal of request for review.

**DATES:** Effective Date: October 15, 2014.

**FOR FURTHER INFORMATION CONTACT:** Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4852.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 3, 2014, the Department published the notice of opportunity to request an administrative review of the antidumping duty order on wind towers from the PRC for the POR.[1] On February 27, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.213(b), the Department received a timely a request from the Wind Tower Trade Coalition (''Petitioner'') to conduct an administrative review of the sales of 47 named companies that produce or export wind towers directly to the United States.[2]

Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), on April 1, 2014, the Department published a notice of initiation of an administrative review of the antidumping duty order on wind towers from the PRC with respect to the 47 companies.[3] On June 5, 2014, Petitioner withdrew its request for an administrative review of the 47 companies.[4]

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, Petitioner withdrew its request for review of the 47 companies within 90 days of the publication date of the *Initiation Notice* of the requested review. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

#### Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of wind towers from China. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

#### Notifications

This notice also serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 79 FR 6159 (February 3, 2014).

[2] *See* Letter from Petitioner, ''Utility Scale Wind Towers from the People's Republic of China: Request for Administrative Review,'' dated February 27, 2014.

[3] *See Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262 (April 1, 2014) (*Initiation Notice*).

[4] *See* Letter from Petitioner, ''Utility Scale Wind Towers from the People's Republic of China: Withdrawal of Requests for Administrative Review,'' dated June 5, 2014.

antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 751 of the Act, and 19 CFR 351.213(d)(4).

Dated: October 7, 2014.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2014–24494 Filed 10–14–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XD528

### New England Fishery Management Council; Public Meeting; Cancellation

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

**ACTION:** Notice of cancellation of a public meeting.

**SUMMARY:** The New England Fishery Management Council has cancelled the public meeting of its Observer Policy Committee that was scheduled for Thursday, October 23, 2014 has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The initial notice published in the **Federal Register** on October 8, 2014 (79 FR 60810).

Dated: October 8, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–24431 Filed 10–14–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XD550

### North Pacific Fishery Management Council (NPFMC); Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Charter Implementation Committee will convene October 29, 2014, from 9–5 p.m. via teleconference. Listening site, North Pacific Fishery Management Council conference room 205 or dial 907–271–2896.

**DATES:** The teleconference will be held on October 29, 2014, 9 a.m.–5 p.m. (AKDT).

**ADDRESSES:** The teleconference will be held at the North Pacific Fishery Management Council, 605 W 4th Avenue, Room 205, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave. Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Steve MacLean, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The agenda is to identify a range of potential management measures for the Area 2C and Area 3A charter halibut fisheries in 2015, using the management measures in place for 2014 as a baseline. For Area 2C, the baseline management measure is a daily limit of one fish less than 44 inches or greater than 76 inches in length. For Area 3A, the baseline management measure is a daily limit of two fish, one fish of any size, and a second fish which must be 29 inches or less in length. Committee recommendations will be incorporated into an analysis for Council review in December 2014. The Council will recommend preferred management measures for consideration by the International Pacific Halibut Commission at its January 2015 meeting, for implementation in 2015.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues of this notice that require emergency action under section 305(c)of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 9, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–24477 Filed 10–14–14; 8:45 am]

BILLING CODE 3510–22–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Disaster Response Cooperative Agreement (DRCA) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kelly DeGraff, at 202–606–6817 or email to *kdegraff@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Comments**

A 60-day Notice requesting public comment was published in the **Federal Register** on July 11, 2014. This comment period ended September 5, 2014. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information collection. The revisions are intended to streamline the application process and ensure interested programs meet the appropriate programmatic and fiscal requirements to successfully execute disaster response activities. Additionally, the supporting forms will help CNCS identify and deploy programs more effectively and efficiently, matching the capabilities of the programs to the needs of the communities requesting assistance. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2015.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* Disaster Response Cooperative Agreement (DRCA).

*OMB Number:* 3045–0133.

*Agency Number:* None.

*Affected Public:* Current grantees and Corporation-supported programs.

*Total Respondents:* 20.

*Frequency:* Once a year.

*Average Time per Response:* Averages two hours.

*Estimated Total Burden Hours:* 200.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Date: October 8, 2014.

**Kelly DeGraff,**

*Senior Advisor for Disaster Services.*

[FR Doc. 2014–24466 Filed 10–14–14; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2014–OS–0141]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to add a new System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a new system of records, DPR 45 DoD, entitled ''Military OneSource (MOS) Case Management System (CMS)'' to its inventory of record systems subject to the Privacy Act of 1974, as amended.

The MOS CMS allows the documentation of an individual's eligibility; identification of the caller's inquiry or issue to provide a warm hand-off, referral and/or requested information; the development towards a final solution and referral information. Records may be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness, and for conducting research. Information about individuals indicating a threat to self or others will be reported to the appropriate authorities in accordance with DoD regulations and established protocols.

**DATES:** Comments will be accepted on or before November 14, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571)372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 6, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 8, 2014.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DPR 45 DoD**

**SYSTEM NAME:**

Military OneSource (MOS) Case Management System (CMS)

**SYSTEM LOCATION:**

DISA DECC Oklahoma City, 8705 Industrial Blvd., Building 3900, Tinker AFB, OK 73145–3336.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty service members; Reserve and National Guard members; members of the Coast Guard activated as part of the Department of the Navy under Title 10 authority; medically discharged service members participating in a Service-sponsored Wounded Warrior or

Seriously Ill and Injured Program; those with honorable and general (under honorable conditions) discharges (includes retirees and those on the Temporary Disability Retirement List (TDRL)), during the first 180 days after separation date; and DoD Civilian Expeditionary Workforce personnel; the immediate family members of the groups described above to include same-sex domestic partners; individuals with a legal responsibility to care for a deployed service member's children acting for the benefit of the children; and survivors of deceased service members who contact Military OneSource seeking information, referrals, or non-medical counseling.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's full name, date of birth, gender, marital status, relationship to service member, rank, unit, branch of military service, military status, current address and mailing address, telephone number, email address, participant ID and case number (automatically generated internal numbers not provided to the participant), presenting issue/information requested, handoff type to contractor, handoff notes, if interpretation is requested and the language, referrals, and feedback from quality assurance follow-up with participants.

Non-medical counseling information includes psychosocial history; assessment of personal concerns; provider name, phone number, and location; authorization number; and outcome summary.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1781 note, Establishment of Online Resources To Provide Information About Benefits and Services Available to Members of the Armed Forces and Their Families; DoD Directive 1404.10, DoD Civilian Expeditionary Workforce; DoD Instruction (DoDI) 1342.22, Military Family Readiness; and DoDI 6490.06, Counseling Services for DoD Military, Guard and Reserve, Certain Affiliated Personnel, and Their Family Members.

**PURPOSE(S):**

MOS CMS allows the documentation of an individual's eligibility; identification of the caller's inquiry or issue to provide a warm hand-off, referral and/or requested information; the development towards a final solution and referral information. Records may be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness, and for conducting research. Information about individuals indicating a threat to self or others will be reported to the appropriate authorities in accordance with DoD regulations and established protocols.

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

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

To authorized DoD MOS contractors for the purpose of responding to service member or family member need.

To contractors and grantees for the purpose of supporting research studies concerned with the effectiveness of non-medical counseling interventions.

To local law enforcement entities for the purpose of intervention to prevent harm to the individual (self) in accordance with DoD regulations and established protocols.

Any release of information contained in this system of records outside the DoD under a routine use will be compatible with the purpose(s) for which the information is collected and maintained.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Information is retrieved by the participant's full name.

**SAFEGUARDS:**

MOS CMS is hosted on a DoD Information Assurance Certification and Accreditation Process (DIACAP) certified and accredited infrastructure. Records are maintained in a secure building in a controlled area accessible only to authorized personnel. Physical entry is restricted by the use of locks and passwords and administrative procedures which are changed periodically. Records are encrypted when not in use (encrypted at rest). Personally identifiable information (PII) is encrypted during transmission to protect session information. The system is designed with access controls, comprehensive intrusion detection, and virus protection. Access to PII in this system is role based and restricted to those who require the data in the performance of the official duties and have completed information assurance and privacy training annually.

**RETENTION AND DISPOSAL:**

Disposition Pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Military Community Outreach, Military Community and Family Policy, 4000 Defense Pentagon, Washington, DC 20301–2400; or Military OneSource Program Manager, Military OneSource Program Office, Military Community Outreach, Military Community and Family Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the system manager.

Written requests should be signed and include the individual's full name, current address, and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed, written requests must include the individual's full name, current address, telephone number and this system of records notice number.

**IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:**

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature].'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature].'

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents, and appealing

initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR Part 311, or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The individual, Military OneSource program officials, and authorized contractors providing advice and support to the individual.

**EXEMPTIONS:**

None.

[FR Doc. 2014–24413 Filed 10–14–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, November 12, 2014, 2:00 p.m.–4:00 p.m.

**ADDRESSES:** NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

*Tentative Agenda*

1. 2:00 p.m. Welcome and Introductions
2. 2:03 p.m. Approval of Agenda
3. 2:05 p.m. Approval of Minutes from September 10, 2014
4. 2:07 p.m. Old Business
5. 2:15 p.m. New Business
6. 2:25 p.m. Update from Executive Committee—Doug Sayre, Chair
7. 2:35 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
8. 2:45 p.m. Update on the Buckman Well Field—Danny Katzman, Los Alamos National Security
9. 3:30 p.m. Public Comment Period
10. 3:45 p.m. Sub-Committee Breakout Session
    - Election of WM Committee Officers
    - Finalize Draft Committee Work Plans for Fiscal Year 2015
    - Discuss Topics for Committee Sponsored Draft Recommendations
    - General Committee Business
11. 4:00 p.m. Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on October 7, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–24470 Filed 10–14–14; 8:45 am]

**BILLING CODE 6405–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Bioenergy Technologies Office: Waste to Energy Roadmapping Workshop

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of Open Meeting: Waste to Energy Roadmapping Workshop.

**SUMMARY:** The Department of Energy (DOE) today gives notice of a workshop hosted by the Bioenergy Technologies Office (BETO) to discuss the current state of technology and efforts needed to achieve affordable, scalable, and sustainable drop-in hydrocarbon biofuels derived from waste feedstocks.

**DATES:** Wednesday, November 5, 2014 8:30 a.m.—5:00 p.m.; Thursday, November 6, 2014 9:00 a.m.—12:00 noon.

**ADDRESSES:** DoubleTree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Questions may be directed to—Aaron Fisher at (410) 953–6231 or by email at *aaron.fisher@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of this workshop is to bring together waste-to-energy experts to identify key technical barriers to the commercial deployment of liquid transportation fuels from waste feedstocks, and ultimately develop a roadmap which highlights the key pathways and metrics to meeting this goal. Participants will be led in facilitated breakout sessions to address anaerobic digestion, hydrothermal liquefaction, and other processes from feedstock streams consisting of wastewater residuals, biosolids, foodstuffs, and organic municipal solid

waste. These discussions will lead to a roadmap that will be a synthesized output from the information gathered at the workshop.

Issued in Golden, CO on September 15, 2014.

**Nicole Blackstone,**

*Contracting Officer.*

[FR Doc. 2014–24457 Filed 10–14–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14–2548–002.
*Applicants:* Ocean State Power.
*Description:* Tariff Amendment per 35.17(b): Second Amendment—Ocean State Power Notice of Succession to be effective 10/7/2014.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5057.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER14–2556–001.
*Applicants:* South Carolina Electric & Gas Company.
*Description:* Compliance filing per 35: Order 792 Errata Notice Filing to be effective 7/31/2014.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5055.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER14–2750–002.
*Applicants:* New York State Electric & Gas Corporation.
*Description:* Tariff Amendment per 35.17(b): Amendment to Facilities Agreement to be effective 9/1/2014.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5183.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER14–2967–001.
*Applicants:* TransCanada Maine Wind Development Inc.
*Description:* Tariff Amendment per 35.17(b): Amendment to TransCanada Maine Wind Development 9/30/14 revised tariff to be effective 10/7/2014.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5048.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER14–2967–002.
*Applicants:* TransCanada Maine Wind Development Inc.
*Description:* Tariff Amendment per 35.17(b): Second Amendment—TransCanada Maine Development Inc. to be effective 10/7/2014.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5081.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–1–001.
*Applicants:* TransCanada Energy Sales Ltd.
*Description:* Tariff Amendment per 35.17(b): Second Amendment—TransCanada Energy Sales to be effective 10/7/2014.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5087.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–32–000.
*Applicants:* Duke Energy Progress, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): DEP–PJM Amended and Restated JOA Concurrence to be effective 12/1/2014.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5184.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–33–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 303, Village of Lakeview to be effective 1/1/2015.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5185.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–34–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Balancing Account Update 2015 (TRBAA, RSBA, ECRBAA) to be effective 1/1/2015.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5186.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–35–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–03 External Resources Filing to be effective 12/2/2014.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5191.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–36–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 304, Village of Mendon to be effective 1/1/2015.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5226.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–37–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 305, Village of Waynesfield to be effective 1/1/2015.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5236.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–38–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 306, Village of Yellow Springs to be effective 1/1/2015.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5237.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–39–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* Tariff Withdrawal per 35.15: FERC Rate Schedule No. 301, Village of Arcanum to be effective 1/1/2015.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5001.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–40–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 301, Village of Arcanum to be effective 1/1/2015.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5002.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–41–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 302, Village of Eldorado to be effective 1/1/2015.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5003.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–42–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc.'s Informational Filing to Notify the Commission of Implementation of Year-Three Reallocation of Revenue Requirements Pursuant to Attachments J and O for the Balanced Portfolio.
*Filed Date:* 10/3/14.
*Accession Number:* 20141003–5243.
*Comments Due:* 5 p.m. ET 10/24/14.

*Docket Numbers:* ER15–43–000.
*Applicants:* Midcontinent Independent System Operator.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–06_ SA 2699 NSP–MMU T–T to be effective 1/1/2015 under ER15–43 Filing Type: 10.
*Filed Date:* 10/6/14.
*Accession Number:* 20141006–5067.
*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–44–000.
*Applicants:* Southern California Edison Company.

*Description:* Tariff Withdrawal per 35.15: Notices of Cancellation of SGIA and Distribution Serv Agmt with Apex to be effective 12/6/2014.

*Filed Date:* 10/6/14.

*Accession Number:* 20141006–5074.

*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–45–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Attachment AE Revisions—MWP Start-Up Offer Recovery Eligibility Clarifications to be effective 12/5/2014.

*Filed Date:* 10/6/14.

*Accession Number:* 20141006–5078.

*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–46–000.

*Applicants:* Dragon Energy, LLC.

*Description:* Tariff Withdrawal per 35.15: Cancellation of Entire MBR Tariff to be effective 10/6/2014.

*Filed Date:* 10/6/14.

*Accession Number:* 20141006–5082.

*Comments Due:* 5 p.m. ET 10/27/14.

*Docket Numbers:* ER15–47–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Specify the Minimum Operating Limits of Non-Dispatachable VERs to be effective 12/5/2014.

*Filed Date:* 10/6/14.

*Accession Number:* 20141006–5086.

*Comments Due:* 5 p.m. ET 10/27/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 6, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–24371 Filed 10–14–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

**AGENCY:** Federal Energy Regulatory Commission, DOE.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**DATE AND TIME:** October 16, 2014, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary Telephone (202) 502–8400. For a recorded message listing items, struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1009TH—MEETING

[Regular Meeting, October 16, 2014, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **ADMINISTRATIVE** | |
| A–1 | AD02–1–000 | Agency Business Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD05–9–000 | Energy Market and Reliability Assessment. |
| A–4 | AD14–8–000 | Winter 2013–2014 Operations and Market Performance Regional Transmission Organizations and Independent System Operators. |
| | **ELECTRIC** | |
| E–1 | ER13–366–001 | Southwest Power Pool, Inc. |
| | ER13–366–002. | |
| | ER13–366–003. | |
| | ER13–367–001. | |
| | ER13–75–002 | Public Service Company of Colorado. |
| | ER13–75–004. | |
| | ER13–100–001 | Kansas City Power & Light Company. |

1009TH—MEETING—Continued

[Regular Meeting, October 16, 2014, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| E–2 | EL14–12–000 | Association of Businesses Advocating Tariff Equity Coalition of MISO Transmission Customers. |
| | | Illinois Industrial Energy Consumers. |
| | | Indiana Industrial Energy Consumers, Inc. |
| | | Minnesota Large Industrial Group. |
| | | Wisconsin Industrial Energy Group v. Midcontinent Independent System Operator, Inc. ALLETE, Inc. |
| | | Ameren Illinois Company. |
| | | Ameren Missouri. |
| | | Ameren Transmission Company of Illinois. |
| | | American Transmission Company, LLC. |
| | | Cleco Power, LLC. |
| | | Duke Energy Business Services, LLC. |
| | | Entergy Arkansas, Inc. |
| | | Entergy Gulf States Louisiana, LLC. |
| | | Entergy Louisiana, LLC. |
| | | Entergy Mississippi, Inc. |
| | | Entergy New Orleans, Inc. |
| | | Entergy Texas, Inc. |
| | | Indianapolis Power & Light Company. |
| | | International Transmission Company. |
| | | ITC Midwest, LLC. |
| | | Michigan Electric Transmission Company, LLC. |
| | | MidAmerican Energy Company. |
| | | Montana-Dakota Utilities Co. |
| | | Northern Indiana Public Service Company. |
| | | Northern States Power Company—Minnesota. |
| | | Northern States Power Company—Wisconsin. |
| | | Otter Tail Power Company. |
| | | Southern Indiana Gas & Electric Company. |
| E–3 | EL11–44–006 | Ibedrola Renewables, Inc., PacifiCorp. |
| | EL11–44–007 | NextEra Energy Resources, LLC. |
| | | Invenergy Wind North America LLC. |
| | | Horizon Wind Energy LLC v. Bonneville Power Administration. |
| E–4 | RM14–1–001 | Reliability Standard for Geomagnetic Disturbance Operations. |
| E–5 | ER14–2574–000 | California Independent System Operator Corporation. |
| E–6 | OMITTED. | |
| E–7 | OMITTED. | |
| E–8 | RR14–6–000 | North American Electric Reliability Corporation. |
| E–9 | EF14–5–000 | Bonneville Power Administration. |
| | EF14–5–001. | |
| E–10 | EL11–66–001 | Martha Coakley, Massachusetts Attorney General Connecticut Public Utilities Regulatory Authority Massachusetts Department of Public Utilities. |
| | | New Hampshire Public Utilities Commission Connecticut Office of Consumer Counsel. |
| | | Maine Office of the Public Advocate. |
| | | George Jepsen, Connecticut Attorney General. |
| | | New Hampshire Office of Consumer Advocate. |
| | | Rhode Island Division of Public Utilities and Carriers. |
| | | Vermont Department of Public Service. |
| | | Massachusetts Municipal Wholesale Electric Company. |
| | | Associated Industries of Massachusetts. |
| | | The Energy Consortium. |
| | | Power Options, Inc. |
| | | The Industrial Energy Consumer Group v. Bangor Hydro-Electric Company. |
| | | Central Maine Power Company. |
| | | New England Power Company d/b/a National Grid. |
| | | New Hampshire Transmission, LLC. d/b/a NextEra. |
| | | NSTAR Electric and Gas Corporation. |
| | | Northeast Utilities Service Company. |
| | | The United Illuminating Company. |
| | | Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Co. |
| | | Vermont Transco, LLC. |
| E–11 | OMITTED. | |
| E–12 | OMITTED. | |
| E–13 | ER12–959–000 | Southwest Power Pool, Inc. |
| | ER12–959–005. | |
| | **GAS** | |
| G–1 | RP13–673–001 | B–R Pipeline Company. |
| | RP14–718–000 | Alliance Pipeline L.P. |
| | RP14–747–000 | Algonquin Gas Transmission, LLC. |

1009TH—MEETING—Continued

[Regular Meeting, October 16, 2014, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | RP14–748–000 .... | Big Sandy Pipeline, LLC. |
| | RP14–749–000 .... | Steckman Ridge, LP. |
| | RP14–750–000 .... | Texas Eastern Transmission, LP. |
| | RP14–751–000 .... | Gulfstream Natural Gas System, LLC. |
| | RP14–752–000 .... | Bobcat Gas Storage. |
| | RP14–753–000 .... | Egan Hub Storage, LLC. |
| | RP14–754–000 .... | East Tennessee Natural Gas, LLC. |
| | RP14–755–000 .... | Saltville Gas Storage Company, LLC. |
| | RP14–756–000 .... | Ozark Gas Transmission, LLC. |
| | RP14–757–000 .... | Maritimes & Northeast Pipeline, LLC. |
| | RP14–758–000 .... | Southeast Supply Header, LLC. |
| | RP14–842–000 .... | PGPipeline LLC. |
| | RP14–851–000 .... | ANR Pipeline Company. |
| | RP14–852–000 .... | ANR Storage Company. |
| | RP14–853–000 .... | Bison Pipeline LLC. |
| | RP14–854–000 .... | Great Lakes Gas Transmission Limited Partnership. |
| | RP14–855–000 .... | Blue Lake Gas Storage Company. |
| | RP14–856–000 .... | Gas Transmission Northwest LLC. |
| | RP14–857–000 .... | North Baja Pipeline, LLC. |
| | RP14–858–000 .... | Northern Border Pipeline Company. |
| | RP14–859–000 .... | Portland Natural Gas Transmission System. |
| | RP14–860–000 .... | TC Offshore, LLC. |
| | RP14–861–000 .... | Tuscarora Gas Transmission Company. |
| | RP14–863–000 .... | Columbia Gas Transmission, LLC. |
| | RP14–864–000 .... | Columbia Gulf Transmission, LLC. |
| | RP14–865–000 .... | Hardy Storage Company, LLC. |
| | RP14–866–000 .... | Crossroads Pipeline Company. |
| | RP14–867–000 .... | Central Kentucky Transmission Company. |
| | RP14–868–000 .... | Southern Star Central Gas Pipeline, Inc. |
| | RP14–872–000 .... | Granite State Gas Transmission, Inc. |
| | RP14–872–001. | |
| | RP14–873–000 .... | Panhandle Eastern Pipe Line Company, LP. |
| | RP14–874–000 .... | Trunkline Gas Company, LLC. |
| | RP14–875–000 .... | Florida Gas Transmission Company, LLC. |
| | RP14–876–000 .... | Leaf River Energy Center LLC. |
| | RP14–877–000 .... | Northwest Pipeline LLC. |
| | RP14–878–000 .... | Arlington Storage Company, LLC. |
| | RP14–879–000 .... | Tres Palacios Gas Storage LLC. |
| | RP14–880–000 .... | Golden Triangle Storage, Inc. |
| | RP14–881–000 .... | Vector Pipeline L.P. |
| | RP14–882–000 .... | Carolina Gas Transmission Corporation. |
| | RP14–883–000 .... | Trailblazer Pipeline Company LLC. |
| | RP14–885–000 .... | Rockies Express Pipeline LLC. |
| | RP14–886–000 .... | Equitrans, L.P. |
| | RP14–887–000 .... | Rager Mountain Storage Company LLC. |
| | RP14–888–000 .... | Nautilus Pipeline Company, LLC. |
| | RP14–889–000 .... | Garden Banks Gas Pipeline, LLC. |
| | RP14–890–000 .... | Mississippi Canyon Gas Pipeline, LLC. |
| | RP14–891–000 .... | Transwestern Pipeline Company, LLC. |
| | RP14–892–000 .... | Fayetteville Express Pipeline LLC. |
| | RP14–893–000 .... | Stingray Pipeline Company, LLC. |
| | RP14–894–000 .... | ETC Tiger Pipeline, LLC. |
| | RP14–895–000 .... | Central New York Oil And Gas Company, LLC. |
| | RP14–896–000 .... | Tallgrass Interstate Gas Transmission, LLC. |
| | RP14–897–000 .... | National Grid LNG, LLC. |
| | RP14–898–000 .... | Cameron Interstate Pipeline, LLC. |
| | RP14–899–000 .... | Mississippi Hub, LLC. |
| | RP14–900–000 .... | LA Storage, LLC. |
| | RP14–901–000 .... | Eastern Shore Natural Gas Company. |
| | RP14–903–000 .... | SG Resources Mississippi, LLC. |
| | RP14–904–000 .... | Pine Prairie Energy Center, LLC. |
| | RP14–905–000 .... | Bluewater Gas Storage, LLC. |
| | RP14–906–000 .... | Honeoye Storage Corporation. |
| | RP14–1051–000. | |
| | RP14–907–000 .... | Questar Pipeline Company. |
| | RP14–908–000 .... | Gulf Crossing Pipeline Company, LLC. |
| | RP14–909–000 .... | Gulf South Pipeline Company, LP. |
| | RP14–910–000 .... | Texas Gas Transmission, LLC. |
| | RP14–911–000 .... | Petal Gas Storage, LLC. |
| | RP14–912–000 .... | Boardwalk Storage Company, LLC. |
| | RP14–913–000 .... | Southwest Gas Storage Company. |

1009TH—MEETING—Continued

[Regular Meeting, October 16, 2014, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | RP14–914–000 .... | Sea Robin Pipeline Company, LLC. |
| | RP14–915–000 .... | Trunkline LNG Company, LLC. |
| | RP14–916–000 .... | Clear Creek Storage Company, LLC. |
| | RP14–917–000 .... | Rendezvous Pipeline Company, LLC. |
| | RP14–919–000 .... | Midcontinent Express Pipeline LLC. |
| | RP14–920–000 .... | Kinder Morgan Louisiana Pipeline LLC. |
| | RP14–921–000 .... | Kinder Morgan Illinois Pipeline LLC. |
| | RP14–922–000 .... | Horizon Pipeline Company, LLC. |
| | RP14–923–000 .... | Natural Gas Pipeline Company of America LLC. |
| | RP14–924–000 .... | Cheyenne Plains Gas Pipeline Company, LLC. |
| | RP14–925–000 .... | Ruby Pipeline, LLC. |
| | RP14–926–000 .... | Colorado Interstate Gas Company, LLC. |
| | RP14–927–000 .... | Wyoming Interstate Company, LLC. |
| | RP14–928–000 .... | Young Gas Storage Company, Ltd. |
| | RP14–929–000 .... | Guardian Pipeline, LLC. |
| | RP14–931–000 .... | Midwestern Gas Transmission Company. |
| | RP14–932–000 .... | OkTex Pipeline Company, LLC. |
| | RP14–933–000 .... | Viking Gas Transmission Company. |
| | RP14–934–000 .... | Questar Southern Trails Pipeline Company. |
| | RP14–935–000 .... | Questar Overthrust Pipeline Company. |
| | RP14–936–000 .... | White River Hub, LLC. |
| | RP14–937–000 .... | Portland General Electric Company. |
| | RP14–938–000 .... | WestGas InterState, Inc. |
| | RP14–940–000 .... | Venice Gathering System, LLC. |
| | RP14–942–000 .... | Sabine Pipe Line LLC. |
| | RP14–943–000 .... | Dauphin Island Gathering Partners. |
| | RP14–944–000 .... | Cimarron River Pipeline, LLC. |
| | RP14–945–000 .... | WBI Energy Transmission, Inc. |
| | RP14–946–000 .... | Southern Natural Gas Company, LLC. |
| | RP14–947–000 .... | Trans-Union Interstate Pipeline, L.P. |
| | RP14–948–000 .... | Southern LNG Company, LLC. |
| | RP14–949–000 .... | Elba Express Company, LLC. |
| | RP14–951–000 .... | Discovery Gas Transmission LLC. |
| | RP14–952–000 .... | Destin Pipeline Company, LLC. |
| | RP14–953–000 .... | MarkWest New Mexico, LLC. |
| | RP14–954–000 .... | MarkWest Pioneer, LLC. |
| | RP14–955–000 .... | NGO Transmission, Inc. |
| | RP14–956–000 .... | Ryckman Creek Resources, LLC. |
| | RP14–957–000 .... | KO Transmission Company. |
| | RP14–958–000 .... | Enable Mississippi River Transmission, LLC. |
| | RP14–959–000 .... | Black Marlin Pipeline Company. |
| | RP14–960–000 .... | Enable Gas Transmission, LLC. |
| | RP14–961–000 .... | USG Pipeline Company, LLC. |
| | RP14–962–000 .... | Pine Needle LNG Company, LLC. |
| | RP14–963–000 .... | Transcontinental Gas Pipe Line Company, LLC. |
| | RP14–964–000 .... | Gulf Shore Energy Partners, LP. |
| | RP14–964–001. | |
| | RP14–964–002. | |
| | RP14–965–000 .... | Kinetica Energy Express, LLC. |
| | RP14–966–000 .... | Panther Interstate Pipeline Energy, LLC. |
| | RP14–967–000 .... | American Midstream (Ala Tenn), LLC. |
| | RP14–968–000 .... | Tennessee Gas Pipeline Company, LLC. |
| | RP14–969–000 .... | Golden Pass Pipeline LLC. |
| | RP14–970–000 .... | High Point Gas Transmission, LLC. |
| | RP14–971–000 .... | Gulf States Transmission LLC. |
| | RP14–972–000 .... | Kern River Gas Transmission Company. |
| | RP14–974–000 .... | KPC Pipeline, LLC. |
| | RP14–973–000 .... | American Midstream (Midla) LLC. |
| | RP14–975–000 .... | Northern Natural Gas Company. |
| | RP14–976–000 .... | MoGas Pipeline LLC. |
| | RP14–977–000 .... | East Cheyenne Gas Storage, LLC. |
| | RP14–978–000 .... | Cheniere Creole Trail Pipeline, L.P. |
| | RP14–979–000 .... | Dominion Transmission, Inc. |
| | RP14–981–000 .... | Dominion Cove Point LNG, LP. |
| | RP14–982–000 .... | National Fuel Gas Supply Corporation. |
| | RP14–983–000 .... | Empire Pipeline, Inc. |
| | RP14–984–000 .... | El Paso Natural Gas Company, LLC. |
| | RP14–985–000 .... | Mojave Pipeline Company, LLC. |
| | RP14–986–000 .... | TransColorado Gas Transmission Company LLC. |
| | RP14–987–000 .... | Iroquois Gas Transmission System, L.P. |
| | RP14–988–000 .... | Paiute Pipeline Company. |

1009TH—MEETING—Continued

[Regular Meeting, October 16, 2014, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | RP14–989–000 | Millennium Pipeline Company, LLC. |
| | RP14–1001–000 | Caledonia Energy Partners, LLC. |
| | RP14–1002–000 | Freebird Gas Storage, LLC. |
| | RP14–1005–000 | High Island Offshore System, LLC. |
| | RP14–1056–000 | MIGC LLC. |
| | RP14–1077–000 | Chandeleur Pipe Line, LLC. |
| | RP14–1114–000 | Energy West Development, Inc. |
| | RP14–1124–000 | Wyckoff Gas Storage Company, LLC. |
| | RP14–1133–000 | Total Peaking Services, LLC. |
| | RP14–1165–000 | Cadeville Gas Storage LLC. |
| | RP14–1166–000 | Perryville Gas Storage LLC. |
| | RP14–1169–000 | Monroe Gas Storage Company, LLC. |
| | RP14–1183–000 | WTG Hugoton, LP. |
| | RP14–1186–000 | UGI Storage Company. |
| | RP14–1187–000 | Western Gas Interstate Company. |
| | RP14–1189–000 | UGI LNG Inc. |
| G–2 | RP06–569–008 RP07–376–005. (Consolidated). | Transcontinental Gas Pipe Line Corporation. |
| | **HYDRO** | |
| H–1 | P–14612–000 | New Summit Hydro, LLC. |
| H–2 | P–12790–002 | Andrew Peklo III. |
| H–3 | P–2082–061 | PacifiCorp. |
| H–4 | P–2687–167 | Pacific Gas and Electric Company. |
| H–5 | P–12747–004 | San Diego County Water Authority. |
| H–6 | P–2101–095 | Sacramento Municipal Utility District. |
| H–7 | P–2114–270 | Public Utility District No. 2 of Grant County, Washington. |
| H–8 | P–11910–002 | AG Hydro, LLC. |
| H–9 | P–7019–061 | Eastern Hydroelectric Corporation. |
| | **CERTIFICATES** | |
| C–1 | OMITTED. | |

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Issued: October 9, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–24553 Filed 10–10–14; 11:15 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR15–1–000]**

### Holly Energy Partners, L.P.; Notice of petition for waiver

Take notice that on October 1, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Holly Energy Partners, L.P. filed a petition requesting temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 20, 2014.

Dated: October 7, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–24370 Filed 10–14–14; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2014–0676; FRL–9916–66]**

## Ortho-Phthalaldehyde Receipt of Application for Emergency Exemption, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA) (CAS No. 643–79–8) to treat the International Space Station internal active thermal control system (IATCS) coolant, including the United States (U.S.) Laboratory Module, the Japanese Experiment Module, the Columbus and Node 3, with a total volume of 829 liters (L) with a maximum of 986 centimeters (cm)$^3$ OPA resin/year to control aerobic/microaerophilic water bacteria. The applicant proposes the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before October 22, 2014. The time available for a decision on this requires shortening the comment period, as allowed by 40 CFR 166.24(c).

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0676 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 Confidential Business Information (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.*

**FOR FURTHER INFORMATION CONTACT:** Dan Rosenblatt, 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. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA

if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of OPA in the International Space Station IATCS coolant to control aerobic/microaerophilic water bacteria. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that OPA is the most effective biocide which meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. Non-use of OPA in the requested manner would leave NASA's International Space Station without an adequate long-term solution for controlling the micro-organisms in the coolant systems.

The Applicant proposes to make no more than one application of OPA/loop in the International Space Station IATCS coolant including the U.S. Laboratory, the Japanese Experiment Module, the Columbus and the Node 3 with a total volume not to exceed 829 L with a maximum of 984 $cm^3$ OPA resin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the National Aeronautics and Space Administration.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 6, 2014.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2014–24351 Filed 10–14–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9917–94–OGC]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by the State of Wyoming in the United States District Court for the District of Wyoming: *Wyoming* v. *McCarthy,* Civil Action No. 2:14–cv–00042–NDF (D.Wyo.). On February 25, 2014, Plaintiff filed a complaint which alleged that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA''), failed to perform a nondiscretionary duty to approve, disapprove, approve in part and disapprove in part, or conditionally approve Wyoming's nonattainment new source review state implementation plan (''NNSR SIP'') within one year of the date it was deemed complete by operation of law. The proposed consent decree would establish a deadline for EPA to take this action.

**DATES:** Written comments on the proposed consent decree must be received by *November 14, 2014.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2014–0752, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3244; fax number: (202) 564–5603; email address: *hogan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the State of Wyoming seeking to compel the Administrator to take action under CAA sections 110(k). Under the terms of the proposed consent decree, EPA would agree to sign a notice by no later than December 12, 2014, to approve, disapprove, approve in part and disapprove in part, or conditionally approve the NNSR SIP. Under the terms of the proposed consent decree, EPA will deliver notice of the action to the Office of the Federal Register for review and publication within 15 days of signature. In addition, the proposed consent decree indicates that the State of Wyoming does not seek payment of the costs of litigation.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

### II. Additional Information About Commenting on the Proposed Consent Decree

*A. How can I get a copy of the consent decree?*

The official public docket for this action (identified by EPA–HQ–OGC–2014–0752) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through

*www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 2, 2014.

**Lorie J. Schmidt,**

*Associate General Counsel.*

[FR Doc. 2014–24472 Filed 10–14–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2014–0748; FRL–9917–58]**

## Agricultural Pesticide Spray Drift Reduction Technologies Voluntary Program

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

**ACTION:** Notice.

**SUMMARY:** EPA's Office of Pesticides Programs (OPP) is announcing a voluntary program to document the effectiveness of agricultural pesticide spray application technologies on reducing pesticide spray drift. Under the Drift Reduction Technology (DRT) Program, agricultural equipment manufacturers would conduct (or make arrangements for a testing facility to conduct) studies to determine the percent drift reduction according to a verification protocol. Once completed, the manufacturer would submit the study to EPA for review and evaluation. As verified, these reductions could then be quantitatively credited in the environmental risk assessments used to develop the drift reduction measures appearing on the label of the pesticide product.

**FOR FURTHER INFORMATION CONTACT:** Jay Ellenberger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7099; email address: *ellenberger.jay@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 a pesticide application equipment manufacturer, chemical manufacturer, pesticide registrant, university researcher, or have an interest in reducing spray drift. 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).
- Producers of pesticide products (NAICS code 32532).
- Research and development in the physical, engineering, and life sciences (NAICS code 541710).
- Colleges, universities, and professional schools (NAICS code 611310).

*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–2014–0748, 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. Background

*A. What is the Drift Reduction Technology Program?*

Since 2006, EPA has worked collaboratively with other government agencies, industry, and academia to develop a verification protocol for quantitating the percent drift reduction for a particular application technology. With this notice, EPA is announcing a voluntary program based on this verification protocol to promote the use of technologies that have demonstrated their effectiveness in reducing the drift of agricultural pesticide spray application technologies. The benefits of this voluntary program include reduced loss of pesticide from site of application,

more deposition of the applied pesticide on the crop, improved pesticide product efficacy, reduced costs to applicators and growers, and reductions in overall risks.

EPA believes there are application technologies that have the potential to significantly reduce the amount of spray drift. Studies conducted to measure spray drift reduction would verify the percent reduction achieved, and thus identify these technologies. As manufacturers become aware of the DRT Program and begin to complete verification studies of their technologies (in accordance with the verification protocol), the manufacturer would submit the test data to OPP for evaluation. OPP will evaluate each data submission and, as appropriate, assign a DRT rating to the specific technology (*e.g.,* a nozzle) based on the technology's spray drift characteristics as compared to those of a standard set of nozzles. OPP will then post on its Web site (*http://www2.epa.gov/reducing-pesticide-drift*) the identification of the manufacturer, its validated technology, and the EPA-assigned DRT rating.

Using the information on the OPP's Web site, pesticide registrants then have the option of submitting a draft label for review which would include draft application instructions using DRT-rated technology on their product labels. As part of the label approval process, EPA would consider the rating category, (along with the appropriate drift reduction factor), in its risk assessment and risk management decisions. As appropriate, the approved label would contain application instructions for use of non-DRT-rated equipment as well as one or more categories of DRT-rated equipment. The applicator would read the label and also refer to OPP's Web site to identify verified DRTs whose use could be compatible with their application and then follow the label directions for the DRT-rated technology selected for use.

Use of DRT technologies offers the potential for fewer/reduced application restrictions needed to mitigate spray drift from the intended application site(s); application of more of the spray on the target site or crop which can improve efficacy; a potential reduction in the associated potential risks from spray drift; and a reduction in costs to the applicator and grower (reduced potential for insurance claims and enforcement penalties). Thus, applicators and growers will have incentives to use these drift reduction technologies. As applicators and growers use DRTs on a more routine basis, benefits will accrue. Less pesticide loss to non-target sites means more of the applied pesticides are deposited on the intended sites. This may result in improved pesticide application efficacy, reduced costs to applicators and growers, and reductions in overall risks.

This is a voluntary program: No one is required to participate. Detailed information about the voluntary DRT Program, including approval by the Office of Management and Budget to collect this information, is available on OPP's Web site. EPA will accept DRT studies for review and evaluation immediately.

*B. What is Pesticide Drift and why is DRT important?*

For the purpose of this notice pesticide spray drift is defined as the physical movement of a pesticide through the air at the time of application or soon thereafter from the target site to any non- or off-target site. This does not include pesticide movements by erosion, migration, volatility, or windblown soil particles after application. Spray drift is dependent on the design of application equipment, size of spray droplets, weather conditions, and other factors.

Today, there is increased sensitivity to spray drift due to increased suburban development in agricultural areas, and protection of endangered species. Spray drift management is of interest to pesticide and other chemical manufacturers, application equipment manufacturers, pesticide applicators, government agencies, advocacy groups, and the public. Generally, applications of most if not all sprays result in some amount of drift. It is not possible to completely eliminate drift.

*C. Description of the DRT Program*

The following is an outline of the DRT Program:

- Agricultural equipment manufacturers contract with a testing facility (or use their own facility) to test their technology using the verification protocol.
- Manufacturers then submit studies to OPP for review and evaluation.
- OPP verifies the adequacy of the study and determines the potential for the technology to reduce drift compared to a reference.
- OPP assigns a 'star' rating to the technology.
- Rating is posted on OPP's Web site.
- Pesticide registrant submits a proposed label that offers an alternative application process that specifies the use of a DRT with 'star' rating.
- OPP evaluates the proposed label and conducts the environmental risk assessment using assumptions appropriate for the 'star' rating/application technology.
- If appropriate, OPP may also approve the label with two sets of application restrictions: One set of restrictions if the product is applied without DRT and another set of restrictions if the product is applied with a DRT.

*D. What is a 'Star' rating?*

As appropriate, each verified technology is assigned to one of four drift reduction categories represented by stars:

- Less than 25% reduction = No DRT rating.
- 25 to 49% reduction = DRT* rating.
- 50 to 74% reduction = DRT** rating.
- 75 to 89% reduction = DRT*** rating.
- Equal to or greater than 90% reduction = DRT**** rating.

*E. Benefits of the Voluntary DRT Program*

Use of verified DRTs in the application of pesticides has the potential for significant benefits.

1. Benefits to growers and applicators would include:

- Substantiated, accepted performance claims of the verified technologies.
- Greater deposition of applied pesticides on the target sites/crops which may result in improved efficacy of pest or weed control.
- With greater on-target deposition, potential reductions in application rates with a commensurate reduction in application costs.
- Reduction of the currently estimated application restrictions for preventing adverse effects (*e.g.,* smaller or no buffer zones).
- Applications can be made with increased flexibility in application timing and options potentially saving applicators time and costs: This means applications under a wider range of environmental and application method conditions.
- Reduced spray drift resulting in fewer incidents of adverse effects: This means fewer claims of violations of pesticide labeling requirements that need to be investigated by enforcement authorities, reduction in enforcement violation penalties, and less litigation and associated costs, including insurance claim costs.

2. Benefits to manufacturers and pesticide registrants would include:

- Increased demand for DRT-rated equipment and pesticide products offering the option of DRT application methods on the label as applicators and

growers use DRTs on a more routine basis.

3. Benefits to the public and the environment would include:

• Fewer incidents of adverse effects from spray drift to humans, and terrestrial and aquatic organisms and ecosystems, including threatened or endangered species.

*F. Next Steps*

Once the submitted DRT studies have been reviewed and evaluated by OPP, and the results are posted on the Agency's Web site, then pesticide registrants have the option of amending their label to include DRT-rated application methods. This requires the submission of a complete application including a Pesticide Registration Improvement Act (PRIA) fee, or request for waiver or reduction. OPP will complete its review of the amendment according to the PRIA timeframe.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 8, 2014.

**Jack E. Housenger,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2014–24525 Filed 10–14–14; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### SES Performance Review Board—Appointment of Members

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members to the Performance Review Board of the Equal Employment Opportunity Commission.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Williams, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507, (202) 663–4306.

**SUPPLEMENTARY INFORMATION:** Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments and performance awards.

The following are the names and titles of executives appointed to serve as members of the SES PRB. Members will serve a 12-month term, which begins on November 19, 2014.

*PRB Chair:*

Mr. Dexter R. Brooks, Director, Federal Sector Programs, Office of Federal Operations, Equal Employment Opportunity Commission.

*Members:*

Mr. Kevin J. Berry, Director, New York District Office, Equal Employment Opportunity Commission;

Ms. Katherine E. Bissell, Deputy Solicitor for Regional Enforcement, Department of Labor;

Ms. Kathryn A. Ellis, Assistant General Counsel, Division of Educational Equity and Research, and Agency Dispute Resolution Specialist, Department of Education;

Ms. Gwendolyn Y. Reams, Associate General Counsel, Equal Employment Opportunity Commission;

*Alternate:*

Ms. Delner Franklin-Thomas, Director, Birmingham District Office, Equal Employment Opportunity Commission.

By the direction of the Commission.

Dated: October 3, 2014.

**Jenny R. Yang,**

*Chair.*

[FR Doc. 2014–24448 Filed 10–14–14; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[3060–1200]**

### Information Collection Approved by the Office of the Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission has received Office of Management and Budget (OMB) emergency approval, for a period of six months, of the information collection requirements under control number 3060–1200, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact, Mikelle Bonan, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, at (202) 418–7151 or via Internet at *Mikelle.Bonan@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1200.

*OMB Approval Date:* September 18, 2014.

*OMB Expiration Date:* March 31, 2015.

*Title:* Application to Participate in Rural Broadband Experiments and Post-Selection Review of Rural Broadband Experiment Winning Bidders.

*Form Numbers:* FCC Forms 5610 and 5620.

*Respondents:* Business or other for-profit, and not-for-profit institutions.

*Number of Respondents and Responses:* 500 respondents; 520 responses.

*Estimated Time per Response:* 5–10 hours.

*Frequency of Response:* One time and on occasion reporting requirements.

*Total Annual Burden:* 2,700 hours.

*Total Annual Cost:* No cost(s).

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154 and 254.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* Information collected in FCC Form 5610 will be confidential until winning applicants are announced. At that time, the proposals submitted by winning applicants will be made publicly available. All other proposals submitted will remain confidential. Information collected in FCC Form 5620 will be confidential.

*Needs and Uses:* Under this information collection, the Commission proposes to collect information to determine applicants that will be selected to participate in the rural broadband experiments and whether winning bidders are technically and financially capable of receiving funding for rural broadband experiment projects. To aid in collecting this information regarding the rural broadband experiments, the Commission has created FCC Form 5610 and FCC Form 5620, which applicants use to submit the most-cost effective proposals in each funding category and winning bidders use to demonstrate that they have the technical and financial qualifications to successfully complete the proposed

project within the required timeframes. These forms will be available electronically through the Internet, and electronic filing will be required.

The Communications Act of 1934, as amended requires the ''preservation and advancement of universal service.'' The information collection requirements reported under this new collection are the result of various Commission actions to promote the Act's universal service goals, while minimizing waste, fraud, and abuse.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2014–24434 Filed 10–14–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1013]**

## Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 15, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0768.

*Title:* 28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5 to 30.0 GHz Frequency Band and to Establish Rules and Policies.

*Form No.:* None.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents/Responses:* 17 respondents; 17 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* On occasion reporting requirement; third-party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154 and 303.

*Total Annual Burden:* 34 hours.

*Annual Cost Burden:* $4,950.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* The Federal Communications Commission (''Commission'') is requesting a revision of the information collection titled, ''28 GHz Band'' under OMB Control No. 3060–0768 from the Office of Management and Budget (OMB).

The purpose of the revision is to remove the information collection requirements that are contained under 47 CFR Sections 25.203, 25.250, 25.257 and 25.258 from OMB Control No. 3060–0768 because they were consolidated under OMB Control No. 3060–0678. The consolidation was approved by OMB on August 15, 2014.

The information collection requirements which remain in this collection require are as follows: (1) Local Multipoint Distribution Systems (LMDS) licensees to serve copies of their applications on all Non-Geostationary Mobile Satellite Service (NGSO/MSS) applicants (Section 101.147) and (2) NGSO/MSS feeder link earth stations must specify a set of geographic coordinates for location of these earth stations, 15 days after the release of a public notice announcing commencement of LMDS auctions (Section 101.147).

The information is used by the Commission and other applicants and/or licensees in the 28 GHz band to facilitate technical coordination of systems among applicants and/or licensees in the 28 GHz band. Without such information, the Commission could not implement the Commission's band plan.

Affected applicants and licensees are required to provide the requested information to the Commission and other third parties whenever they seek authority to provide service in the 28 GHz band. The frequency of filing is, in general, determined by the applicant or licensees. If this information is compiled less frequently or not filed in conjunction with our rules, applicants and licensees will not obtain the authorization necessary to provide telecommunications services. Furthermore, the Commission would not be able to carry out its mandate as required by statute and applicants and licensees would not be able to provide service effectively.

*OMB Control No.:* 3060–1013.

*Title:* Mitigation of Orbital Debris.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 10 respondents; 10 responses.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 308, 309 and 310.

*Total Annual Burden:* 30 hours.

*Annual Cost Burden:* $19,250.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted to the Office of Management and Budget (OMB) as a revision after this 60 day comment

period has ended in order to obtain the full three-year clearance from OMB.

The purpose of the revision is to remove the information collection requirements that are Section 47 CFR 25.114 from OMB Control No. 3060–1013 since they were consolidated in 3060–0678. OMB approved the consolidation on August 15, 2014.

Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. It consists of a wide range of non-functioning man-made objects that have been placed in the Earth's orbit, both accidentally and on purpose. Orbital debris consists of small objects such as paint flakes, discarded lens caps, ejected bolts and pieces of debris from exploded spacecraft and rocket bodies. Since human activity in space began, there has been a steady growth in the number and total mass of orbital debris. Once created, debris remains in orbit indefinitely, absent other forces. Growth in the orbital debris population may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of space based systems. Furthermore, the effects of collisions involving orbital debris can be catastrophic and may cause significant damage to functional spacecraft or to persons or property on the surface of the Earth, if the debris re-enters the Earth's atmosphere in an uncontrolled manner.

The information collection requirements accounted for in this collection are necessary to mitigate the potential harmful effects of orbital debris accumulation. Without such information collection requirements, the growth in the orbital debris population may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of experimental and amateur systems. Furthermore, the effects of collisions involving orbital debris can be catastrophic and may cause significant damage to functional spacecraft or to persons or property on the surface of the Earth, if the debris re-enters the Earth's atmosphere in an uncontrolled manner.

*OMB Control No.:* 3060–1108.

*Title:* Consummation of Assignments and Transfers of Control of Authorization.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 163 respondents; 163 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 47 U.S.C. 154(i).

*Total Annual Burden:* 163 hours.

*Annual Cost Burden:* $48,900.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted to the Office of Management and Budget (OMB) as a revision after this 60 day comment period has ended in order to obtain the full three-year clearance from OMB.

The purpose of the revision is to remove the information collection requirements that are contained in Section 47 CFR 25.119 from OMB Control No. 3060–1108. The information collection requirements were consolidated into collection 3060–0678. OMB approved the consolidation on August 15, 2014.

A consummation is a party's notification to the Commission that a transaction (assignment or transfer of control of authorization) has been completed. A consummation is applicable to all international telecommunications and satellite services, such as International High Frequency (IHF), Section 214 Applications (ITC), and Submarine Cable Landing Licenses (SCL).

Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. The Commission would not be able to carry out its duties under the Communications Act and to determine the qualifications of applicants to provide international telecommunications service, including applicants that are affiliated with foreign entities, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. Furthermore, without this collection of information, the Commission would not be able to maintain effective oversight of U.S. providers of international telecommunications services that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign entities that have market power.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2014–24435 Filed 10–14–14; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1165]**

## Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 15, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1165.

*Title:* Section 74.605, Registration of Stationary TV Pickup Receive Sites.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

*Number of Respondents:* 25 respondents; 33 responses.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 303 and 308.

*Total Annual Burden:* 33 hours.

*Total Annual Cost:* $16,500.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is submitting this expiring information collection to the Office of Management and Budget as an extension to obtain the full three year clearance from them. Section 74.605 requires that licensees of TV pickup stations in the 6875–7125 MHz and 12700–13200 MHz bands shall register their stationary receive sites using the Commission's Universal Licensing System. TV pickup licensees record their receive-only sites in the Universal Licensing System (ULS) database, including all fixed service locations. The TV pickup stations, licensed under Part 74 of the Commission's rules, make it possible for television and radio stations and networks to transmit program material from the sites of breaking news stories or other live events to television studios for inclusion in broadcast programs, to transmit programming material from studios to broadcasting transmitters for delivery to consumers' televisions and radios, and to transmit programs between broadcast stations. Registering the receive sites will allow analysis to determine whether Fixed Service links will cause interference to TV pickup stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2014–24473 Filed 10–14–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[WC Docket No. 05–25; DA 14–1429]**

## Wireline Competition Bureau Launches Secure Web Portal for Special Access Data Collection

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On October 1, 2014, the Commission launched a secure web portal interface allowing the electronic filing of responses to the Special Access Data Collection as outlined in the December 11, 2012 Report and Order and Further Notice of Proposed Rulemaking, which requires providers and purchasers of special access services and certain entities providing ''best efforts'' services in areas where incumbent local exchange carriers are subject to price cap regulation, to submit data for a comprehensive evaluation of the special access services market.

**DATES:** Responses are due by December 15, 2014.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Christopher S. Koves, Wireline Competition Bureau, Pricing Policy Division, (202) 418–8209 or *Christopher.Koves@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice, WC Docket No. 05–25, RM–10593, DA 14–1429, released October 1, 2014. This document does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden[s] for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002. The full text of this document may be downloaded at the following Internet address: *http://www.fcc.gov/document/wcb-launches-secure-portal-special-access-data-collection.* The complete text maybe purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternative formats, for persons with disabilities (e.g. accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

### I. Background

On October 1, 2014, the Commission's Wireline Competition Bureau released a public notice announcing the activation of a secure web portal for the electronic filing of information and certifications in response to the special access data collection. The web portal is available at *https://specialaccessfiling.fcc.gov/spadc/login.*

This web portal launch further implements the collection outlined by the Commission in its December 11, 2012 Report and Order and Further Notice of Proposed Rulemaking, which requires providers and purchasers of special access services and certain entities providing ''best efforts'' services in the same areas as price-cap local exchange carriers, to submit data and information for a comprehensive evaluation of the special access market. Responses to the collection are due by December 15, 2014.

The Bureau will conduct an instructional webinar well in advance of the filing deadline to further educate respondents on the electronic submission process. Additional information on the data collection and the underlying special access rulemaking proceeding can be found at: *http://www.fcc.gov/encyclopedia/special-access-data-collection-overview-0.* For further information regarding this proceeding, contact Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, (202) 418–8209 or *Christopher.Koves@fcc.gov.*

Federal Communications Commission.

**Lynne Engledow,**

*Acting Deputy Chief, Pricing Policy Division.*

[FR Doc. 2014–24497 Filed 10–14–14; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[30-Day–15–14BA]**

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Annual Survey of the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Grantees—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

To improve access to cancer screening, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Pub. L. 101–354) which directed CDC to create the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). Currently, the NBCCEDP funds 67 grantees including all 50 states, the District of Columbia, 5 U.S. territories, and 11 American Indian/Alaska Native tribes or tribal organizations. Grantees provide screening services for breast and cervical cancer to low-income, uninsured, and underinsured women who otherwise would not have access to screening.

The NBCCEDP is shifting from a focus on direct service provision to implementation of expanded evidence-based activities intended to increase rates of breast and cervical cancer screening at the population level. Though NBCCEDP grantees continue to provide breast and cervical cancer screening for un- and underinsured women, CDC is encouraging the implementation of strategies to increase screening rates beyond that of program-eligible women. This data collection is being proposed in order to assess program implementation, particularly related to these expanded population-based efforts. A survey of NBCCEDP grantees was originally fielded in Fall/Winter 2013–2014 and cleared under 0920–0879 as ''Assess Breast and Cervical Cancer Screening Program Activities to Expand Access to Screening''. The survey was found to be useful by CDC and the awardees (which received feedback reports). For example, after the initial implementation of last year's survey, CDC was able to tailor sessions at the Program Director's meeting to the needs of grantees that had been expressed during last year's information collection. DCPC has decided to continue the data collection as an annual survey. Questions are of various types including dichotomous and multiple response.

This assessment will enable CDC to gauge its progress in meeting NBCCEDP program goals, identify implementation activities, monitor program transition to efforts aimed at impacting population-based screening, identify technical assistance needs of state, tribe and territorial health department cancer control programs, and identify implementation models with potential to expand and transition to new settings to increase program impact and reach. The assessment will identify successful activities that should be maintained, replicated, or expanded as well as provide insight into areas that need improvement.

OMB approval is requested for three years. Participation is voluntary for NBCCEDP awardees and there are no costs to respondents other than their time. The estimated burden per response is 40 minutes and the total estimated annualized burden hours are 45.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) |
|---|---|---|---|---|
| Breast and Cervical Cancer Program Directors. | Annual Survey of the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Grantees' Program Implementation. | 67 | 1 | 40/60 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–24438 Filed 10–14–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Times and Dates:* 9:00 a.m.–5:00 p.m., EST, November 6, 2014. 9:00 a.m.–12:30 p.m. EST, November 7, 2014.

*Place:* CDC, 2900 Woodcock Boulevard, University Office Park, Columbia Building, Room 1064/1065, Atlanta, Georgia 30341.

Teleconference login information is as follows:

For Participants:

TOLL-FREE PHONE #: 800–988–9707.

Participant passcode: 4798.

For Participants:

URL: *https://www.mymeetings.com/nc/join/.*

Conference number: PW8992754.

Audience passcode: 4798.

Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW8992754&p=4798&t=c.*

There is also a toll number for anyone outside of the USA:

TOLL PHONE #: 1 (312) 470–7387.

Participant passcode: 4798.

*Status:* Open to the public, limited only by space and net conference and audio phone lines available.

*Purpose:* The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information, dissemination, professional interactions and collaborations, and policy.

*Matters for Discussion:* The agenda will include: (1) Discussing the impact of implementation of the Affordable Care Act on the National Breast and Cervical Cancer Early Detection Program (NBCCEDP); (2) assessing the needs of the public and impact to the NBCCEDP; (3) population-based activities to increase appropriate screening; (4) screening communication tools; (5) provider risk assessments.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Jameka R. Blackmon, MBA, CMP, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE., Mailstop F76, Atlanta, Georgia 30341, Telephone (770) 488–4880.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–24442 Filed 10–14–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1491]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patients' Perceptions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with a survey of pharmacists and patients about their experiences resulting from changes in generic drug pill appearance.

**DATES:** Submit either electronic or written comments on the collection of information by December 15, 2014.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** 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:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Survey of Pharmacists and Patients: Variations in the Physical Characteristics of Generic Drug Pills and Patients' Perceptions—(OMB Control Number 0910–NEW)**

Generic drugs make up approximately 85 percent of all human prescription drugs prescribed in the United States. While generic drugs are required to be pharmaceutically equivalent and bioequivalent to their brand-name counterparts, generics made by different manufacturers may differ substantially from their brand-name therapeutic equivalents and from each other in their physical appearance (e.g., color, shape, or size of pills). When pharmacists switch generic drug suppliers, patients refilling their generic prescriptions may therefore experience changes in their drugs' appearances. These changes may result in patient confusion and concerns about the safety and effectiveness of the generic drug products. Studies indicate that patients are more likely to stop taking their generic medications when they experience a change in their drugs' physical appearances, leading to harmful clinical and public health consequences as well as increased health care costs from avoidable morbidity and mortality.

To provide additional information that may help guide regulatory policy or pharmacy business practices, we intend to conduct surveys of pharmacists and patients about their perceptions about and experiences with generic drug

product pill appearance change. These surveys are intended to further our understanding of the relationship between changes in pill appearance and non-adherence to prescribed therapeutic regimens. The surveys may enable us to investigate factors that may explain the association between changes in pill appearance and non-adherence, including which factors could be modified to improve the safe and effective use of generic drugs.

We intend to survey a national cohort of pharmacists about their experiences with dispensing generic drug pills that differ in appearance from previous refills of the same medication and dosage level (e.g., when pharmacies switch generic suppliers). A stratified, random sample of U.S.-licensed pharmacists will be obtained based on a master list from KM Lists. The target sample includes pharmacists with active licenses who practice in traditional community pharmacy settings and will be proportionally allocated across the United States in relation to the number of pharmacists in each state. Based on an 11 percent undeliverable rate and a 52 percent response rate, 2,161 questionnaires will be mailed to pharmacists to obtain the 1,000 responses required for adequate statistical power. The pharmacists' survey will consist of a mailed questionnaire rather than a telephone survey or an email survey. Prior experience conducting surveys has shown that it is easier to guarantee respondent anonymity using an impersonal, mailed questionnaire with no individual identifying information. The pharmacists will be asked about the frequency with which their pharmacy changes suppliers that lead to variations in the appearance of the generic drugs that they dispense, as well as strategies they use with patients to address the transition to pills that have a different appearance (e.g., alert stickers on pill bottles, verbal warnings, and other strategies). They will also be asked about patient responses to changes in pill appearance, including what types of appearance changes seem to affect patients most often (shape/color/size), how often patients report confusion about pill appearance, and how often patients ultimately refuse to accept the new product. Participation is expected to take approximately 20 minutes.

We also intend to survey two different patient samples using two methodologies. The first is a telephone survey of patients who are 50 years and older and who take one or more generic medications for at least one of the following chronic conditions: Epilepsy, diabetes, hypertension, hyperlipidemia, depression, and HIV. The telephone survey will be generalizable and will consist of well-defined methods to minimize sampling bias such as use of random phone numbers for both landlines and mobile phones, as well as small-batch sampling to ensure a high response rate that meets demographic diversity goals. For the second patient survey, patients will be selected from a proprietary research database of commercially insured patients containing medical and pharmacy claims linked to health insurance enrollment information. A nationally representative sample of patients with at least one chronic condition and who experienced a change in physical appearance of a generic pill will be identified by the research team using medical and pharmacy claims data. Both patient surveys will consist of questions covering topics similar to those asked in the survey of pharmacists and is intended to provide answers to the same topic areas from patients' perspectives. As before, topic areas will include beliefs about generic drugs, outcomes related to changes in generic drug pill appearance, and strategies used by pharmacists or doctors to alert patients to the possibility of changes in appearance. Participation is expected to take approximately 20 minutes.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN [1]

| Surveys of pharmacists and patients on variations in the physical characteristics of generic drug pills and patients' perceptions | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Survey of Pharmacists | 1,000 | 1 | 1,000 | 0.333 (20 minutes) | 333 |
| Survey of Patients #1 | 1,000 | 1 | 1,000 | 0.333 (20 minutes) | 333 |
| Survey of Patients #2 | 1,000 | 1 | 1,000 | 0.333 (20 minutes) | 333 |
| Total | | | | | 999 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 8, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–24365 Filed 10–14–14; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0078]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Animal Drug User Fee Cover Sheet

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Animal Drug User Fee Cover Sheet'' 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 July 8, 2014, the Agency submitted a proposed collection of information entitled ''Animal Drug User Fee Cover Sheet'' 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 0910–0539. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 9, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–24444 Filed 10–14–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1414]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Class II Special Controls Guidance Document: Labeling of Natural Rubber Latex Condoms

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection for the labeling of natural rubber latex condoms.

**DATES:** Submit either electronic or written comments on the collection of information by December 15, 2014.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** 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:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300—(OMB Control Number 0910–0633)—Extension

Under the Medical Device Amendments of 1976 (Pub. L. 94–295), class II devices were defined as those devices for which there was insufficient information to show that general controls themselves would provide a reasonable assurance of safety and effectiveness but for which there was sufficient information to establish performance standards to provide such assurance.

Condoms without spermicidal lubricant containing nonoxynol 9 are classified in class II. They were originally classified before the enactment of provisions of the Safe Medical Devices Act of 1990 (Pub. L. 101–629), which broadened the definition of class II devices and now permit FDA to establish special controls beyond performance standards, including guidance documents, to help provide reasonable assurance of the safety and effectiveness of such devices.

In December 2000 Congress enacted Public Law 106–554, which, among other provisions, directed FDA to ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness in preventing sexually transmitted diseases * * *.'' In response, FDA recommended labeling intended to provide important information for condom users, including the extent of protection provided by condoms against various types of sexually transmitted diseases.

Respondents to this collection of information are manufacturers and repackagers of male condoms made of natural rubber latex without spermicidal lubricant. FDA expects approximately 5 new manufacturers or repackagers to enter the market yearly and to collectively have a third-party disclosure burden of 60 hours. The number of respondents cited in table 1 of this document is based on FDA's database of premarket submissions and the electronic registration and listing database. The average burden per disclosure was derived from a study performed for FDA by Eastern Research Group, Inc., an economic consulting firm, to estimate the impact of the 1999 over-the-counter (OTC) human drug labeling requirements final rule (64 FR 13254, March 17, 1999). Because the packaging requirements for condoms are similar to those of many OTC drugs, we believe the burden to design the labeling for OTC drugs is an appropriate proxy for the estimated burden to design condom labeling.

The special controls guidance document also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

The collection of information under § 801.437 does not constitute a ''collection of information'' under the PRA. Rather, it is a ''public disclosure 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)).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| Activity | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300 | 5 | 1 | 5 | 12 | 60 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 9, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–24445 Filed 10–14–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–0114]**

### Distinguishing Medical Device Recalls From Medical Device Enhancements; Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled, ''Distinguishing Medical Device Recalls From Medical Device Enhancements.'' This guidance is intended to clarify when a potential change to a device is a medical device recall, distinguish those instances from product enhancements, and explain reporting requirements.

**DATES:** Submit either electronic or written comments on this guidance at any time.

**ADDRESSES:** An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies of the guidance document entitled, ''Distinguishing Medical Device Recalls From Medical Device Enhancements'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ronny Brown, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2654, Silver Spring, MD 20993–0002, 301–796–6163.

### I. Background

Defects or performance failures of marketed medical devices can pose serious risks to public health. The recall process serves both to correct the device defects and to notify users of potential risks and steps to minimize the impact of device failure or improper function. The recall process establishes a mechanism for firms that produce and market medical devices to take timely action to correct or remove violative devices.

When a firm's recall process is operating effectively, the firm identifies a device defect or failure, determines that a recall is appropriate, and triggers the initiation of the recall process. However, firms may have trouble identifying whether a change to a device meets the definition of a recall, the appropriate scope of a recall, and when FDA should be notified of a recall. These issues can result in delays in notifying the public about unsafe medical devices.

FDA also recognizes that continuous improvement activities, as part of an effective quality system, often have a favorable impact on medical device safety and are part of ongoing efforts to design and manufacture devices that meet the needs of the user and patient. When a new iteration of a device has improved design, for example, this does not necessarily mean that the prior version of the device should be recalled. Such changes may be appropriately characterized instead as product enhancements. In addition to determining whether a proposed change to a marketed device meets the definition of a device recall or a product enhancement, a firm must assess whether it is required to report the change to FDA.

In the **Federal Register** of February 22, 2013 (78 FR 12329), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by May 23, 2013. Multiple comments were received with recommendations pertaining to three main areas: (1) Clarification of definitions; (2) requests for more examples; and (3) clarification of reporting obligations pertaining to 21 CFR part 806. In response to these comments, FDA revised the guidance document to enhance clarity through the inclusion of multiple new examples. Some previously-included examples were deleted or reframed for improved clarity, and some content was removed since it did not enhance clarity and in some cases led to confusion. The guidance as revised provides more succinct information about the distinctions between medical device recalls and medical device enhancements and related reporting obligations. The guidance is organized in a question-and-answer format, providing responses to questions that FDA believes are helpful in properly identifying medical device recalls and applying reporting requirements.

### II. Significance of Guidance

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the difference between a medical device recall and a

medical device enhancement. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

**III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Distinguishing Medical Device Recalls From Medical Device Enhancements,'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1819 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

The 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 part 7, subpart C, have been approved under OMB control number 0910–0249; the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; and the collections of information in 21 CFR part 810 have been approved under OMB control number 0910–0432.

**V. Comments**

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: October 9, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–24446 Filed 10–14–14; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1496]**

### Regulatory Science Considerations for Software Used in Diabetes Management; Public Workshop; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Regulatory Science Considerations for Software Used in Diabetes Management.'' The goals of this public workshop are to foster greater stakeholder collaboration in the area of diabetes device interoperability and to seek input from the clinical community, academia, government, industry, and other stakeholders regarding usability considerations for appropriate information consumption (e.g., notifications, indicators, data, and displays) based on user skill and knowledge. The Agency also requests input regarding the technical considerations for insulin bolus calculator design and use.

*Date and Time:* The public workshop will be held on November 13, 2014, from 8 a.m. to 5 p.m.

*Location:* The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Please arrive early to ensure time for parking and security screening. The public meeting will also be available to be viewed online via Webcast.

*Contact Persons:* James Mullally, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5613, Silver Spring, MD 20993, 240–402–5021, FAX: 301–847–8513, email: *james.mullally@fda.hhs.gov;* and Runa Musib, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5633, Silver Spring, MD 20993, 301–796–7014, FAX: 301–847–8513, email: *runa.musib@fda.hhs.gov.*

*Registration:* Registration is free and available on a first-come, first-served basis. You must register online by 4 p.m., November 6, 2014. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7 a.m. If you need special accommodations due to a disability, please contact Susan Monahan, 301–796–5661, email: *susan.monahan@fda.hhs.gov,* no later than October 30, 2014.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Susan Monahan to register (see registration contact person). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

*Streaming Webcast of the Public Workshop:* This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 4 p.m., November 6, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after November 6, 2014. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web

sites after this document publishes in the **Federal Register**.)

*Requests for Oral Presentations:* This public workshop includes a public comment session. During online registration you may indicate if you wish to speak during the public comment session and which topics you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comments. Following the close of registration, FDA will determine the amount of time allotted to each speaker and will select and notify participants by November 10, 2014. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

*Comments:* FDA is holding this public workshop to obtain input on insulin bolus calculators. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments regarding the public workshop topics that pertain to insulin bolus calculators. The deadline for submitting comments related to this public workshop is December 11, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question number you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

*Transcripts:* Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list), approximately 45 days after the workshop.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is seeking to foster greater stakeholder collaboration in the area of diabetes device interoperability. To that end, the Agency requests input from the clinical community, academia, government, industry, and other stakeholders regarding usability considerations for appropriate information consumption (e.g., notifications, indicators, data, and displays) based on user skill and knowledge. The Agency also requests input regarding the technical considerations for calculator design and use.

The first topic of discussion is the interoperability between diabetes devices. The Agency recognizes that the diabetes community possesses an interest in patients having greater flexibility to pair device components, e.g., continuous glucose meters with insulin pumps from different manufacturers. Pairing would allow those devices to communicate with each other and enable patients to interact with a single interface platform. Achieving this goal would improve data tracking and access, thereby facilitating more productive patient interactions with their healthcare providers. In order to realize the objective of effective diabetes device interoperability, developers and manufacturers should discuss technical, safety, and regulatory challenges that lay before this goal. A forum that elicits opinions from physicians and patients regarding their desires and needs will help inform those discussions. FDA is committed to fostering a collaborative environment to promote these interactions.

The second topic of discussion is insulin bolus calculators. These devices are intended to calculate insulin boluses for patients who manage their diabetes with insulin-intensive therapy. FDA currently regulates insulin bolus calculators as class II devices, often clearing them in combination with insulin pumps or blood glucose meters. Devices that calculate insulin boluses are increasingly available on the market, including those devices that use novel dosing algorithms and new user interface formats. Although these devices can benefit patient care, they could also jeopardize patient safety without proper regulation guarding against the serious health consequences of miscalculating insulin dosages. The Agency will host a public dialogue about insulin bolus calculators to help realize the aim of ensuring continued access to safe and effective technological innovations, regardless of interface format.

The public workshop will include two sessions, one for each of the topics noted previously. Each session will include presentations from physicians, FDA, and other experts in the field. A panel discussion will follow the session addressing insulin bolus calculators, and the panel will address questions from the audience. In addition, Agency representatives will update the diabetes community on relevant FDA news.

## II. Topics for Discussion at the Public Workshop

Among other topics, the workshop will include discussion of the following questions.

1. How can patients and providers be confident that the insulin bolus values obtained from the calculators are accurate and appropriate for their use?
2. What information do patients and providers need about how a particular calculator works so that they may appropriately use the calculator for diabetes management?
3. How can FDA foster both innovation and safety of insulin dose calculators intended for use by healthcare practitioners?
4. How can FDA foster both innovation and safety of insulin dose calculators intended for use by patients?

Dated: October 8, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–24451 Filed 10–14–14; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**SUPPLEMENTARY INFORMATION:** Technology descriptions follow.

**The Use of Chimeric Antigen Receptor To Control HIV Infection**

*Description of Technology:* Chimeric Antigen Receptors (CARs) are engineered proteins expressed by transduction on autologous CD8 T cells; after adoptive transfer, they promote targeted killing of specific cell types. CARs are showing great promise for treating cancer. The present invention (CD4–CRD CAR) is a novel bifunctional targeting motif for an anti-HIV CAR, consisting of a region of human CD4 linked to a carbohydrate recognition domain (CRD) from one of several human C-type lectins known to interact with high-mannose glycans on HIV gp120. Compared to a ''standard'' CD4 CAR, the CD4–CRD CAR displays two major enhancements: (1) Increased potency for suppression of HIV–1 infection by selective killing of productively infected cells, and (2) complete absence of CD4-mediated entry receptor activity that would otherwise render the transduced CD8 T cells susceptible to HIV infection. Compared to antibody-based anti-HIV CARs, the CD4–CRD CAR of the present invention is predicted to have two major advantages: (1) Lower escape potential, due to the universality of HIV CD4-dependence and high-mannose glycan display on gp120, and (2) reduced immunogenicity, since the all-human CD4–CRD CAR sequences are devoid of variable regions that would likely elicit anti-idiotypic antibody responses against scFv-based targeting motifs.

*Potential Commercial Applications:*

- Therapy for HIV infection
- Research on antiretroviral infection

*Competitive Advantages:* Enhanced potency for HIV inhibition and does not render transduced CD8T cells susceptible to HIV infection.

*Development Stage:*

- In vitro data available
- In vivo data available (animal)

*Inventors:* Mustafa H. Ghanem, Bama Dey, Edward Berger (all of NIAID)

*Publications:*

1. Scholler J, et al. Decade-long safety and function of retroviral-modified chimeric antigen receptor T cells. Sci Transl Med. 2012 May 2;4(132):132ra53. [PMID 22553251]

2. Du T, et al. Bifunctional CD4–DC–SIGN fusion proteins demonstrate enhanced avidity to gp120 and inhibit HIV–1 infection and dissemination. Antimicrob Agents Chemother. 2012 Sep;56(9):4640–9. [PMID 22687513]

3. Lamers CH, et al. Immune responses to transgene and retroviral vector in patients treated with ex vivo-engineered T cells. Blood. 2011 Jan 6;117(1):72–82. [PMID 20889925]

*Intellectual Property:* HHS Reference No. E–212–2014/0—US Provisional Application No. 62/040,398 filed 21 August 2014

*Licensing Contact:* John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Chris Kornak at *chris.kornak@nih.gov.*

**Photo-Controlled Removal of Targets In Vitro and In Vivo**

*Description of Technology:* The invention relates to a novel technology for separation, isolation and removal of target molecules or cells from a complex mixture. The technology can be used for both in vitro and in vivo applications. It comprises a conjugate of a biomolecule with specific binding activity (e.g. antibody, hapten, protein, nucleic acid) and the fluorescence dye IR700. When the conjugate is allowed to contact with a sample, it binds to the target molecule in the sample to form a biological complex. Upon exposure to near infrared light (NIR) of approximately 700 nm the biological complex becomes hydrophobic due to cleavage of a part of the fluorescent dye. Such hydrophobic complex can aggregate and readily be separated and removed from the biological mixture. The technology can be used in a broad range of applications, such as environmental or food (removal of contaminants from samples), or in vivo removal of toxins, pathogens or drugs from a subject, where the latter may provide a photo-controlled way to control the pharmacokinetics of a drug in vivo. The technology can also be applied in the therapeutic field, for example in cancer therapy, by killing and removal of tumor cells in a subject with the aid of wearable NIR device. In such treatment, the aggregated target cells may be removed from the subject via the liver and/or spleen.

*Potential Commercial Applications:*

- Environmental or food (removal of contaminants from samples)
- In vivo removal of toxins, pathogens or drugs from a subject
- Cancer therapy

*Competitive Advantages:* Simple and versatile way to separate and remove molecules or cells from a complex mixture.

*Development Stage:* Early-stage

*Inventors:* Hisataka Kobayashi, et al. (NCI)

*Intellectual Property:* HHS Reference No. E–209–2014/0—US Provisional Application No. 62/034,990 filed 08 August 2014

*Licensing Contact:* Uri Reichman, Ph.D., MBA; 301–435–4616; *ur7a@nih.gov*

*Collaborative Research Opportunity:* The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**Human Monoclonal Antibodies Against 5T4 as Therapeutic Agents**

*Description of Technology:* 5T4 is an antigen expressed in a number of carcinomas. Its expression is limited in normal tissue, but is prevalent in malignant tumors throughout their development. This confined expression makes it an attractive target for cancer immunotherapy. 5T4 is often found in colorectal, ovarian, and gastric tumors and thus has been used as a prognostic aid for these cancers. In addition, its role in antibody-directed immunotherapy for delivering response modifiers to tumors has been studied using murine monoclonal antibodies (mAbs) and the cancer vaccine TroVax (currently in clinical trials for multiple solid tumors) targets 5T4.

The present invention describes the identification and characterization of two fully human mAbs (m1001 and m1002) that bind to 5T4. Since the mAbs are fully human, they could have less immunogenicity and better safety profiles than the existing mouse and humanized antibodies. These mAbs have the potential to be cancer therapeutics as naked mAbs, Chimerica Antigen Receptors (CARs) and/or Antibody-Drug Conjugates (ADCs).

*Potential Commercial Applications:* A mAb, CAR, or ADC therapeutic for the

treatment of various human cancers expressing 5T4.

*Competitive Advantages:*

• The fully human antibodies may have better drugability, especially less immunogenicity and better safety.

• This antibodies could be used as naked mAbs, CARs and/or as ADCs.

• The confined expression of 5T4 makes it an attractive target for cancer immunotherapy.

• 5T4 mAbs could be used to treat several solid tumor cancers.

*Development Stage:* In vitro data available

*Inventors:* Dimiter Dimitrov, Tianlei Ying, Yang Feng (all of NCI)

*Intellectual Property:* HHS Reference No. E–158–2014/0—U.S. Provisional Application No. 62/034,995 filed 08 August 2014

*Licensing Contact:* Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*

**Quantitative Multiplex Methods for Rapid Detection and Identification of Viral Nucleic Acids**

*Description of Technology:* The subject technologies are quantitative multiplex loop mediated isothermal amplification assays that can detect and distinguish different viral pathogens, including HIV, Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), Hepatitis E Virus (HEV), Dengue Virus (DENV), Chikungunya virus (CHIKV) and West Nile Virus (WNV). The assay has the advantage of distinguishing between different genotypes of HCV. It has the potential to detect other pathogens. A quantitative multiplex variation of the assay can detect and identify all seven viruses using one reaction mixture. The detection-reaction is performed on a simple heat-source and viral quantitation can be measured using a simple fluorospectrophotometer. The entire detection process using these assays can be accomplished within 30 to 60 minutes in a doctor's office, laboratory setting, or in the field. Detection limits of as little as 1–10 International Units (viral copies) are possible with the use of fluorogenic oligonucleotides. The assays demonstrate very high specificity when tested with human clinical samples.

*Potential Commercial Applications:* Detection assays for viral pathogens such as HIV, HBV, HCV, HEV, Dengue Virus, Chikungunya, and West Nile Virus.

*Competitive Advantages:*

• Assays can be completed within 30 to 60 minutes and in a doctor's office, laboratory setting, or in the field.

• Assays can be performed without expensive instrumentation or specialized technical operators.

• Assays are highly specific and can distinguish between different viruses and between different genotypes of viruses.

*Development Stage:*

• Early-stage

• In vitro data available

• In vivo data available (human)

*Inventors:* Dougbeh-Chris Nyan (FDA), Deborah R. Taylor (FDA), Maria Rios (FDA), Kevin L. Swinson (Morgan State University), Laura E. Ulitzky (FDA)

*Publication:* Nyan DC, et al. Rapid Detection of Hepatitis B Virus in Blood Plasma by a Specific and Sensitive Loop-Mediated Isothermal Amplification Assay. Clin Infect Dis. 2014 July 1;59(1):16–23. [PMID 24704724]

*Intellectual Property:* HHS Reference No. E–135–2014/0—US Provisional Patent Application No. 61/979,446 filed 14 April 2014

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*

*Collaborative Research Opportunity:* The Food and Drug Administration, Center for Biologics Evaluation and Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize blood screening test and/or diagnostic test for infectious diseases. For collaboration opportunities, please contact Nisha Narayan at *Nisha.Narayan@fda.hhs.gov* or 240–402–9770.

Dated: October 8, 2014.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2014–24403 Filed 10–14–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 27, 2014, 07:30 a.m. to October 28, 2014, 06:00 p.m., Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA, 90401 which was published in the **Federal Register** on October 06, 2014, 79 FR 60175.

The meeting will start on October 27, 2014. The meeting time and location remains the same.

The meeting is closed to the public.

Dated: October 7, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24380 Filed 10–14–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine; Extramural Programs Subcommittee.

*Date:* February 10, 2015.

*Closed:* 7:45 a.m. to 8:45 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, Billings Conference Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

*Name of Committee:* Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

*Date:* February 10, 2015.

*Open:* 7:45 a.m. to 8:45 a.m.

*Agenda:* To review and discuss outreach activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* February 10–11, 2015.

*Open:* February 10, 2015, 9:00 a.m. to 4:40 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* February 10, 2015, 4:40 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* February 11, 2015, 9:00 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on February 10–11, 2015.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24396 Filed 10–14–14; 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:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Muscle and Rheumatic Diseases Related Clinical Study Grants Review.

*Date:* November 7, 2014.

*Time:* 10:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Democracy Boulevard, Suite 800—Conference Room, Bethesda, MD 20892.

*Contact Person:* Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24390 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Center for Biotechnology Information.

*Date:* April 21, 2015.

Open: 8:30 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2:00 p.m. to 3:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, National Center of Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20892, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24399 Filed 10–14–14; 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; Member Conflict: Biocomputation and Biological Modeling.

*Date:* November 6, 2014.

*Time:* 1:00 p.m. to 5:30 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:* Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov*.

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

*Date:* November 7, 2014.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Palmer House, 17 Monroe Street, Chicago, IL 60603.

*Contact Person:* Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biomedical Computing and Health Informatics.

*Date:* November 7, 2014.

*Time:* 3:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Palmer House, 17 Monroe Street, Chicago, IL 60603.

*Contact Person:* Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; NIH Science Education Partnership Award (SEPA) (R25).

*Date:* November 12, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders, Language, Communication and Related Neurosciences.

*Date:* November 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott—Residence Inn Bethesda, 7335 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Vilen A Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

*Name of Committee:* AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

*Date:* November 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

*Contact Person:* Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

*Date:* November 13–14, 2014.

*Time:* 8:00 a.m. to 2:00 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:* David R. Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Skeletal Muscle SBIR/STTR.

*Date:* November 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–14–080 International Research in Infectious Diseases including AIDS (IRIDA).

*Date:* November 13–14, 2014.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Duke Alexandria Old Town, 1456 Duke Street, Alexandria, VA 22314.

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; HIV/AIDS Innovative Research Applications.

*Date:* November 13–14, 2014.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA Review Group 1.

*Date:* November 13–14, 2014.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships (BRP): PAR14–092.

*Date:* November 13, 2014.

*Time:* 11:45 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mehrdad Mohseni, MD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology and Reproduction.

*Date:* November 13, 2014.

*Time:* 1:00 p.m. to 3:00 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:* Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@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: October 8, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24382 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Division of Microbiology & Infectious Diseases: Regulatory Affairs Support.

*Date:* November 17–18, 2014.

*Time:* November 17, 2014, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington/Rockville, Jackson Room, 1750 Rockville Pike, Rockville, MD 20852, (Telephone Conference Call).

*Time:* November 18, 2014, 8:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington/Rockville, Jackson Room, 1750 Rockville Pike, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Richard W. Morris, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fisher Lane–5601FL, Rockville, Maryland 20892–9823, Mailstop 9823, Telephone–240–669–5022, Fax: 301–480–2408.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24385 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Training, Education, and AREA Grants.

*Date:* November 21, 2014.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Hungyi Shau, Ph.D., Scientific Review Officer, National Center for Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24383 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious 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:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Novel, Alternate Model Systems for Enteric Diseases.

*Date:* November 3–4, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fisher Lane, Room 3G13B, Bethesda, MD 20892, Telephone: 240–669–5048, Fax: 301–480–2408, *gaol2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24387 Filed 10–14–14; 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:* November 4–5, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Charles H. Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Boulevard, Suite 800, 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: October 7, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24389 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 meetings.

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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biomedical Library and Informatics Review Committee.

*Date:* March 19–20, 2015.

*Time:* March 19, 2015, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Time:* March 20, 2015, 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24425 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* February 26–27, 2015.

*Open:* February 26, 2015, 8:30 a.m. to 10:45 a.m.

*Agenda:* Administrative.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* February 26, 2015, 10:45 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* February 27, 2015, 8:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–6921, *backusj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24395 Filed 10–14–14; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Conflict Review.

*Date:* October 27, 2014.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* JoAnn McConnell, 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, 301–496–5324, *mcconnej@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R25 ENDURE Program Review.

*Date:* October 31, 2014.

*Time:* 12:00 p.m. to 3:00 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:* JoAnn McConnell, 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, 301–496–5324, *mcconnej@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials.

*Date:* November 10, 2014.

*Time:* 7:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle, One Washington Circle NW., Washington, DC 20037.

*Contact Person:* Shanta Rajaram, 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, 301–435–6033, *rajarams@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: October 7, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24394 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Integrated PreClinical/Clinical AIDS Vaccine Development (IPCAVD).

*Date:* November 3–4, 2014.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, MSC 9823, Rockville, Maryland 20892, Telephone: 240–669–5081, Fax: 301–480–2408, *ec17w@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Consortium for Food Allergy Research (U19) and NIAID Investigator Initiated Program Project Applications (P01).

*Date:* November 4–5, 2014.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fisher Lane, MSC 9823, Rockville, Maryland 20892.

*Contact Person:* Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 5601 Fishers Lane, MSC 9823, Bethesda, Maryland 20892, Telephone: 240–669–5070, Fax: 301–480–2408, *rosenthalla@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24386 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Support for Conferences and Scientific Meeting (R13).

*Date:* November 6, 2014.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817, (Virtual Meeting).

*Contact Person:* Hui Chen, MD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–7784, *chenhui@mail.nih.gov.*

Dated: October 7, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24393 Filed 10–14–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney 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:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Data Coordinating Center AMP Type-2 Diabetes.

*Date:* November 24, 2014.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 7, 2014 .

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24391 Filed 10–14–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

*Date:* April 9–10, 2015.

*Open:* April 9, 2015, 9:00 a.m. to 12:00 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* April 9, 2015, 12:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate personal qualifications, performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* April 10, 2015, 9:00 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate personal qualifications, performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

*Open:* April 10, 2015, 10:00 a.m. to 11:00 a.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical, Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 8, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24398 Filed 10–14–14; 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:* National Institute of Arthritis and Musculoskeletal and Skin

Diseases Special Emphasis Panel; Training Grants Review.

*Date:* November 3, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24388 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; T32 Training Grant.

*Date:* October 31, 2014.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Human Genome Research Institute 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

*Name of Committee:* National Human Genome Research Institute Initial Review Group; Genome Research Review Committee, GNOM–G CEGS.

*Date:* November 6–7, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Gaithersburg Washingtonian Center, 204, B & C, Boardwalk Place, Gaithersburg, MD 20878.

*Contact Person:* Ken D. Nakamura, Ph.D., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel; R21 UDN.

*Date:* November 10, 2014.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Keith McKenney, Ph.D., Scientific Review Officer NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

*Name of Committee:* Center for Inherited Disease Research Access Committee.

*Date:* November 13, 2014.

*Time:* 11:30 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 7, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–24384 Filed 10–14–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2014–0003]**

### Notice of Adjustment of Countywide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2014, will be increased.

**DATES:** *Effective Date:* October 1, 2014, and applies to major disasters declared on or after October 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** In assessing damages for area designations under 44 CFR 206.40(b), FEMA uses a county-wide per capita indicator to evaluate the impact of the disaster at the county level. FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $3.56 for all disasters declared on or after October 1, 2014.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.7 percent for the 12-month period that ended in August 2014. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 17, 2014.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters))

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2014–24480 Filed 10–14–14; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2014–0030]**

### Agency Information Collection Activities: Proposed Collection; Comment Request, Write Your Own (WYO) Program

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved

information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the requirements of the WYO Transaction Record Reporting and Processing Plan.

**DATES:** Comments must be submitted on or before December 15, 2014.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2014–0030. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (202) 212–4701.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Montgomery, Financial Management Analyst, Federal Insurance & Mitigation Administration, (202) 212–2324 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 202–4701 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Write Your Own (WYO) Program, FEMA regulation 44 CFR 62.23 authorizes the Federal Insurance Administrator to enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. To facilitate the marketing of flood insurance, the Federal Government will be a grantor of flood insurance coverage for WYO Company policies issued under the WYO arrangement. To ensure that any policyholders' monies are accounted for and appropriately expended, the Federal Insurance Administrator implemented a Financial Control Plan (FCP) under FEMA regulation 44 CFR 62.23(f). This plan requires that each WYO Company submit financial data on a monthly basis into the National Flood Insurance Program's Transaction Record Reporting and Processing Plan (TRRPP) system, as referenced in 44 CFR 62.23(h)(4). The regulation explains the operational and financial control procedures governing the issuance of flood insurance coverage under the National Flood Insurance Program (NFIP) by private sector property insurance companies under the WYO Program.

**Collection of Information**

*Title:* Write Your Own (WYO) Program.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* 1660–0020.

*Form Titles and Numbers:* FEMA Form 129–1, Write Your Own Program.

*Abstract:* FEMA enters into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. WYO Companies are expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 88.

*Number of Responses:* 1056.

*Estimated Total Annual Burden Hours:* 62304.

*Estimated Cost:* There is no annual start-up or capital costs.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: October 1, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–24416 Filed 10–14–14; 8:45 am]

BILLING CODE 9111–52–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2014–0025; OMB No. 1660–0130]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before November 14, 2014.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, 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 or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Room 7NE, Washington, DC 20472–3100, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Collection of Information

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Type of information collection:* Revision of a currently approved information collection.

*Form Titles and Numbers:* None.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but are 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. These collections will allow for ongoing, 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.

Feedback collected under this generic clearance will provide useful information, but it will 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 non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the 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.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 326,207.

*Estimated Total Annual Burden Hours:* 54,436.

*Estimated Cost:* There are no annual start-up or capital costs.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–24481 Filed 10–14–14; 8:45 am]

**BILLING CODE 9111–19–P**

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# DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2014–0002]**

## Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective date for each LOMR is indicated in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alabama: | | | | | |
| Jefferson (FEMA Docket No.: B–1421). | City of Clay (14–04–2938P). | The Honorable Charles Webster, Mayor, City of Clay, P.O. Box 345, Clay, AL 35048. | City Hall, 2441 Old Springville Road, Birmingham, AL 35125. | August 14, 2014 | 010446 |
| Jefferson (FEMA Docket No.: B–1421). | Unincorporated areas of Jefferson County (14–04–2938P). | The Honorable David Carrington, Chairman, Jefferson County Commission, 716 Richard Arrington Jr., Boulevard North, Birmingham, AL 35203. | Jefferson County Land Development Department, 716 North 21st Street, Room 202A, Birmingham, AL 35263. | August 14, 2014 | 010217 |
| Arizona: | | | | | |
| Maricopa (FEMA Docket No.: B–1421). | City of Peoria (14–09–0517P). | The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | August 1, 2014 | 040050 |
| Pinal (FEMA Docket No.: B–1421). | Unincorporated areas of Pinal County (14–09–0882P). | The Honorable Anthony Smith, Chairman, Pinal County Board of Supervisors, 41600 West Smith Enke Road, Suite 128, Maricopa, AZ 85138. | Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85232. | August 8, 2014 | 040077 |
| California: | | | | | |
| Riverside (FEMA Docket No.: B–1423). | City of Corona (13–09–3138P). | The Honorable Karen Spiegel, Mayor, City of Corona, 400 South Vincentia Avenue, Corona, CA 92882. | City Hall, 400 South Vincentia Avenue, Corona, CA 92882. | August 18, 2014 | 060250 |
| Riverside (FEMA Docket No.: B–1423). | Unincorporated areas of Riverside County (13–09–3138P). | The Honorable Jeff Stone, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, 5th Floor, Riverside, CA 95201. | Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 95201. | August 18, 2014 | 060245 |
| San Bernardino (FEMA Docket No.: B–1423). | City of Apple Valley (13–09–2728P). | The Honorable Art Bishop, Mayor, City of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA 92307. | Engineering Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307. | August 15, 2014 | 060752 |
| San Bernardino (FEMA Docket No.: B–1423). | City of Hesperia (13–09–2728P). | The Honorable Thurston Smith, Mayor, City of Hesperia, 9700 7th Avenue, Hesperia, CA 92345. | City Hall, 9700 7th Avenue, Hesperia, CA 92345. | August 15, 2014 | 060733 |
| San Bernardino (FEMA Docket No.: B–1423). | City of Victorville (13–09–2728P). | The Honorable Jim Cox, Mayor, City of Victorville, P.O. Box 5001, Victorville, CA 92393. | Engineering Division, Public Works Department, 14343 Civic Drive, Victorville, CA 92393. | August 15, 2014 | 065068 |
| San Bernardino (FEMA Docket No.: B–1423). | Unincorporated areas of San Bernardino County (13–09–2728P). | The Honorable Janice Rutherford, Chair, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415. | San Bernardino County Public Works Department, 825 East 3rd Street, San Bernardino, CA 92415. | August 15, 2014 | 060270 |
| San Diego (FEMA Docket No.: B–1423). | City of San Marcos (13–09–2932P). | The Honorable Jim Desmond, Mayor, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069. | City Hall, 1 Civic Center Drive, San Marcos, CA 92069. | August 21, 2014 | 060296 |
| San Diego (FEMA Docket No.: B–1423). | Unincorporated areas of San Diego County (13–09–2932P). | The Honorable Dianne Jacob, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway, Suite 335, San Diego, CA 92101. | San Diego County Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123. | August 21, 2014 | 060284 |
| Colorado: | | | | | |
| Boulder (FEMA Docket No.: B–1423). | City of Longmont (13–08–1185P). | The Honorable Dennis L. Coombs, Mayor, City of Longmont, 350 Kimbark Street, Longmont, CO 80501. | Public Works Department, 1100 South Sherman Street, Longmont, CO 80501. | August 21, 2014 | 080027 |
| Boulder (FEMA Docket No.: B–1423). | Unincorporated areas of Boulder County (13–08–1185P). | The Honorable Cindy Domenico, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306. | Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80306. | August 21, 2014 | 080023 |
| Delta (FEMA Docket No.: B–1421). | City of Delta (14–08–0144P). | The Honorable Ed Sisson, Mayor, City of Delta, 360 Main Street, Delta, CO 81416. | City Hall, 360 Main Street, Delta, CO 81416. | August 7, 2014 | 080043 |
| Florida: | | | | | |
| Collier (FEMA Docket No.: B–1423). | City of Naples (14–04–0880P). | The Honorable John Sorey, III, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102. | Building Department, 295 Riverside Circle, Naples, FL 34102. | August 11, 2014 | 125130 |
| Lee (FEMA Docket No.: B–1421). | Unincorporated areas of Lee County (14–04–3452X). | The Honorable Larry Kiker, Chairman, Lee County Board of Commissioners, 2115 2nd Street, Fort Myers, FL 33901. | Lee County Community Development Department, 1500 Monroe Street, 2nd Floor, Fort Myers, FL 33901. | August 1, 2014 | 125124 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Monroe (FEMA Docket No.: B–1423). | Unincorporated areas of Monroe County (14–04–1710P). | The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040. | Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050. | August 11, 2014 | 125129 |
| Monroe (FEMA Docket No.: B–1423). | Unincorporated areas of Monroe County (14–04–2295P). | The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040. | Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050. | August 11, 2014 | 125129 |
| Monroe (FEMA Docket No.: B–1423). | Unincorporated areas of Monroe County (14–04–3390P). | The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040. | Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050. | August 15, 2014 | 125129 |
| Orange (FEMA Docket No.: B–1421). | City of Orlando (13–04–4686P). | The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802. | Permitting Services Division, 400 South Orange Avenue, Orlando, FL 32801. | August 8, 2014 | 120186 |
| Orange (FEMA Docket No.: B–1421). | City of Winter Park (13–04–4686P). | The Honorable Kenneth W. Bradley, Mayor, City of Winter Park, 401 South Park Avenue, Winter Park, FL 32789. | Building Department, 401 South Park Avenue, Winter Park, FL 32789. | August 8, 2014 | 120188 |
| Orange (FEMA Docket No.: B–1421). | Unincorporated areas of Orange County (13–04–4686P). | The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801. | Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839. | August 8, 2014 | 120179 |
| Seminole (FEMA Docket No.: B–1423). | Unincorporated areas of Seminole County (14–04–2923P). | The Honorable Bob Dallari, Chairman, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771. | Seminole County Public Works Department, 1101 East 1st Street, Sanford, FL 32771. | August 15, 2014 | 120289 |
| Sumter (FEMA Docket No.: B–1423). | City of Wildwood (14–04–2261P). | The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785. | Development Services Department, 100 North Main Street, Wildwood, FL 34785. | August 8, 2014 | 120299 |
| Sumter (FEMA Docket No.: B–1423). | Unincorporated areas of Sumter County (14–04–2261P). | The Honorable Al Butler, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785. | Sumter County Development Department, 7375 Powell Road, Wildwood, FL 34785. | August 8, 2014 | 120296 |
| Sumter (FEMA Docket No.: B–1421). | Unincorporated areas of Sumter County (14–04–3677P). | The Honorable Al Butler, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785. | Sumter County Development Department, 7375 Powell Road, Wildwood, FL 34785. | August 1, 2014 | 120296 |
| Kentucky: | | | | | |
| Fayette (FEMA Docket No.: B–1423). | Lexington-Fayette Urban County Government (13–04–3690P). | The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507. | Lexington-Fayette Urban County Government Division of Planning, 101 East Vine Street, Lexington, KY 40507. | August 18, 2014 | 210067 |
| Nevada: | | | | | |
| Clark (FEMA Docket No.: B–1421). | Unincorporated areas of Clark County (13–09–3209P). | The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155. | Clark County Public Works Department, 500 Grand Central Parkway, Las Vegas, NV 89155. | August 1, 2014 | 320003 |
| Douglas (FEMA Docket No.: B–1421). | Unincorporated areas of Douglas County (13–09–3099P). | The Honorable Doug Johnson, Chairman, Douglas County Board of Commissioners, P.O. Box 218, Minden, NV 89423. | Douglas County Planning Division, 1594 Ismeralda Avenue, Minden, NV 89423. | August 1, 2014 | 320008 |
| New York: | | | | | |
| Dutchess (FEMA Docket No.: B–1411). | Town of LaGrange (14–02-0734P). | The Honorable Alan Bell, Supervisor, LaGrange Town Board, 120 Stringham Road, LaGrangeville, NY 12540. | Town Hall, 120 Stringham Road, LaGrangeville, NY 12540. | August 11, 2014 | 361011 |
| North Carolina: | | | | | |
| Cumberland (FEMA Docket No.: B–1421). | City of Fayetteville (14–04–1195P). | The Honorable Nat Robertson, Mayor, City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301. | Planning Department, 433 Hay Street, Fayetteville, NC 28301. | August 5, 2014 | 370077 |
| Mecklenburg (FEMA Docket No.: B–1423). | Town of Davidson (12–04–5664P). | The Honorable John Woods, Mayor, Town of Davidson, P.O. Box 1929, Davidson, NC 28036. | Planning Department, 216 South Main Street, Davidson, NC 28036. | August 15, 2014 | 370503 |
| Mecklenburg (FEMA Docket No.: B–1423). | Unincorporated areas of Mecklenburg County (12–04–5664P). | Ms. Dena Diorio, Mecklenburg County Manager, 600 East 4th Street, Charlotte, NC 28202. | Mecklenburg County Planning Department, 600 East 4th Street, Charlotte, NC 28202. | August 15, 2014 | 370158 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Wake (FEMA Docket No.: B–1421). | City of Raleigh (13–04–5462P). | The Honorable Nancy McFarlane, Mayor, City of Raleigh, P.O. Box 590, Raleigh, NC 27602. | Public Works Department, 222 West Hargett Street, Raleigh, NC 27601. | August 18, 2014 | 370243 |
| South Carolina: | | | | | |
| Greenville (FEMA Docket No.: B–1423). | Unincorporated areas of Greenville County (13–04–8105P). | The Honorable Bob Taylor, Chairman, Greenville County Council, 301 University Ridge, Suite 2400, Greenville, SC 29601. | Greenville County Code Department, 301 University Ridge, Suite 4100, Greenville, SC 29601. | August 15, 2014 | 450089 |
| South Dakota: | | | | | |
| Pennington (FEMA Docket No.: B–1423). | City of Rapid City (13–08–1321P). | The Honorable Sam Kooiker, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701. | Planning Department, 300 6th Street, Rapid City, SD 57701. | August 21, 2014 | 465420 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 29, 2014.

**Roy E. Wright,**

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

[FR Doc. 2014–24478 Filed 10–14–14; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2014–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The effective date of October 16, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

| Community | Community map repository address |
|---|---|
| **Yavapai County, Arizona, and Incorporated Areas Docket No.: FEMA–B–1345** | |
| Unincorporated Areas of Yavapai County | Yavapai County Flood Control District Office, 1120 Commerce Drive, Prescott, AZ 86305. |
| **Dubois County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1310** | |
| City of Huntingburg | City Hall, 508 East 4th Street, Huntingburg, IN 47542. |
| City of Jasper | City Hall, 610 Main Street, Jasper, IN 47547. |
| Town of Ferdinand | Town Hall, 2065 Main Street, Ferdinand, IN 47532. |

| Community | Community map repository address |
|---|---|
| Unincorporated Areas of Dubois County | Dubois County Courthouse, One Courthouse Square, Jasper, IN 47546. |
| **Wells County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1292** | |
| City of Bluffton | Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714. |
| Town of Markle | Huntington Department of Community Development, Huntington County Courthouse, Room 204, 201 North Jefferson Street, Huntington, IN 46750. |
| Town of Ossian | Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714. |
| Town of Vera Cruz | Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714. |
| Town of Zanesville | Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714. |
| Unincorporated Areas of Wells County | Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714. |
| **Story County, Iowa and Incorporated Areas Docket No.: FEMA–B–1340** | |
| City of Ames | Department of Planning and Housing, City Hall, 515 Clarke Avenue, Ames, IA 50010. |
| Unincorporated Areas of Story County | Story County Planning and Zoning Department, 900 Sixth Street, Nevada, IA 50201. |
| **Warren County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1340** | |
| City of Carlisle | City Hall, 195 North First Street, Carlisle, IA 50047. |
| City of Cumming | City Hall, 649 North 44th Street, Cumming, IA 50061. |
| City of Des Moines | City Hall, 400 Robert D Ray Drive, Des Moines, IA 50309. |
| City of Norwalk | City Hall, 705 North Avenue, Norwalk, IA 50211. |
| Unincorporated Areas of Warren County | County Courthouse, 301 North Buxton Street, Suite 212, Indianola, IA 50125. |
| **Chippewa County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1342** | |
| Bay Mills Indian Community | Bay Mills Indian Community Tribal Office, 12140 West Lakeshore Drive, Brimley, MI 49715. |
| Charter Township of Kinross | Kinross Charter Township Hall, 4884 West Curtis Street, Kincheloe, MI 49788. |
| City of Sault Sainte Marie | City Hall, 225 East Portage Avenue, Sault Sainte Marie, MI 49783. |
| Township of Bay Mills | Bay Mills Township Hall, 14740 West Lakeshore Drive, Brimley, MI 49715. |
| Township of Bruce | Bruce Township Hall, 3156 East 12 Mile Road, Dafter, MI 49724. |
| Township of Dafter | Township of Dafter Map Repository, 10184 South Wilson Drive, Dafter, MI 49724. |
| Township of DeTour | Municipal Offices, 260 South Superior Street, DeTour Village, MI 49725. |
| Township of Drummond Island | Township Hall, 29935 East Pine Street, Drummond Island, MI 49726. |
| Township of Hulbert | Township Hall, 37685 West 4th Street, Hulbert, MI 49748. |
| Township of Pickford | Township Hall, 155 East Main Street, Pickford, MI 49774. |
| Township of Raber | Raber Township Hall, 16315 East M–48, Goetzville, MI 49736. |
| Township of Soo | Soo Township Hall, 639 3 1/2 Mile Road, Sault Sainte Marie, MI 49783. |
| Township of Sugar Island | Sugar Island Community Center, 6401 East 1 1/2 Mile Road, Sault Sainte Marie, MI 49783. |
| Township of Superior | Superior Township Hall, 7049 South M–221, Brimley, MI 49715. |
| Township of Whitefish | Whitefish Township Hall, 7052 North M–123, Paradise, MI 49768. |
| Village of DeTour | Village Hall, 260 South Superior Street, DeTour Village, MI 49725. |
| **Bradford County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1311** | |
| Borough of Alba | Alba Borough Hall, Secretary's Office, 3536 Minnequa Main Road, Canton, PA 17724. |
| Borough of Athens | Municipal Building, 2 South River Street, Athens, PA 18810. |
| Borough of Burlington | Burlington Borough Council President's Office, 480 Berwick Turnpike, Ulster, PA 18850. |
| Borough of Canton | Borough Office, 4 North Center Street, Canton, PA 17724. |
| Borough of LeRaysville | Borough Hall, 130 East Street, LeRaysville, PA 18829. |

| Community | Community map repository address |
|---|---|
| Borough of Monroe | Monroe Borough Hall, 149 Dalpiaz Drive, Monroeton, PA 18832. |
| Borough of New Albany | Borough Hall, 548 Front Street, New Albany, PA 18833. |
| Borough of Rome | Borough Building, 926 Main Street, Rome, PA 18837. |
| Borough of Sayre | Borough Office, 110 West Packer Avenue, Sayre, PA 18840. |
| Borough of South Waverly | Borough Hall, 2523 Pennsylvania Avenue, South Waverly, PA 18840. |
| Borough of Sylvania | Borough Community Building, 2553 Sylvania Road, Sylvania, PA 16945. |
| Borough of Towanda | Municipal Building, 724 Main Street, Towanda, PA 18848. |
| Borough of Troy | Borough Office, 49 Elmira Street, Troy, PA 16947. |
| Borough of Wyalusing | Borough Hall, 50 Senate Street, Wyalusing, PA 18853. |
| Township of Albany | Albany Township Secretary's Office, 817 Dog Farm Road, New Albany, PA 18833. |
| Township of Armenia | Township of Armenia, 2162 Fallbrook Road, Troy, PA 16947. |
| Township of Asylum | Asylum Township Building, 19981 Route 187, Towanda, PA 18848. |
| Township of Athens | Athens Township Municipal Building, 45 Herrick Avenue, Sayre, PA 18840. |
| Township of Burlington | Burlington Township Building, 2030 Weed Hill Road, Towanda, PA 18848. |
| Township of Canton | Township Building, 2343 Route 414, Canton, PA 17724. |
| Township of Columbia | Township of Columbia, Bradley Hall, 3290 Watkins Hill Road, Columbia Cross Roads, PA 16914. |
| Township of Franklin | Franklin Township Building, 31 Grange Road, Monroeton, PA 18832. |
| Township of Granville | Granville Township Secretary's Office, 487 Saxton Hill Road, Granville Summit, PA 16926. |
| Township of Herrick | Herrick Township Building, 399 Leisure Lake Road, Wyalusing, PA 18853. |
| Township of LeRoy | LeRoy Township Secretary's Office, 7854 Southside Road, Canton, PA 17724. |
| Township of Litchfield | Litchfield Township Secretary's Office, 168 Hunsinger Overlook Lane, Athens, PA 18810. |
| Township of Monroe | Bradford County Office of Planning, 29 Vankuren Drive, Suite 1, Towanda, PA 18848. |
| Township of North Towanda | North Towanda Township Office, 477 Reuter Boulevard, Towanda, PA 18848. |
| Township of Orwell | Orwell Township Hall, 619 South Hill Road, Wyalusing, PA 18853. |
| Township of Overton | Township of Overton, 80 McGroarty Lane, New Albany, PA 18833. |
| Township of Pike | Pike Township Building, 1514 Haighs Pond Road, Rome, PA 18837. |
| Township of Ridgebury | Ridgebury Township Municipal Building, 13278 Berwick Turnpike, Gillett, PA 16925. |
| Township of Rome | Rome Township Building, 28083 Route 187, Wysox, PA 18854. |
| Township of Sheshequin | Sheshequin Township Office, 1774 North Middle Road, Ulster, PA 18850. |
| Township of Smithfield | Smithfield Township Municipal Building, 48 Factory Drive, East Smithfield, PA 18817. |
| Township of South Creek | South Creek Township Secretary's Office, 35839 Route 14, Gillett, PA 16925. |
| Township of Springfield | Springfield Township Building, 3431 Springfield Road, Columbia Crossroads, PA 16914. |
| Township of Standing Stone | Standing Stone Township Building, 35165 Route 6, Wysox, PA 18854. |
| Township of Stevens | Stevens Township Building, Secretary's Office, 4332 Herrickville Road, Wyalusing, PA 18853. |
| Township of Terry | Terry Township Building, 1876 Rienze Road, Wyalusing, PA 18853. |
| Township of Towanda | Township Office, 44 Chapel Street, Towanda, PA 18848. |
| Township of Troy | Township Office, 961 Gulf Road, Suite 101, Troy, PA 16947. |
| Township of Tuscarora | Tuscarora Township Building, 2298 Underhill Road, Laceyville, PA 18623. |
| Township of Ulster | Municipal Building, 24071 Route 220, Ulster, PA 18850. |
| Township of Warren | Warren Township Municipal Building, 3 Schoolhouse Road, Warren Center, PA 18851. |
| Township of Wells | Wells Township Building, 7212 Coryland Park Road, Gillett, PA 16925. |
| Township of West Burlington | Township Building, 13028 Route 6, West Burlington, PA 18810. |
| Township of Wilmot | Wilmot Township Municipal Building, 4861 Route 187, Sugar Run, PA 18846. |
| Township of Windham | Windham Township Building, 38846 Route 187, Rome, PA 18837. |
| Township of Wyalusing | Township Building, 41908 Route 6, Wyalusing, PA 18853. |
| Township of Wysox | Township Building, 1789 Hillside Drive, Wysox, PA 18854. |

**Calhoun County, Texas, and Incorporated Areas**
**Docket No.: FEMA–B–1343**

| | |
|---|---|
| City of Point Comfort | City Hall, 102 Jones Street, Point Comfort, TX 77978. |
| City of Port Lavaca | City Hall, 202 North Virginia Street, Port Lavaca, TX 77979. |
| City of Seadrift | City Hall, 501 South Main Street, Seadrift, TX 77983. |

| Community | Community map repository address |
|---|---|
| Unincorporated Areas of Calhoun County | Calhoun County Courthouse, 211 South Ann Street, Port Lavaca, TX 77979. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 29, 2014.

**Roy E. Wright,**

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

[FR Doc. 2014–24409 Filed 10–14–14; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2014–0002]**

## Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The effective date of October 2, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

| Community | Community map repository address |
|---|---|
| **Madison County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1283** | |
| City of Huntsville | 308 Fountain Circle, Huntsville, AL 35801. |
| City of Madison | 100 Hughes Road, Madison, AL 35758. |
| Town of Gurley | 235 Walker Street, Gurley, AL 35748. |
| Town of New Hope | 5496 Main Drive, New Hope, AL 35760. |
| Town of Owens Cross Roads | 2965 Old Highway 431, Owens Cross Roads, AL 35763. |
| Town of Triana | Triana Town Hall, 640 6th Street, Madison, AL 35756. |
| Unincorporated Areas of Madison County | Madison County Engineering Building, 266–C Shields Road, Huntsville, AL 35811. |
| **Walker County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1347** | |
| City of Carbon Hill | City Hall, 170 NW 2nd Avenue, Carbon Hill, AL 35549. |
| City of Cordova | City Hall, 3885 North Massachusetts Avenue, Cordova, AL 35550. |
| City of Dora | City Hall, 1485 Sharon Boulevard, Dora, AL 35062. |
| City of Jasper | City Hall, 400 West 19th Street, Jasper, AL 35501. |
| Town of Eldridge | Town Hall, 208 Smothers Avenue, Eldridge, AL 35554. |
| Town of Kansas | Town Hall, 497 Old Highway 78, Kansas, AL 35573. |
| Town of Nauvoo | Town Hall, 176 McDaniel Avenue, Nauvoo, AL 35578. |
| Town of Oakman | Town Hall, 8236 Market Street, Oakman, AL 35579. |
| Town of Parrish | Town Hall, 6484 Highway 269, Parrish, AL 35580. |
| Town of Sipsey | Town Hall, 3635 Sipsey Road, Sipsey, AL 35584. |
| Town of Sumiton | Town Hall, 416 State Street, Sumiton, AL 35148. |

| Community | Community map repository address |
|---|---|
| Unincorporated Areas of Walker County | Walker County Engineering Department, 1801 3rd Avenue South, Jasper, AL 35502. |
| **Saline County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1342** | |
| City of Eldorado | City Hall, 901 4th Street, Eldorado, IL 62930. |
| City of Harrisburg | City Hall, 110 East Locust Street, Harrisburg, IL 62946. |
| Unincorporated Areas of Saline County | County Courthouse, 10 East Poplar Street, Harrisburg, IL 62946. |
| Village of Muddy | Village Hall, 60 Maple Street, Muddy, IL 62965. |
| **Martin County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1304** | |
| City of Loogootee | City Municipal Building, 401 John F. Kennedy Avenue, Loogootee, IN 47553. |
| Town of Shoals | Town Hall, 201 Water Street, Shoals, IN 47581. |
| Unincorporated Areas of Martin County | Martin County Courthouse, 111 South Main Street, Shoals, IN 47581. |
| **Morgan County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1315** | |
| City of Martinsville | City Hall, 59 South Jefferson Street, Martinsville, IN 46151. |
| Town of Brooklyn | Town Hall, 4 North Main Street, Brooklyn, IN 46111. |
| Town of Mooresville | Town Hall, 4 East Harrison Street, Mooresville, IN 46158. |
| Town of Morgantown | Town Hall, 120 West Washington Street, Morgantown, IN 46160. |
| Town of Paragon | Town Hall, 209 West Union Street, Paragon, IN 46166. |
| Unincorporated Areas of Morgan County | Morgan County Administration Building, 180 South Main Street, Martinsville, IN 46151. |
| **Monroe County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1329** | |
| Charter Township of Berlin | 8000 Swan View Road, Newport, MI 48166. |
| Charter Township of Frenchtown | 2744 Vivian Road, Monroe, MI 48162. |
| Charter Township of Monroe | 4925 East Dunbar Road, Monroe, MI 48161. |
| City of Luna Pier | 4357 Buckeye Street, Luna Pier, MI 48157. |
| City of Monroe | 120 East First Street, Monroe, MI 48161. |
| City of Petersburg | 24 East Center Street, Petersburg, MI 49270. |
| Township of Ash | 1677 Ready Road, Carleton, MI 48117. |
| Township of Bedford | 8100 Jackman Road, Temperance, MI 48182. |
| Township of Dundee | 179 Main Street, Dundee, MI 48131. |
| Township of Erie | 2065 Erie Road, Erie, MI 48133. |
| Township of Ida | 3016 Lewis Avenue, Ida, MI 48140. |
| Township of Lasalle | 4111 LaPlaisance Road, LaSalle, MI 48145. |
| Township of London | 13613 Tuttlehill Road, Milan, MI 48160. |
| Township of Milan | 16444 Cone Road, Milan, MI 48160. |
| Township of Raisinville | 96 Ida-Maybee Road, Monroe, MI 48161. |
| Township of Summerfield | 26 Saline Street, Petersburg, MI 49270. |
| Township of Whiteford | 8000 Yankee Road, Suite 100, Ottawa Lake, MI 49267. |
| Village of Dundee | 350 West Monroe Street, Dundee, MI 48131. |
| Village of Estral Beach | 7194 Lakeview Boulevard, Newport, MI 48166. |
| Village of South Rockwood | 5676 Carleton-Rockwood Road, South Rockwood, MI 48179. |
| **Lancaster County, Virginia, and Incorporated Areas Docket No.: FEMA–B–1343** | |
| Town of Irvington | Town Hall Office, 235 Steamboat Road, Irvington, VA 22480. |
| Town of Kilmarnock | Town Hall Office, 1 North Main Street, Kilmarnock, VA 22482. |
| Town of White Stone | Town Hall Office, 433 Rappahannock Drive, White Stone, VA 22578. |
| Unincorporated Areas of Lancaster County | Lancaster County Courthouse, 8311 Mary Ball Road, Lancaster, VA 22503. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 29, 2014.

**Roy E. Wright,**

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

[FR Doc. 2014–24410 Filed 10–14–14; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds On Customs Duties

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2014, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**DATES:** *Effective Date:* October 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Dean, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4882.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2014–23, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2014, and ending on December 31, 2014. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning January 1, 2015, and ending March 31, 2015.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

| Beginning date | Ending date | Under-payments (percent) | Over-payments (percent) | Corporate over-payments (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 070174 | 063075 | 6 | 6 | |
| 070175 | 013176 | 9 | 9 | |
| 020176 | 013178 | 7 | 7 | |
| 020178 | 013180 | 6 | 6 | |
| 020180 | 013182 | 12 | 12 | |
| 020182 | 123182 | 20 | 20 | |
| 010183 | 063083 | 16 | 16 | |
| 070183 | 123184 | 11 | 11 | |
| 010185 | 063085 | 13 | 13 | |
| 070185 | 123185 | 11 | 11 | |
| 010186 | 063086 | 10 | 10 | |
| 070186 | 123186 | 9 | 9 | |
| 010187 | 093087 | 9 | 8 | |
| 100187 | 123187 | 10 | 9 | |
| 010188 | 033188 | 11 | 10 | |
| 040188 | 093088 | 10 | 9 | |
| 100188 | 033189 | 11 | 10 | |
| 040189 | 093089 | 12 | 11 | |
| 100189 | 033191 | 11 | 10 | |
| 040191 | 123191 | 10 | 9 | |
| 010192 | 033192 | 9 | 8 | |
| 040192 | 093092 | 8 | 7 | |
| 100192 | 063094 | 7 | 6 | |
| 070194 | 093094 | 8 | 7 | |
| 100194 | 033195 | 9 | 8 | |
| 040195 | 063095 | 10 | 9 | |
| 070195 | 033196 | 9 | 8 | |
| 040196 | 063096 | 8 | 7 | |
| 070196 | 033198 | 9 | 8 | |
| 040198 | 123198 | 8 | 7 | |
| 010199 | 033199 | 7 | 7 | 6 |
| 040199 | 033100 | 8 | 8 | 7 |
| 040100 | 033101 | 9 | 9 | 8 |
| 040101 | 063001 | 8 | 8 | 7 |
| 070101 | 123101 | 7 | 7 | 6 |
| 010102 | 123102 | 6 | 6 | 5 |

| Beginning date | Ending date | Under-payments (percent) | Over-payments (percent) | Corporate over-payments (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 010103 | 093003 | 5 | 5 | 4 |
| 100103 | 033104 | 4 | 4 | 3 |
| 040104 | 063004 | 5 | 5 | 4 |
| 070104 | 093004 | 4 | 4 | 3 |
| 100104 | 033105 | 5 | 5 | 4 |
| 040105 | 093005 | 6 | 6 | 5 |
| 100105 | 063006 | 7 | 7 | 6 |
| 070106 | 123107 | 8 | 8 | 7 |
| 010108 | 033108 | 7 | 7 | 6 |
| 040108 | 063008 | 6 | 6 | 5 |
| 070108 | 093008 | 5 | 5 | 4 |
| 100108 | 123108 | 6 | 6 | 5 |
| 010109 | 033109 | 5 | 5 | 4 |
| 040109 | 123110 | 4 | 4 | 3 |
| 010111 | 033111 | 3 | 3 | 2 |
| 040111 | 093011 | 4 | 4 | 3 |
| 100111 | 123114 | 3 | 3 | 2 |

Dated: October 8, 2014.

**R. Gil Kerlikowske,**

*Commissioner.*

[FR Doc. 2014–24424 Filed 10–14–14; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5758–N–14]**

## 60-Day Notice of Proposed Information Collection: Strong Cities Strong Communities National Resource Network

**AGENCY:** Office of the Assistant Secretary for Policy Development & Research, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* December 15, 2014.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

### A. Overview of Information Collection

*Title of Information Collection:* National Resource Network Program Evaluation and Engagements.

*OMB Approval Number:* 2528–0289.

*Type of Request:* This is a revision to the existing information collection for the SC2 Network.

*Form Number:* N/A.

*Description of the need for the information and proposed use:* The Strong Cities Strong Communities National Resource Network (SC2 Network) provides comprehensive technical assistance to cities with populations of 40,000 or more that are experiencing long-term economic challenges as evidenced by population decline, high unemployment rates, high poverty, and low education attainment. The SC2 Network is seeking to evaluate its program through a combination of site visits, surveys, interviews, and quantitative and qualitative data collection. In addition, the SC2 Network will solicit information from cities to provide direct technical assistance. Such information includes information related to population; employment rates; poverty; education attainment; fiscal and economic distress; priorities, goals, and initiatives of local government; regional partnerships or efforts; types of direct assistance that could improve a city's economic outcome; support from political and community leadership; city budgets; and comprehensive annual financial reports.

*Respondents:* Respondents are from local governments, as well as from anchor institutions, and public and private organizations that work with local governments.

*Estimated Number of Respondents:* The estimated number of respondents to complete surveys, interviews, and/or provide data collection is estimated to be 120 respondents. The estimated number of respondents to provide information to the SC2 Network to solicit for direct technical assistance is estimated to be 500.

*Estimated Number of Responses:* The estimated number of responses for surveys, interviews, and/or data collection is estimated to be 240. The estimated number of responses for direct technical assistance is 1000.

*Frequency of Response:* The frequency of response for both survey, interview, and/or data collection, and direct technical assistance is twice per solicitation.

*Average Hours per Response:* The average hour per response for surveys, interview, and/or data collection is 1.5

hours. The average hour per response for direct technical assistance is 1 hour.

*Total Estimated Burdens:* The total estimated burden for surveys, interview, and/or data collection is 360 hours. The total estimated burden hours for direct technical assistance is 1000 hours.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** 12 U.S.C. 1701z–1 Research and Demonstrations.

Dated: October 7, 2014.

**Katherine M. O'Regan,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 2014–24521 Filed 10–14–14; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO3100000 L13100000 PB0000 241E; OMB Control Number 1004–0137]**

### Renewal of Approved Information Collection

**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 from applicants who wish to participate in the exploration, development, production, and utilization of oil and gas operations on BLM-managed public lands. The Office of Management and Budget (OMB) has assigned control number 1004–0137 to this 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 November 14, 2014.

**ADDRESSES:** Please submit comments directly to the Desk Officer for the Department of the Interior (OMB # 1004–0137), 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 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: 1004–0137'' regardless of the form of your comments.

**FOR FURTHER INFORMATION CONTACT:** Donnie Shaw, Division of Fluid Minerals, at 202–912–7155. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to leave a message for Mr. Shaw. 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 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until the 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 June 11, 2014 (79 FR 33592) and the comment period closed on August 11, 2014. The BLM received one public comment. The comment was a general invective about the Federal government, the Department of the Interior, the BLM, and Federal employees. It did not address, and was not germane to, this information collection. Therefore, we have not changed the collection in response to the comment.

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 to the addresses listed under **ADDRESSES**. Please refer to OMB Control Number 1004–0137 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 is provided for the information collection:

*Title:* Onshore Oil and Gas Operations (43 CFR part 3160).

*OMB Control Number:* 1004–0137.

*Type of Review:* Extension of a currently approved information collection.

*Abstract:* Various Federal and Indian mineral leasing statutes authorize the BLM to grant and manage onshore oil and gas leases on Federal and Indian (except Osage Tribe) lands. In order to fulfill its responsibilities under these statutes, the BLM needs to perform the information collection activity set forth in the regulations at 43 CFR part 3160, and in onshore oil and gas orders promulgated in accordance with 43 CFR 3164.1.

*Frequency of Collection:* On occasion.

*Forms:*

- Form 3160–3, Application for Permit to Drill or Re-enter;
- Form 3160–4, Well Completion or Recompletion Report and Log; and
- Form 3160–5, Sundry Notices and Reports on Wells.

*Estimated Annual Burden Hours:* 920,464.

*Estimated Annual Responses:* 235,252.

*Estimated Annual Non-hour Burden Cost:* $32,500,000.

The estimated burdens are itemized in the following table:

| A. Type of response | B. Number of responses | C. Hours per response | D. Total hours (column B × column C) |
|---|---|---|---|
| Application for Permit to Drill or Re-enter (43 CFR 3162.3–1) Form 3160–3 | 5,000 | 80 | 400,000 |
| Well Completion or Recompletion Report and Log (43 CFR 3162.4–1) Form 3160–4 | 5,000 | 4 | 20,000 |
| Sundry Notices and Reports on Wells (43 CFR 3162.3–2) Form 3160–5 | 35,000 | 8 | 280,000 |
| Plan for Well Abandonment (43 CFR 3162.3–4) | 1,500 | 8 | 12,000 |
| Schematic/Facility Diagrams (43 CFR 3162.4–1(a) and 3162.7–5(d)(1)) | 1,000 | 8 | 8,000 |
| Drilling Tests, Logs, and Surveys (43 CFR 3162.4–2(a)) | 110 | 8 | 880 |
| Disposal of Produced Water (43 CFR 3162.5–1(b), 3164.1, and Onshore Oil and Gas Order No. 7) | 1,500 | 8 | 12,000 |
| Report of Spills, Discharges, or Other Undesirable Events (43 CFR 3162.5–1(c)) | 215 | 8 | 1,720 |
| Contingency Plan (43 CFR 3162.5–1(d)) | 52 | 32 | 1,664 |
| Horizontal and Directional Drilling (43 CFR 3162.5–2(b)) | 2,100 | 8 | 16,800 |
| Well Markers (43 CFR 3162.6) | 1,000 | 8 | 8,000 |
| Gas Flaring (43 CFR 3162.7–1(d), 3164.1, and Notice to Lessees 4A) | 120 | 16 | 1,920 |
| Records for Seals (43 CFR 3162.7–5(b)) | 90,000 | 0.75 | 67,500 |
| Site Security (43 CFR 3162.7–5(c)) | 2,500 | 8 | 20,000 |
| Prepare Run Tickets (43 CFR 3162.7–2, 3164.1, and Onshore Oil and Gas Order No. 4) | 90,000 | 0.75 | 67,500 |
| Application for Suspension or Other Relief (43 CFR 3165.1) | 100 | 16 | 1,600 |
| State Director Review (43 CFR 3165.3(b)) | 55 | 16 | 880 |
| Totals | 235,252 | | 920,464 |

**Jean Sonneman,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 2014–24469 Filed 10–14–14; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[14XL.LLIDT02000.L12200000.MA0000.241A.00]**

## Proposed Supplementary Rules for the Castle Rocks Land Use Plan Amendment Area, Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed supplementary rules.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing supplementary rules for all BLM-administered public lands within an approximately 400-acre area in Idaho known as Castle Rocks. The BLM addressed this area in the November 2013 Cassia Resource Management Plan (CRMP) Amendment and Record of Decision (ROD). The CRMP amendment made implementation-level decisions designed to conserve natural and cultural resources while providing for recreational opportunities. These supplementary rules would allow the BLM and law enforcement partners to enforce those decisions.

**DATES:** Interested parties may submit written comments regarding the proposed supplementary rules until December 15, 2014.

**ADDRESSES:** You may submit comments by mail, electronic mail, or hand-delivery. Mail or Hand Delivery: Dennis Thompson, Outdoor Recreation Planner, Bureau of Land Management, Burley Field Office, 15 East 200 South, Burley, ID 83318. email: *blm_id_monumentcassiarmpamend@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dennis Thompson, Outdoor Recreation Planner, at 208–677–6664 or by email at *dthompson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Thompson.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Public Comment Procedures
III. Discussion of Proposed Supplementary Rules
IV. Procedural Matters

### I. Background

Castle Rocks is a dramatic geologic area located in the southern Albion Mountain Range of Cassia County, Idaho. Castle Rocks consists primarily of quartz-monzonite, a type of granite associated with the Almo Pluton. Pinnacles and monoliths, towering over 400 feet in local relief, characterize the area. Castle Rocks currently contains near pristine cultural and natural resources.

Until 2003, a difficult and lengthy hike from Stines Pass was the only way for the public to reach Castle Rocks, due to the unique ownership pattern and geography of the surrounding lands. This limited access helped preserve rare resources that are of great importance to the Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley. Castle Rocks became less isolated after passage of the Castle Rock Ranch Acquisition Act of 2000 (Pub. L. 106–421), which authorized the National Park Service (NPS) to purchase a private ranch that provided convenient public access on the east side of the geologic area. After the acquisition, the NPS exchanged the property with the Idaho Department of Parks and Recreation (IDPR) for other lands adjacent to existing NPS properties.

Since May 25, 2003, the IDPR has provided park facilities and has managed recreation at Castle Rocks. Starting in 2003, the BLM has protected the 400-acre parcel that is under its management by issuing a series of temporary closure orders prohibiting rock climbing, camping, staging, and trail building. In 2012, the BLM determined that amending the CRMP was necessary to properly manage the area. The decision in the CRMP was to close the area permanently to rock climbing, camping, staging, and trail building. This decision was made to protect significant cultural resources that were, or had the potential to be, adversely impacted by these activities. The Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley consider the area a sacred site and have requested the assistance of the Burley Field Office in nominating

the area as a Traditional Cultural Property under the National Historic Preservation Act.

The supplementary rules proposed here would allow the BLM to achieve management objectives and implement the CRMP amendment. They would also provide the BLM with enforcement capability to prevent damage to cultural and natural resources.

## II. Public Comment Procedures

You may mail, email, or hand-deliver comments to Dennis Thompson, Recreational Planner, at the addresses listed above (See **ADDRESSES**). Written comments on the proposed supplementary rules should be specific and confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider, or include in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (See **ADDRESSES**) or comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information for respondents, will be available for public review at the BLM Burley Field Office address listed in **ADDRESSES** during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your 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.

## III. Discussion of Proposed Supplementary Rules

These supplementary rules are necessary to protect the cultural and natural resources within the 400-acre BLM parcel at Castle Rocks as described in the CRMP amendment environmental assessment (EA).

The proposed supplementary rules would prohibit traditional rock climbing, sport rock climbing, bouldering, staging, trail building, and camping on BLM-administered public land within the Castle Rocks area because of adverse effects to cultural resources resulting from these activities. Use of the existing Stines Creek trail as shown on the 2012 Oakley 1:100,000 surface management Status Map would still be authorized. The EA for the CRMP amendment (Appendix II) designates the trail appropriate for foot, horse, or bike use and describes the authorized course of the trail.

## IV. Procedural Matters

### *Executive Order 12866, Regulatory Planning and Review*

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They would not have an effect of $100 million or more on the economy. They would not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor would they raise novel legal or policy issues. The proposed rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety.

### *Clarity of the Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand? Please send any comments you have on the clarity of the proposed supplementary rules to the address specified in the **ADDRESSES** section.

### *National Environmental Policy Act (NEPA)*

The BLM prepared an EA as part of the development of the CRMP amendment at Castle Rocks. During that NEPA process, alternative decisions for the CRMP amendment were fully analyzed or discussed and offered for public comment, including the substance of these proposed supplementary rules. The pertinent analysis can be found in Chapter 4 of the CRMP Amendment and Proposed Decision Record, April, 2013. The ROD for the CRMP was signed by the Idaho BLM State Director on November 20, 2013. These proposed supplementary rules would provide for enforcement of the plan decisions. The rationale for the decisions made is fully covered in the ROD. It is available for review in the BLM administrative record at the address specified in the ''**ADDRESSES**'' section and online at *http://www.blm.gov/id/st/en/prog/cultural/climbing-CastleRocks_EA.html.*

### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and would have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

### *Small Business Regulatory Enforcement Fairness Act*

These proposed supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of $100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

*Unfunded Mandates Reform Act*

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

These proposed supplementary rules would not have significant takings implications nor would they be capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that these rules would not cause a ''taking'' of private property or require preparation of a takings assessment.

*Executive Order 13132, Federalism*

These proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules would not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

The BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Consultation and Coordination with the Shoshone-Bannock and Shoshone-Paiute Tribes has been ongoing since 2010. The Tribes have been fully briefed and support these proposed supplementary rules.

*Information Quality Act*

The Information Quality Act (Section 515 of Pub. L. 106–554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

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

These proposed supplementary rules would not constitute a significant energy action. The proposed supplementary rules would not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

*Paperwork Reduction Act*

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*Author*

The principal author of these supplementary rules is Michael C. Courtney, Burley Field Manager, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Burley Field Office, Bureau of Land Management, proposes to issue supplementary rules for BLM-administered lands covered under the Cassia Resource Management Plan Amendment at Castle Rocks, to read as follows:

SUPPLEMENTARY RULES FOR THE PORTION OF THE CASTLE ROCKS AREA MANAGED BY THE U.S. BUREAU OF LAND MANAGEMENT

Definitions:

*Traditional rock climbing* means a style of climbing where a climber or group of climbers places all gear required to protect against falls and removes it when passage is complete.

*Sport rock climbing* means a style of climbing that relies on fixed protection against falls, usually bolts and/or top anchors.

*Bouldering* means ropeless climbing that involves short, sequential moves on rock usually no more than 20 feet off the ground and uses bouldering crash pads at the base of the climbing area to prevent injuries from falls.

*Staging* means assembling, unpacking or otherwise preparing gear for climbing; typically conducted at the base of a cliff, where gear such as backpacks may also be left during a climb, but in some cases, is conducted at the top of a cliff.

*Trail building* means the act of creating new travel routes through the use of tools; or user-created trails developed through repeated visits to a specific destination. EA DOI–BLM–ID–T020–2013–0010–EA, Appendix II serves as the baseline for existing trails on BLM lands.

*Camping* means setting up, occupying or making use of a place for shelter or overnight stay.

On BLM-administered public land within the Castle Rocks area, the following supplementary rules apply:

1. Traditional and sport rock climbing and bouldering are prohibited.
2. Staging is prohibited.
3. Camping is prohibited.
4. Trail building is prohibited.

EXCEPTIONS: The following persons are exempt from these supplementary rules:

A. Any Federal, State, local and/or military employee acting within the scope of their duties;

B. Members of any organized rescue or fire-fighting force in performance of an official duty; and

C. Persons, agencies, municipalities, or companies holding an existing special-use permit and operating within the scope of their permit.

PENALTIES: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

**Timothy M. Murphy,**

*Idaho State Director, Bureau of Land Management.*

[FR Doc. 2014–24471 Filed 10–14–14; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLOR–936000–L14300000–ET0000–14XL1109AF; HAG–14–0145; OR–50500]**

## Notice of Application for Withdrawal Extension and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend the duration of Public Land Order (PLO) No. 7184 for an additional 20-year term. PLO No. 7184 withdrew approximately 4,921 acres of National Forest System land from mining in order to protect the recreational and visual resources of the Elk River Wild and Scenic Corridor. The withdrawal created by PLO No. 7184 will expire on February 13, 2016, unless it is extended. This notice gives the public an opportunity to comment on the application and proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by January 13, 2015.

**ADDRESSES:** Comments and meeting requests should be sent to the BLM Oregon/Washington State Director, P.O. Box 2965, Portland, OR 97208–2965 or 1220 SW 3rd Avenue, Portland, OR 97204–3264.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Barnes, BLM Oregon/Washington State Office, 503–808–6155; or Candice Polisky, USFS Pacific Northwest Region, 503–808–2479.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USFS has filed an application requesting that the Secretary of the Interior extend PLO No. 7184 (61 FR 5719 as corrected by 61 FR 24948 (1996)), which withdrew certain lands in Curry County, Oregon from location and entry under the United States mining laws (30 U.S.C. Ch. 2) for an additional 20-year term, subject to valid existing rights. PLO No. 7184, as corrected, is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to ensure the continued protection of the recreational and visual resources of the Elk River Wild and Scenic Corridor. The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Michael L. Barnes at the above address or phone number.

For a period until January 13, 2015, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above. Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by January 13, 2015. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.4.

**Authority:** 43 CFR 2310.3–1

**Fred O'Ferrall,**

*Chief, Branch of Land, Mineral, and Energy Resources.*

[FR Doc. 2014–24463 Filed 10–14–14; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hazard Communication

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Hazard Communication,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 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 November 14, 2014.

**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=201408-1219-001* (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 by email at *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–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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 by email at *DOL_PRA_PUBLIC@dol.gov*.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Hazard Communication information collection requirements codified in regulations 30 CFR part 47. The Hazard Communication Standard requires a mine operator to use labels or other forms of warning necessary to inform miners of all hazards to which the miners are exposed, relevant symptoms and emergency treatment, and proper conditions of safety use or exposure. Federal Mine Safety and Health Act of

1977 sections 101(a)(7) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a)(7), 813(h).

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 1219–0133.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 5, 2014 (79 FR 32576).

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 1219–0133. 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–MSHA.

*Title of Collection:* Hazard Communication.

*OMB Control Number:* 1219–0133.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 23,834.

*Total Estimated Number of Responses:* 1,093,530.

*Total Estimated Annual Time Burden:* 187,230 hours.

*Total Estimated Annual Other Costs Burden:* $13,281.

Dated: October 8, 2014.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2014–24458 Filed 10–14–14; 8:45 am]

**BILLING CODE 4510–43–P**

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection Requests Submitted for Public Comment

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before December 15, 2014.

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Prohibited Transaction Exemption 86–128.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0059.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 27,900.

*Responses:* 1,199,800.

*Estimated Total Burden Hours:* 63,800.

*Estimated Total Burden Cost (Operating and Maintenance):* $736,800.

*Description:* Prohibited Transaction Class Exemption 86–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is

written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio. The ICR was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210–0059 and is scheduled to expire on January 31, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Consent to Receive Employee Benefit Plan Disclosures Electronically.

*Type of Review:* Extension of a currently approved information collection.

*OMB Number:* 1210–0121.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 37,086.

*Responses:* 3,176,585.

*Estimated Total Burden Hours:* 15,453.

*Estimated Total Burden Cost (Operating and Maintenance):* $158,829.

*Description:* The Department established a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy disclosure obligations under Title I of ERISA (29 CFR 2520.104b–1). Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, has affirmatively consented to receive disclosure documents. Prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements. In the event of a hardware or software change that creates a material risk that the individual will be unable to access or retain documents that were the subject of the initial consent, the individual must be provided with information concerning the revised hardware or software, and an opportunity to withdraw a prior consent. The ICR was approved by OMB under OMB Control Number 1210–0121 and is scheduled to expire on January 31, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Furnishing Documents to the Secretary of Labor on Request Under ERISA 104(a)(6).

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0112.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 300.

*Responses:* 300.

*Estimated Total Burden Hours:* 22.

*Estimated Total Burden Cost (Operating and Maintenance):* $1,300.

*Description:* As a result of the Taxpayer Relief Act of 1997 (TRA 97), the plan administrators of ERISA-covered employee benefit plans no longer need to file copies of the summary plan descriptions and summaries of material modifications that are publicly available. TRA 97 added paragraph (6) to section 104(a) of ERISA. Prior to the TRA 97 amendments, ERISA required certain documents be filed with the Department so that plan participants and beneficiaries could obtain the documents without having to turn to the plan administrator. The new section 104(a)(6) authorizes the Department to request these documents on behalf of plan participants and beneficiaries. The Department issued a final implementing guidance on this matter on January 7, 2002 (67 FR 772). The ICR was approved by OMB under OMB Control Number 1210–0112 and is scheduled to expire on February 28, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Section 2715 Summary Disclosures.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0147.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 858.

*Responses:* 79,500,000.

*Estimated Total Burden Hours:* 622,750.

*Estimated Total Burden Cost (Operating and Maintenance):* $4,842,500.

*Description:* Section 2715 of the PHS Act directs the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to ''develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage.'' To implement these disclosure requirements, collection of information requests relate to the provision of the following: Summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and a notice of modifications. The ICR was approved by OMB under OMB Control Number 1210–0147 and is scheduled to expire on February 28, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* ERISA Section 408(b)(2) Regulation.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0133.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 62,137.

*Responses:* 1,274,255.

*Estimated Total Burden Hours:* 1,643,941.

*Estimated Total Burden Cost (Operating and Maintenance):* $4,199,584.

*Description:* On February 3, 2012, the Department published a final regulation under ERISA section 408(b)(2) (the ''408(b)(2) regulation''), requiring that certain service providers to pension

plans disclose information about the service providers' compensation and potential conflicts of interest. These disclosure requirements were established to provide guidance for compliance with a statutory exemption from ERISA's prohibited transaction provisions. If the disclosure requirements of the 408(b)(2) regulation are not satisfied, a prohibited provision of services under ERISA section 406(a)(1)(C) will occur, with consequences for both the responsible plan fiduciary and the covered service provider. The ICR was approved by OMB under OMB Control Number 1210–0133 and is scheduled to expire on March 31, 2015. **Note:** The Department issued a proposed amendment to this ICR on March 12, 2014, that would, upon adoption, require covered service providers to furnish a guide to assist plan fiduciaries in reviewing the disclosures required by the final rule if the disclosures are contained in multiple or lengthy documents. The comment period for the proposal closed on June 10, 2014, and the Department currently is reviewing the comments.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* ERISA Procedure 76–1 Advisory Opinion Procedure.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0066.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 56.

*Responses:* 56.

*Estimated Total Burden Hours:* 573.

*Estimated Total Burden Cost (Operating and Maintenance):* $1,250,218.

*Description:* Under ERISA, the Department has responsibility to administer the reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. In 1976, the Department issued ERISA Procedure 76–1, Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting guidance from EBSA on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the types of questions that may be submitted. As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. EBSA relies on the information provided by the requester to analyze the issue presented and provide guidance. The ERISA Procedure has been in use since 1976, and the Department has issued hundreds of advisory opinions and information letters under its rules. The ICR was approved by OMB under OMB Control Number 1210–0066 and is scheduled to expire on June 30, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* ERISA Technical Release 91–1.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0084.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 12.

*Responses:* 82,518.

*Estimated Total Burden Hours:* 1,392.

*Estimated Total Burden Cost (Operating and Maintenance*): $20,715.

*Description:* The information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986.

The notice requirements of section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given and any additional reporting requirements deemed necessary.

Although the Department of Labor has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91–1, to provide guidance on how to satisfy the notice requirements prescribed by this section.

The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute. The ICR was approved by OMB under OMB Control Number 1210–0084 and is scheduled to expire on June 30, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Disclosures by Insurers to General Account Policyholders.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0114.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 104.

*Responses:* 96,223.

*Estimated Total Burden Hours:* 408,948.

*Estimated Total Burden Cost (Operating and Maintenance):* $33,678.

*Description:* Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) (SBJPA) amended added a new section 401(c) to the Employee Income Security Act of 1974 (ERISA). This new section, inter alia, required the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are ''plan assets'' within the meaning of the Employee Retirement Income Security Act (ERISA), because the policies are not ''guaranteed benefit policies'' within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a regulation, issued in final form on January 5, 2000 (65 FR 714), and codified at 29 CFR 2550.401c–1. This regulation has not been amended subsequently. The ICR was approved by OMB under OMB Control Number 1210–0114 and is scheduled to expire on June 30, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Registration for EFAST–2 Credentials.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0117.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 400,000.

*Responses:* 400,000.

*Estimated Total Burden Hours:* 133,333.

*Estimated Total Burden Cost (Operating and Maintenance):* $0.

*Description:* ERISA Section 104 requires administrators of pension and welfare benefit plans (collectively, employee benefit plans), and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, to file returns/reports annually with the Secretary of Labor (the Secretary) concerning the financial condition and operation of the plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Beginning with plan year filings for 1999, Form 5500 filings were processed under the ERISA Filing Acceptance System (EFAST), which was designed to simplify and expedite the receipt and processing of the Form 5500 by relying on computer scannable forms and electronic filing technologies.

Beginning with plan year filings for 2009, Form 5500 filings are processed under a new system, the ERISA Filing Acceptance System 2 (EFAST–2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies. In order to file electronically, employee benefit plan filing authors, schedule authors, filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST–2 credentials through the EFAST–2 Web site. Requested information includes: Applicant type (filing author, filing signer, schedule author, transmitter, or software developer); mailing address; fax number (optional); email address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question (''What is your date of birth?'' or ''Where is your place of birth?''), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement. The ICR was approved by OMB under OMB Control Number 1210–0117 and is scheduled to expire on June 30, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Notice of Blackout Period Under ERISA.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0122.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 46,200.

*Responses:* 6,100,000.

*Estimated Total Burden Hours:* 195,800.

*Estimated Total Burden Cost (Operating and Maintenance):* $1,900,000.

*Description:* The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, added ERISA section 101(i), which requires individual account pension plans to furnish a written notice to participants and beneficiaries in advance of any ''blackout period'' during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department's regulation for this purpose is codified at 29 CFR 2520.101–3. The ICR was approved by OMB under OMB Control Number 1210–0122 and is scheduled to expire on June 30, 2015.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0144.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 1,020,074.

*Responses:* 117,864.

*Estimated Total Burden Hours:* 886.

*Estimated Total Burden Cost (Operating and Maintenance):* $642,461.

*Description:* The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added Public Health Service Act (PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department, in conjunction with the Departments of the Treasury and Department of Health and Human Services (collectively, the Departments), issued interim final regulations on July 23, 2010 (75 FR 43330), which set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

Also, PHS Act section 2719 and the interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

On June 24, 2011, the Department amended the interim final regulations. Two amendments revised the ICR. The first amendment provides that plans no longer are required to include diagnosis and treatment codes on notices of adverse benefit determination and final internal adverse benefit determination. Instead, they must notify claimants of the opportunity to receive the codes on request and plans and issuers must provide the codes upon request.

The second amendment also changes the method plans and issuers must use to determine who is eligible to receive a notice in a culturally and linguistically appropriate manner, and the information that must be provided to such persons. The previous rule was based on the number of employees at a firm. The new rule is based on whether a participant or beneficiary resides in a county where ten percent or more of the population residing in the county is literate only in the same non-English language.

The ICR was approved by OMB under OMB Control Number 1210–0144 and is scheduled to expire on July 31, 2015.

## II. Focus of Comments

The Department is particularly interested in comments that:

• Evaluate whether the collections of information are 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 collections 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research, Employee Benefits Security Administration.*

[FR Doc. 2014–24447 Filed 10–14–14; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 2nd day of October 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

### Appendix

16 TAA Petitions Instituted Between 9/22/14 and 9/26/14

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85545 | Rural Metro Ambulance (Workers) | Indianapolis, IN | 09/22/14 | 09/22/14 |
| 85546 | Boston Scientific (Workers) | San Clemente, CA | 09/23/14 | 09/22/14 |
| 85547 | Foxconn Assembly LLC/Hon Hai Logistics LLC (Workers) | Houston, TX | 09/23/14 | 09/22/14 |
| 85548 | Trega Corporation (Company) | Hamburg, PA | 09/23/14 | 09/22/14 |
| 85549 | Humana (State/One-Stop) | Louisville, KY | 09/23/14 | 09/22/14 |
| 85550 | Rcad Milling (Company) | Champaign, IL | 09/24/14 | 09/23/14 |
| 85551 | Harte Hanks Market Intelligence (State/One-Stop) | San Diego, CA | 09/25/14 | 09/24/14 |
| 85552 | Ferrara Candy Company (Company) | Chattanooga, TN | 09/25/14 | 09/24/14 |
| 85553 | YUSA Corporation (Company) | Washington Court House, OH | 09/25/14 | 09/24/14 |
| 85554 | Caraustar (State/One-Stop) | Rogersville, AL | 09/25/14 | 09/24/14 |
| 85555 | Arcic Timber Inc. (State/One-Stop) | Cosmopolis, WA | 09/25/14 | 09/24/14 |
| 85556 | Optiscan (State/One-Stop) | Phoenix, AZ | 09/26/14 | 09/25/14 |
| 85557 | Conesys Aero-Electric (State/One-Stop) | Torrance, CA | 09/26/14 | 09/25/14 |
| 85558 | Speedline Technologies Inc. (State/One-Stop) | Franklin, MA | 09/26/14 | 09/25/14 |
| 85559 | Weatherford International LLC (State/One-Stop) | Houston, TX | 09/26/14 | 09/25/14 |
| 85560 | Heraeus Shin Etsu America (State/One-Stop) | Camas, WA | 09/26/14 | 09/23/14 |

[FR Doc. 2014–24449 Filed 10–14–14; 8:45 am]

**BILLING CODE 4510–FN–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 14–101]**

### NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Friday, November 21, 2014, 12:00 noon to 3:00 p.m., Local Time.

**ADDRESSES:** This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–989–3378, passcode 4988706, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/;* the meeting is 993 684 123, password is *PSS@Nov21.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Planetary Science Division Research and Analysis Program Update
—Reports from Analysis Groups

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2014–24476 Filed 10–14–14; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

### Application for a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139; August 28, 2007. Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

[Description of material]

| Name of applicant, date of application, date received, application No., docket No. | Material type | Total quantity | End use | Destination |
|---|---|---|---|---|
| DOE/NNSA—Y–12 National Security Complex, September 18, 2014, September 22, 2014, XSNM3756, 11006175. | High-Enriched Uranium (93.35%). | 7.28 kilograms uranium-235 contained in 7.8 kilograms uranium. | To fabricate targets at CERCA AREVA Romans in France and to irradiate targets at the BR–2 Research Reactor in Belgium, the HFR Research Reactor in the Netherlands, the OSIRIS Research Reactor in France, the LVR–15 Research Reactor in Czech Republic, and the Maria Reactor in Poland, for ultimate use for production of medical isotopes at the Institute for Radioelements in Belgium. | Belgium. |

For the Nuclear Regulatory Commission.

Dated this 8th day of October 2014 at Rockville, Maryland.

**David L. Skeen,**

*Deputy Director, Office of International Programs.*

[FR Doc. 2014–24512 Filed 10–14–14; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31280; 812–14304]**

### Eaton Vance Distributors, Inc. and Eaton Vance Unit Trust; Notice of Application

October 8, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

**APPLICANTS:** Eaton Vance Distributors, Inc. (''EVD'') and Eaton Vance Unit Trust.[1]

**SUMMARY:** *Summary of Application:* Applicants request an order to permit certain unit investment trusts to: (a)

[1] Applicants also request relief for future unit investment trusts (collectively, with Eaton Vance Unit Trust, the ''Trusts'') and series of the Trusts (''Series'') that are sponsored by EVD or any entity controlling, controlled by or under common control with EVD (together with EVD, the ''Depositors''). Any future Trust and Series that relies on the requested order will comply with the terms and conditions of the application. All existing entities that currently intend to rely on the requested order are named as applicants.

Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**DATES:** *Filing Dates:* The application was filed on May 2, 2014 and amended on September 2, 2014.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2014, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, Two International Place, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Aaron T. Gilbride, Attorney-Adviser, at (202) 551–6906, or Melissa R. Harke, Branch Chief, at (202) 551–6722 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Applicants' Representations

1. Eaton Vance Unit Trust will be a unit investment trust (''UIT'') that is registered under the Act. Any future Trust will be a registered UIT. EVD is registered under the Securities Exchange Act of 1934 as a broker-dealer and will be the Depositor of Eaton Vance Unit Trust. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge, a deferred sales charge or both. The maximum sales charge may be reduced in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor may, but is not legally obligated to, maintain a secondary market for Units of an outstanding Series. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

### *A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances*

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (i.e., at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient and that securities will be sold pro rata, if practicable, otherwise a specific security will be designated for sale.

### *B. Exchange Option and Rollover Option*

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge, a DSC or both.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

## Applicants' Legal Analysis

### *A. DSC and Waiver of DSC*

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or

her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

*B. Exchange Option and Rollover Option*

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option.

*C. Net Worth Requirement*

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit more than $100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or shares of registered investment companies which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

*D. Capital Gains Distribution*

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

*A. DSC Relief and Exchange and Rollover Options*

1. Whenever the Exchange Option or Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the

Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

*B. Net Worth Requirement*

Applicants will comply in all respects with the requirements of rule 14a–3 under the Act, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24423 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73320; File No. SR–NYSEArca–2014–30]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of Hull Tactical US ETF Under NYSE Arca Equities Rule 8.600

October 8, 2014.

On March 24, 2014, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of Hull Tactical US ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on April 11, 2014.[3] On May 21, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On July 9, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received one comment letter.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 11, 2014.[9] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 8, 2014, and the 240th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is December 5, 2014.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letter received.

Accordingly, the Commission pursuant to 19(b)(2) of the Act [10] designates December 5, 2014 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2014–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24421 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71894 (Apr. 7, 2014), 79 FR 20273 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 72214 (May 21, 2014), 79 FR 30672 (May 28, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated July 10, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] Securities Exchange Act Release No. 72571 (July 9, 2014), 79 FR 41330 (July 15, 2014). The Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.*

[7] *See* Letter from Christopher S. Jones, Associate Professor, University of Southern California to Elizabeth M. Murphy, Secretary, Commission (Sept. 16, 2014).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73317; File No. SR–ISEGemini–2014–26]**

## Self-Regulatory Organizations; ISE Gemini Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 723 To Add a New PIM ISO Order Type

October 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2014 the ISE Gemini Exchange, LLC ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

ISE Gemini proposes to amend its rules to add a new PIM ISO order type. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's rules to add a new PIM ISO order type.

The Price Improvement Mechanism (''PIM'') is a process that allows Electronic Access Members (''EAM'') to provide price improvement opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a ''Crossing Transaction''). A Crossing Transaction is comprised of the order the EAM represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. A Crossing Transaction must be entered only at a price that is equal to or better than the national best bid or offer (''NBBO'') and better than the limit order or quote on the ISE Gemini orderbook on the same side of the Agency Order.

An intermarket sweep order (''ISO'') is defined in Rule 1900(h) as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by Members at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Rule 1900.[3] ISOs are immediately executable within the Exchange's options trading system or cancelled, and shall not be eligible for routing as set out in Rule 1900. Simultaneously with the routing of an ISO to the Exchange's options trading system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Protected Offer in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

The Exchange proposes to implement a PIM ISO order type (''PIM ISO'') that will allow the submission of an ISO into the PIM. Specifically, a PIM ISO is the transmission of two orders for crossing pursuant to Rule 723 without regard for better priced Protected Bids or Protected Offers because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order, meaning that any execution(s) obtained from the away side will be given to the agency side of the order.

The Exchange will accept a PIM ISO provided the order adheres to the current PIM order acceptance requirements outlined above, but without regard to the NBBO. The Exchange will execute the PIM ISO in the same manner that it currently executes PIM orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO order. There is no other impact to PIM functionality. Specifically, liquidity present at the end of the PIM auction will continue to be included in the PIM auction as it is with PIM orders not marked as ISOs.

The Exchange will announce the implementation of this order type in an information circular.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change promotes just and equitable principles or trade and removes impediments to a free and open market in that it promotes competition, as described below. Specifically, the proposal allows the Exchange to offer its members an order type that is already offered by another exchange.[6] In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PIM. Finally, the proposal does not unfairly discriminate among members because all Members are eligible to submit a PIM ISO order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under Rule 1900, a ''Protected Quotation'' includes a Protected Bid or Protected Offer. A ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. ''Bid'' or ''Offer'' means the bid price or the offer price communicated by a member of an Eligible Exchange to any broker or dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. The ''OPRA Plan'' means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended. ''Best Bid'' and ''Best Offer'' mean the highest priced Bid and the lowest priced Offer. Finally, ''Eligible Exchange'' means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Act that: (i) Is a Participant Exchange in The Options Clearing Corporation (''OCC'') (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan; and (iii) if the national securities exchange is not a party to the OPRA Plan, is a participant in another plan approved by the Commission providing for comparable trade-through and locked and crossed market protection.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* NASDAQ OMX PHLX LLC (''PHLX'') Rule 1080, Commentary .09.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to adopt a PIM ISO order type is pro-competitive because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PIM. The proposed rule change will also allow the Exchange to compete with other markets that already allow an ISO order type in their price improvement mechanisms.[7]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

**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–ISEGemini–2014–26 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–ISEGemini-2014–26. 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–ISEGemini-2014–26 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24418 Filed 10–14–14; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73316; File No. SR–FINRA–2014–040]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Operative Date for Deletion of Rule 7740 Pursuant to SR–FINRA–2014–032

October 7, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to revise the operative date for the deletion of Rule 7740 (Historical Research and Administrative Reports) pursuant to SR–FINRA–2014–032. The proposed rule change would not make any changes to the text of FINRA rules.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

On July 2, 2014, FINRA filed for immediate effectiveness proposed rule change SR–FINRA–2014–032 to amend Rule 7710 relating to fees for the OTC Reporting Facility (''ORF'') and delete Rule 7740.[4] Rule 7740 sets forth the fees to be paid by the purchaser of historical research reports regarding OTC Bulletin Board (''OTCBB'') securities through the OTCBB Web site.

By its terms, SR–FINRA–2014–032 will be operative upon migration of the ORF to FINRA's Multi-Product Platform (''MPP''). At the time of the filing of SR–FINRA–2014–032, the ORF was scheduled to migrate to the MPP on September 15, 2014. In response to requests by the industry, FINRA recently delayed the migration of the ORF from September 15, 2014 to November 17, 2014.[5] As such, the amendments to Rule 7710 relating to fees for the ORF will be operative on the revised migration date of November 17, 2014.

However, with respect to deletion of Rule 7740, FINRA is proposing that the operative date be September 30, 2014. On that date, FINRA's vendor that generates and bills for the historical research reports under Rule 7740 will migrate to a new technology platform and will no longer provide these services to FINRA. Because FINRA contemplated migration of the ORF to the MPP, and the elimination of these reports, as of September 15, 2014, FINRA did not make arrangements to connect to the vendor's new technology platform. As such, the historical research reports will not be produced as of September 30, 2014. (The last date to order a report would be September 29, 2014.) As noted in SR–FINRA–2014–032, the quotation activity through the OTCBB has decreased in recent years and as such, the value of these reports has declined significantly. In fact, some reports in recent months have been generated with substantially all zeroes. Accordingly, the number of requests for reports continues to decrease. For example, there were 274 requests for reports pursuant to Rule 7740 in 2012, 103 in 2013 and 57 through August 2014.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change is consistent with the Act in that it ensures that FINRA rules accurately reflect the functionality of its systems and will avoid the potential confusion of having a fee rule in FINRA's manual for reports that FINRA no longer provides.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted in SR–FINRA–2014–032, with the deletion of Rule 7740, FINRA is eliminating fees for historical research reports that are of little value today and not relied on by market participants as a source of market data.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## 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) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. FINRA is proposing to change the deletion date of Rule 7740 due to the reports' unavailability as a result of a third-party vendor's platform change. The Commission believes it is in the interest of investors to implement this change immediately. The reports referenced in Rule 7740 will be unavailable before the 30-day operative delay is complete and, by making the filing operative immediately, this will provide the most notice of this change to the firms. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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:

[4] *See* Securities Exchange Act Release No. 72595 (July 11, 2014), 79 FR 41711 (July 17, 2014) (Notice of Filing and Immediate Effectiveness; SR–FINRA–2014–032).

[5] *See* ''Revised Migration Date for New OTC Reporting Facility Technology Platform,'' available at *www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/P580334*.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–040 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.

All submissions should refer to File Number SR–FINRA–2014–040. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–040 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24454 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73319; File No. SR–FINRA–2014–005]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Broaden Arbitrators' Authority To Make Referrals During an Arbitration Proceeding

October 8, 2014.

### I. Introduction

On July 12, 2010, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed a proposal pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] with the Securities and Exchange Commission (''Commission'') to amend Rule 12104 (Effect of Arbitration on FINRA Regulatory Activities) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13104 (Effect of Arbitration on FINRA Regulatory Activities) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (collectively, the ''Codes''). This initial proposal would have permitted arbitrators to make referrals to FINRA during an arbitration case, would have required the FINRA Director of Arbitration (''Director'') to disclose the referral to the parties, and would have required the entire panel to withdraw upon a party's request that a referring arbitrator withdraw (''original proposal''). The Commission published the original proposal for comment on September 17, 2010.[3] On July 7, 2011, FINRA responded to comments received by the Commission by filing an amendment to the original proposal,[4] which replaced the original proposal in its entirety.

Under the Amended Original Proposal, an arbitrator would have been permitted to make a mid-case referral if he or she became aware of any matter or conduct that the arbitrator had reason to believe posed a serious threat, whether ongoing or imminent, that was likely to harm investors unless immediate action was taken. A mid-case referral could not have been based solely on allegations in the pleadings. The Amended Original Proposal also would have instructed the arbitrator to wait until the arbitration concluded to make a referral if, in the arbitrator's judgment, investor protection would not have been materially compromised by the delay. Further, if an arbitrator made a mid-case referral, the Director would have disclosed the act of making the referral to the parties, and a party would have been permitted to request recusal of the referring arbitrator. The Amended Original Proposal would have required either the President of FINRA Dispute Resolution (''President'') or the Director to evaluate the referral and determine whether to forward it to other divisions of FINRA for further review. Finally, the Amended Original Proposal would have retained the provisions in Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code that permits an arbitrator to make a post-case referral. The Commission received five comment letters in response to the Amended Original Proposal.

On January 29, 2014, FINRA withdrew the Amended Original Proposal [5] without responding to the comments and filed the current proposal (''Proposed Rule''). The Proposed Rule was identical to the Amended Original Proposal. As part of the Proposed Rule, FINRA responded to comments received on the Amended Original Proposal. The Proposed Rule was published for comment in the **Federal Register** on February 12, 2014.[6] The Commission received 10 comment letters in response. On March 28, 2014, FINRA extended to May 20, 2014, the time period in which the Commission must approve the Proposed Rule, disapprove the Proposed Rule, or institute proceedings to determine whether to approve or disapprove the Proposed Rule. On May 19, 2014, FINRA responded to comments to the Proposed Rule and filed Partial Amendment No. 1.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 62930 (Sept. 17, 2010), 75 FR 58007 (Sept. 23, 2010) (SR–FINRA–2010–036).

[4] *See* Securities Exchange Act Rel. No. 64954 (Jul. 25, 2011), 76 FR 45631 (Jul. 29, 2011) (SR–FINRA–2010–036) (Notice of Filing Proposed Rule Change and Amendment No. 1 to Amend the Codes of Arbitration Procedure To Permit Arbitrators To Make Mid-Case Referrals) (hereinafter, the ''Amended Original Proposal,'' to distinguish Amendment No.1 to the original proposal from the current proposal as amended by Partial Amendment No. 1.).

[5] *See* SR–FINRA–2010–036, Withdrawal of Proposed Rule Change, available at *http://www.finra.org/Industry/Regulation/RuleFilings/2010/P121722.*

[6] *See* Securities Exchange Act Rel. No. 71534 (Feb. 12, 2014), 79 FR 9523 (Feb. 19, 2014) (SR–FINRA–2014–005) (''Notice of Filing'').

[7] *See* Letter from Mignon McLemore, Assistant General Counsel, FINRA Dispute Resolution, to Lourdes Gonzalez, Commission, dated May 19, 2014 (''May Response''). The May Response and the text of Partial Amendment No. 1 are available on

Continued

On May 20, 2014, the Commission published for comment both Partial Amendment No. 1, and an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the Proposed Rule, as modified by Partial Amendment No. 1.[9] The Commission received nine comments on the Proposed Rule as modified by Partial Amendment No. 1 (together, the ''Amended Current Proposal'').[10] On August 14, 2014, FINRA responded to these comments.[11]

This order approves the Amended Current Proposal.

## II. Description of the Amended Current Proposal

As further described in the Notice of Filing, FINRA is proposing to amend Rule 12104 of the Customer Code and Rule 13104 of the Industry Code to broaden arbitrators' authority to make referrals during an arbitration proceeding. Under the Amended Current Proposal, an arbitrator would be permitted to make a mid-case referral if the arbitrator becomes aware of any matter or conduct that the arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken. A mid-case referral could not be based solely on allegations in the pleadings. The Amended Current Proposal would further provide that when a case is nearing completion, the arbitrator should wait until the case concludes to make a referral if, in the arbitrator's judgment, investor protection would not be materially compromised by the delay. If an arbitrator makes a mid-case referral, the Director would disclose the act of making the referral to the parties, and a party would be permitted to request recusal of the referring arbitrator. The Amended Current Proposal would require either the President or the Director to evaluate the referral and determine whether to forward it to other divisions of FINRA for further review. The Amended Current Proposal would retain the provisions in Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code that permit an arbitrator to make a post-case referral. Partial Amendment No. 1 would require that a party requesting recusal of an arbitrator following a mid-case referral, and based on such a referral, do so within three days of being notified of the mid-case referral. FINRA stated that the amendment is intended to prevent a party from receiving notice of the mid-case referral and reserving the right to strategically request recusal when it would best benefit that party.

## III. Comments on the Amended Current Proposal

The Commission received nine comments on the Amended Current Proposal.[12] Five commenters opposed the Amended Current Proposal,[13] three commenters partially supported the Amended Current Proposal,[14] and one commenter supported the Amended Current Proposal.[15]

### *A. Support for the Goals of the Amended Current Proposal*

One commenter states that the Amended Current Proposal, along with certain suggested changes, would enhance the investor protection mission of FINRA and the SEC.[16] Two other commenters support FINRA's efforts to identify and stop ongoing securities market schemes that could harm investors by authorizing arbitrators to make mid-case referrals.[17] They express concerns, however, about the potential impacts of the Amended Current Proposal on individual claimants and suggest further changes that, in their view, would minimize the negative impact of the Amended Current Proposal.[18]

FINRA replies that it has carefully considered the impact that its proposal could have on an individual investor claimant. However, it states further that its regulatory obligations also require it to weigh the potential effect that failing to allow mid-case referrals could have on a large group of investors. In considering these potential effects, FINRA determined that the proposal would help FINRA detect serious threats to investors at an earlier stage than would otherwise occur; this early warning, FINRA states, could help curb financial losses of a potentially large group of investors. Therefore, FINRA states that providing additional protection to public investors generally by strengthening its regulatory structure outweighs the potential increased costs to an investor party.[19]

### *B. Effect on Retail Investors*

The Commission solicited comment on the Amended Current Proposal's effects on retail investors.[20] In response, some commenters express concern about increased costs and delays incurred by the investor in the arbitration if an arbitrator made a mid-case referral.[21] Two commenters also contend that a retail investor should not be expected to incur the costs that could arise if an arbitrator made a mid-case referral.[22] These commenters suggest that the costs that result from a mid-case referral should be borne by the party seeking recusal or by FINRA.[23]

Regarding the suggestion that FINRA pay an investor's costs and expenses that could arise as a result of a mid-case referral, FINRA states it does not believe that it would be appropriate for the forum that administers the arbitration process to bear the costs for any party. FINRA states also that it provides an arbitration forum that is neutral and fair for all parties to a dispute, and that if the forum were to agree to pay for one party's costs and expenses it would raise questions about the forum's neutrality and its role in administering the arbitration process; FINRA therefore declines to make such a change.[24]

While FINRA acknowledges that it cannot eliminate all of the potential costs or delays to an individual claimant

FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room. The May Response is also available on the Commission's Web site at *http://www.sec.gov.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Rel. No. 72196 (May 20, 2014), 76 FR 30206 (May 27, 2014) (''Order Instituting Proceedings'').

[10] Jenice L. Malecki, Esquire, Malecki Law (May 20, 2014, commenting only on the Proposed Rule) (''Malecki''); George H. Friedman, Esquire, George H. Friedman Consulting, LLC (Jun. 9, 2014) (''Friedman''); Nicole G. Iannarone, Assistant Clinical Professor, and Patricia Uceda, Student Intern, Investor Advocacy Clinic, Georgia State University College of Law (Jun. 20, 2014) (''Georgia State''); Guillermo Gleizer, Esq. (Jun. 25, 2014) (''Gleizer''); Jason Doss, President, Public Investors Arbitration Bar Association (Jun. 26, 2014) (''PIABA''); Ellen Liang, Student Intern, Elissa Germaine, Supervising Attorney, and Jill Gross, Director, Pace Investor Rights Clinic (Jun. 26, 2014) (''Pace''); Richard P. Ryder, Esquire, President, Securities Arbitration Commentator, Inc. (Jun. 26, 2014) (''Ryder''); Andrea Seidt, President, North American Securities Administrators Association and Ohio Securities Commissioner, (Jun. 27, 2014) (''NASAA''); and Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C. (July 2, 2014) (''Caruso'').

[11] Letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, Inc., to Kevin O'Neill, Deputy Secretary, Commission, dated August 14, 2014 (''FINRA Letter'').

[12] See note 10, *supra.*

[13] PIABA, Georgia State, Gleizer, Ryder, and Caruso.

[14] Pace, NASAA, and Malecki.

[15] Friedman.

[16] Friedman.

[17] Pace and NASAA. *See also* Malecki (supporting the goal of the Proposed Rule).

[18] Pace and NASAA. These suggestions are discussed further below.

[19] FINRA Letter at 4.

[20] *See* Order Instituting Proceedings, note 9, *supra.*

[21] See, e.g., PIABA, Ryder, and Pace.

[22] PIABA and Malecki.

[23] *Id.*

[24] FINRA Letter at 5, incorporating by reference May Response at 12.

associated with a mid-case referral, it also describes a number of ways in which the Codes permit a hearing panel to allocate costs in a manner that takes into account the circumstances leading to the costs' incursion, ways in which the Codes permit FINRA to absorb some costs that may be incurred as a result of a mid-case referral, as well as ways in which the parties themselves can minimize costs and delays.[25]

For example, FINRA notes that the Codes permit a panel to allocate the amount of certain costs and expenses incurred by the parties, and which party or parties will pay those costs and expenses.[26] Citing an example, FINRA states that if an investor party incurs costs and expenses as a result of a mid-case referral, the investor can request that the arbitrator or panel assign liability for the investor's costs and expenses to the respondent.[27] Similarly, FINRA notes that the Codes give arbitrators the ability to allocate postponement fees against the party that contributed to the need for the postponement.[28] FINRA notes further that, under Rule 12601(b)(1) of the Customer Code and Rule 13601(b)(1) of the Industry Code, if a party requests a postponement as a result of an arbitrator's recusal based on a mid-case referral request, the panel could also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement.[29]

As to existing Code provisions that allow FINRA to help absorb some costs associated with any need for the replacement of an arbitrator, FINRA notes that it pays the replacement arbitrator to review the hearing record (e.g., listen to the digital recording or review a transcript, when available, of the prior hearing sessions) and learn about the arbitration case up to the point at which it was stopped.[30] Pursuant to forum policy, FINRA notes the parties would not be assessed any fees for this review time.[31]

FINRA also highlights the options parties have to control the costs they could incur if an arbitrator makes a mid-case referral.[32] For example, FINRA states that the parties may agree to rehearing only key witnesses, or stipulate to summaries of prior testimony.[33] In light of these factors, FINRA believes its current policies and procedures address the commenters' concerns and declines to make any changes to the Amended Current Proposal.[34]

Other commenters raise concerns about the adverse effects a recusal request would have on an investor's arbitration case, as well as the resulting motion to vacate that the commenters believe a respondent would file, if the referring arbitrator denies a recusal request.[35] In response, FINRA notes that, while a denial of a recusal request could result in a motion to vacate, courts have found that such actions do not provide parties with valid bias grounds on which to challenge an award.[36] Further, FINRA notes that it expects to issue a Regulatory Notice if the Amended Current Proposal is approved that would, among other things, emphasize that arbitrators are not required to grant a recusal request based on making a mid-case referral, and also provide guidance on the courts' findings on what constitutes grounds for evident partiality.[37] This guidance, FINRA believes, could further mitigate the effect of these motions on a retail investor claimant. Consequently, FINRA believes that its current policies and procedures, as well as case law, address these concerns.[38]

*C. Standard of Referral*

The Commission solicited comment on the proposed standard of referral, and whether FINRA should propose a different standard. In response, one commenter states that a different standard of referral under proposed Rule 12104(b) would not insulate a claimant from the adverse impacts of the proposal.[39] Another commenter states that the proposed standard may be inadequate for those arbitrators who are not attorneys and not trained in the nuances of the legal system.[40] A third commenter states that the standard is designed to assure that the rule is rarely invoked, but does not believe it would prevent arbitrators from making an unnecessary and wrongly-based referral.[41] In response, FINRA states that the reasonable belief standard is appropriate for arbitrators because it would allow arbitrators to use their judgment, based on their assessment of the facts, evidence, and testimony, when making decisions during an arbitration.[42] Further, FINRA agrees to provide training for arbitrators on the mid-case referral rule and how it should be applied.[43]

One commenter, who supports the standard for referral as well as FINRA's proposed training, states that the standard, along with the training, should help prevent arbitrators from making unnecessary mid-case referrals, and facilitate a smoother transition for them to learn how to apply the rule.[44] FINRA agrees, and, believes the proposed standard is appropriate and should remain unchanged.[45]

One commenter suggests that FINRA eliminate the proposed provision of the rule that directs an arbitrator to delay a referral if a case is nearing completion until the case concludes if, in the arbitrator's judgment, investor protection will not be materially compromised by this delay. [46] This commenter believes the phrase ''nearing completion'' in the proposed rule text is vague and would invite inconsistent interpretation.[47] In response, FINRA states that this option to delay a referral permits arbitrators to protect a party from the effects that a mid-case referral could have on a person's case, if the facts and circumstances support waiting until the case concludes, and that such a result could provide protections to investors in the arbitration process.[48] FINRA also states that this provision provides additional guidance to arbitrators as to when it is appropriate to make a mid-case referral.[49] Thus, FINRA declines to make the commenters' suggested changes.

*D. Whether Partial Amendment No. 1 Ameliorates Potential Adverse Effects on Claimants*

Partial Amendment No. 1 requires that a party file a recusal request for the referring arbitrator no later than three days after the Director notifies the parties of the referral, or forfeit the right

[25] FINRA Letter at 4, incorporating by reference May Response at 12–13.

[26] FINRA Letter at 5, citing Rule 12902(c) and Rule 13902(c).

[27] FINRA Letter at 5, incorporating by reference May Response at 11–12.

[28] FINRA Letter at 5, incorporating by reference May Response at 12.

[29] Id.

[30] FINRA Letter at 5, incorporating by reference May Response at 13.

[31] FINRA Letter at 5, incorporating by reference May Response at 14.

[32] FINRA Letter at 5, incorporating by reference May Response at 12–13.

[33] FINRA Letter at 5, incorporating by reference May Response at 14.

[34] FINRA Letter at 5.

[35] Caruso, Ryder, and Pace.

[36] FINRA Letter at 4.

[37] *Id.*

[38] FINRA Letter at 4–5.

[39] PIABA.

[40] Caruso.

[41] Ryder.

[42] FINRA Letter at 8, incorporating by reference May Response at 8–9.

[43] FINRA Letter at 6.

[44] Pace.

[45] FINRA Letter at 6.

[46] Friedman.

[47] *Id.*

[48] FINRA Letter at 6, incorporating by reference May Response at 5.

[49] FINRA Letter at 6.

to request recusal based on the mid-case referral. The Commission solicited comment on this amendment, and in particular whether the amendment ameliorates commenters' concerns that notifying parties of a mid-case referral could lead to adverse consequences to the claimant, including requests for recusal and challenges to an award. In response, three commenters state they do not believe Partial Amendment No. 1 will ameliorate the rule's potential adverse effects on claimants.[50]

One commenter contends that Partial Amendment No. 1 would not minimize the negative consequences of the Amended Current Proposal.[51] The commenter states that if the respondent inadvertently or purposefully fails to file a recusal request within three days of being notified about the referral, this failure would serve as basis for a subsequent motion to vacate an award.[52] One commenter indicates that Partial Amendment No. 1 does not ameliorate its concerns because the proposal contains an explicit reference to recusal.[53] This commenter argues that a mid-case referral should not provide any grounds for recusal or for a motion to vacate an award.[54] Another commenter believes that Partial Amendment No. 1 does not ameliorate its concerns about the effect that notifying the parties would have on the claimant's case, namely that a mid-case referral would result in a recusal request and a motion to vacate if the subject of the mid-case referral loses the request or case.[55] Finally, one commenter suggests that FINRA expressly state in the rule that mid-case referral is not grounds for recusal.[56]

In response, FINRA states that a party's inadvertent or deliberate failure to comply with a forum's rules, such as by not filing a recusal request within three days, is not grounds, under the Federal Arbitration Act, for vacating an arbitration award.[57]

As to commenters' suggestion that the Amended Current Proposal either creates a right to request recusal, encourages recusal motions, or that the rule should mandate the outcome of such motions, FINRA notes that a party currently may make such a request under the Codes in any arbitration case; the Amended Current Proposal does not create such a right.[58] FINRA also explains that its rules do not dictate the grounds for granting recusal requests and do not require specific decisions by arbitrators in response to such requests.[59] In response to the commenter's concern about the subject of a mid-case referral filing a motion to vacate if the request is denied or case is lost, FINRA acknowledges that such motions may occur, but notes that courts have found that an arbitrator's denying a recusal request does not provide parties with valid bias grounds on which to challenge an award.[60] FINRA believes that its current policies, procedures, and case law address the commenters' concerns and declines to amend the Amended Current Proposal.[61]

*E. Eliminating the Notice Requirement*

The Commission solicited comment regarding whether the requirement to notify parties of a mid-case referral should be eliminated. Commenters were divided, with three commenters opposing elimination,[62] and three other commenters supporting it.[63] One commenter believes that notification is consistent with the current obligations of arbitrators to provide full disclosure to help ensure fairness in the arbitration process.[64] FINRA, in response, points to the forum's policies encouraging a wide variety of arbitrator disclosures and its rules that require arbitrators to make disclosures when appointed to a FINRA arbitration, at any stage of the arbitration, or as circumstances dictate.[65] Further, FINRA also notes that, in addition to its rules and practices, case law has established a broad requirement that arbitrators make full disclosures,[66] and, that a failure to do so could provide a party with grounds to challenge an award by claiming evident partiality against the arbitrator.[67] For the reasons, FINRA declines to eliminate the notice requirement.[68]

One commenter suggests that providing the subject of a mid-case referral advance notice of a potential investigation could negatively impact subsequent criminal or regulatory investigations.[69] In particular, the commenter believes that such notice could lead to destruction of evidence and obstruction of the investigation.[70] FINRA states in response that knowledge of behavior that would warrant a mid-case referral, if revealed during a hearing, would likely not be a revelation to the alleged wrongdoer. However, the airing of such information during a hearing would serve as notice to the wrongdoer that the matter or conduct is on the verge of public exposure.[71] FINRA states that, after that, the wrongdoer could begin to engage in the behavior described by the commenter, regardless of whether a mid-case referral is made.[72] FINRA believes that, in these instances, disclosure of a mid-case referral would give regulators advance notice of a serious threat that is likely to harm investors, and, thus, permit them to take immediate action instead of waiting until the end of the case.[73] FINRA states further that if FINRA did not learn of the referral until after the case closes, there is a risk that the wrongdoer would have extra time to destroy evidence.[74]

*F. Forwarding the Mid-Case Referral to the President or Director*

Two commenters suggest removing the provision that would require forwarding the mid-case referral to the President or Director for review.[75] One commenter believes the referral could be forwarded directly to the regulatory or enforcement department of FINRA.[76] The other commenter suggests expanding the direct referral concept to include the SEC, state securities regulators, or local or federal law enforcement.[77] FINRA states that it modeled this provision after the current practice used when an arbitrator makes a post-case referral.[78] FINRA also states that the purpose of the review is to determine which FINRA division should receive the referral, and whether other divisions or regulators should be notified.[79] FINRA believes that this provision would result in an efficient use of its resources, and, thus, declines to make the suggested change.[80]

[50] PIABA, Pace, and Georgia State.
[51] PIABA.
[52] *Id.*
[53] Pace.
[54] *Id.*
[55] Georgia State.
[56] NASAA.
[57] FINRA Letter at 7 (citing 9 U.S.C. 10(a)).
[58] FINRA Letter at 7.
[59] *Id.*
[60] FINRA Letter at 4.
[61] FINRA Letter at 8.
[62] Pace, Ryder, and Friedman.
[63] Georgia State, NASAA, and Caruso.
[64] Pace.
[65] FINRA Letter at 8, incorporating by reference May Letter at 9–10.
[66] *Id.*
[67] FINRA Letter at 8.
[68] *Id.*
[69] Caruso.
[70] *Id.*
[71] FINRA Letter at 8–9.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] Friedman and NASAA.
[76] Friedman.
[77] NASAA.
[78] FINRA Letter at 9.
[79] *Id.*
[80] *Id.*

*G. Other Issues Related to the Amended Current Proposal Than Those Specifically Raised by the Commission*

1. Explicit References to Recusal

Two commenters contend that the explicit reference to recusal in the Amended Current Proposal suggests implicitly that an arbitrator could be biased after the person has heard enough evidence of wrongdoing.[81] One commenter states that finding liability based on evidence presented does not mean that the arbitrator is sufficiently biased against the wrongdoer to justify good cause for recusal.[82] Another commenter compares the proposal to the Federal laws, such as the Bankruptcy Code, which, according to the commenter, are less stringent and do not expressly provide for recusal.[83] This commenter contends that by explaining the availability of a recusal request in the Amended Current Proposal, even though it is available in other parts of the Codes, FINRA is seeking to make its rules more stringent than the Federal laws.

In response, FINRA first notes that the Amended Current Proposal does not create a right to make a recusal request, which already exists in any arbitration case.[84] Second, FINRA disagrees that the explicit reference to recusal implies potential bias on the part of an arbitrator.[85] Last, FINRA notes that the Federal laws, to which one commenter refers, relate to grounds for recusal. The reference in this rule is not about the grounds for recusal.[86] FINRA states that arbitrators are expected to make decisions based on evidence presented during a hearing, and such decisions alone have been insufficient to support a showing of evident partiality.[87]

FINRA states also that the act of making a mid-case referral is not evidence of bias, whether implied or overt.[88] The forum's rules, according to FINRA, are designed to guide parties and staff in the administration of arbitration cases. FINRA believes its rules are more effective when procedures are expressly incorporated in the arbitration rules, and that this transparency results in the efficient administration of cases and consistent application of the rules.[89]

2. Rely on Current Referral Process

Three commenters suggest that FINRA rely on the current process for referring actions or matters for further investigation.[90] These commenters believe FINRA should use this process to detect wrongdoing rather than rely on the arbitrators to enforce the rules and, thus, create issues of bias and impartiality.[91] FINRA, in response, notes that when an arbitration claim is filed, FINRA's Central Review Group (''CRG'') receives a copy of statements of claims and pleadings and reviews them to determine if referral to FINRA Enforcement is warranted.[92] FINRA states also that the enforcement procedures conducted by CRG prior to an arbitration hearing would not be an effective substitute for arbitrator action taken during a hearing based on evidence presented.[93] FINRA notes further that analysis by FINRA Enforcement employees conducted on the claims and pleadings permit FINRA to monitor and analyze volumes of data through various market data systems to detect evidence of wrongdoing.[94] FINRA states, however, that expanding these Enforcement procedures would not necessarily provide the same benefits as having earlier notification by arbitrators, who may learn of a serious threat during the course of a hearing.[95] For these reasons FINRA declines to expand its enforcement procedures as an alternative to the Amended Current Proposal.[96]

3. No Evidence To Support the Need for the Amended Current Proposal

Three commenters contend that FINRA did not provide evidence to support the need for the Amended Current Proposal or FINRA's assertion that it would prevent ongoing fraud or losses for investors.[97] FINRA responds that its assessment of its regulatory structure, as well as its determination that its rules would be strengthened by closing a gap that currently permits arbitrators to make post-case referrals only, justify the need for the Amended Current Proposal.[98] FINRA believes that its assessment of the issue addresses this concern.[99]

4. Amended Current Proposal May Compromise an Arbitrator's Role

Three commenters express concern that the Amended Current Proposal would deputize arbitrators as examiners, who would be required to evaluate and report rule violations.[100] They believe this role would conflict with an arbitrator's duty, which is to serve as an arbiter of a dispute to achieve the best resolution in a manner that serves the interests of the parties.[101] FINRA responds that its rules require arbitrators to be impartial and free from conflicts that could hinder their ability to decide a case fairly.[102] FINRA cites case law in support of its position that arbitrators would not compromise their neutrality by making a mid-case referral, because, in doing so, arbitrators would be performing one of the duties that is expected of arbitrators.[103] FINRA believes that its current rules, case law, and the Code of Ethics for Arbitrators in Commercial Disputes address these concerns.[104]

5. Monitor Effectiveness and Provide Statistics to the Commission

Two commenters recommend that FINRA monitor the effects of the Amended Current Proposal on individual investors and disclose statistics periodically to the Commission on the number of mid-case referrals that arbitrators make.[105] FINRA notes that it has implemented procedures to track post-case referrals and says that it will update its procedures to track the number of mid-case referrals made under the Amended Current Proposal and would provide this data to the Commission a year after the effective date of the proposed rules, and thereafter at the Commission's request.[106] FINRA would also monitor the effects of the Amended Current Proposal to determine whether further action would be necessary.[107]

**IV. Discussion**

After carefully considering the Amended Current Proposal, the comments submitted, and FINRA's response to the comments, the Commission finds that the Amended Current Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

[81] Pace and Malecki.
[82] Pace.
[83] Malecki.
[84] FINRA Letter at 10.
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] FINRA Letter at 10.
[90] Georgia State, PIABA, and Malecki.
[91] Georgia State, PIABA, and Malecki.
[92] FINRA Letter at 10.
[93] FINRA Letter at 10–11.
[94] FINRA Letter at 11.
[95] FINRA Letter at 11, citing May Response at 7–8.
[96] FINRA Letter at 11.
[97] Georgia State, Malecki, and Caruso.
[98] FINRA Letter at 11.
[99] *Id.*
[100] Ryder, Gleizer, and Malecki.
[101] *Id.*
[102] FINRA Letter at 11–12.
[103] FINRA Letter at 12.
[104] *Id.*
[105] NASAA and Pace.
[106] FINRA Letter at 12.
[107] *Id.*

a national securities association.[108] In particular, the Commission finds that the Amended Current Proposal is consistent with Section 15A(b)(6) of the Act,[109] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The rule will permit arbitrators to refer to FINRA any matter or conduct that an arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken. The Commission believes that allowing arbitrators to voice a serious concern under extremely limited circumstances provides a necessary means of alerting FINRA senior staff should an arbitrator have reason to believe during the pendency of an arbitration that there is a threat of serious ongoing or imminent harm. This notification would provide FINRA with earlier warning of potentially harmful conduct than might otherwise occur, and allow FINRA to better protect investors by intervening more quickly under the appropriate circumstances.

As FINRA acknowledges, the rule may cause delays and increase costs for a claimant in some instances. However, the rule is designed in a way that should make its invocation rare, limiting such negative effects. First, the standard for reporting is high. Because the rule limits mid-case referrals to situations where the arbitrator has reason to believe that a matter or conduct poses a serious threat likely to harm investors unless immediate action is taken, it should be rarely invoked. Second, permitting mid-case referrals only for matters or conduct unearthed during the proceedings—and not on the basis of allegations in the pleadings—means that an arbitrator will need to make a mid-case referral decision only in cases when FINRA might not otherwise know about the potentially harmful conduct. Third, the proposal allows an arbitrator to delay making a mid-case referral when, in the arbitrator's judgment, investor protection would not be materially compromised, further reducing the number of times the rule is invoked. Fourth, as amended, the rule limits recusal requests based on the referral itself to three days after the parties are notified of the recusal, limiting the opportunity for recusal requests and the potential strategic delay of a recusal request.

Even in those rare instances where the rule is invoked and there is potential harm to an investor whose case involves a referral, such as a delay or additional costs, FINRA has identified ways that such harm can be limited. First, allocation of costs by an arbitrator or panel can take into account relative fault of the parties. Second, FINRA will bear certain costs itself, such as paying a replacement arbitrator to review the hearing record and to learn about the arbitration up to the point where the case was interrupted. Third, FINRA has identified ways in which the parties themselves can help minimize costs and delays, such as by agreeing to rehear only key witnesses, or stipulating to summaries of prior testimony.

While this would not eliminate every potential cost or dilatory burden on an investor whose case may be adversely affected by a referral, we believe FINRA has identified ways those harms to parties in arbitration can be mitigated or minimized while better protecting investors and the public interest.

Moreover, notifying parties of the fact of a referral can help to safeguard the fairness of the arbitration forum by keeping the parties equally informed, consistent with current arbitration practices. Also, having the Director or President serve as an intake point for any referrals would result in an efficient review and assignment process, and could help direct appropriate resources toward potentially harmful conduct as quickly as possible. In addition, by requiring requests for recusal to be made within three days of being notified, the rule will limit the uncertainty associated with whether a mid-case referral will result in an eventual recusal request. The Commission notes also that a recusal request can still be made for any reason at any time for reasons other than the referral request itself.

In light of the potential gravity of the misconduct that may be reported, and because we believe the potential negative effects will be relatively limited and partially mitigated by the operation of other FINRA rules, we believe the Amended Current Proposal is consistent with the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

We appreciate the concerns of some commenters that mid-case referrals may disrupt or delay some arbitration proceedings. Therefore, as some commenters have suggested, and FINRA has agreed, FINRA will gather statistics and report to the Commission, for the period of one year from the effective date of this rule change and for later periods upon request, on the number of cases in which an arbitrator made a mid-case referral. FINRA will also monitor the effects of the Amended Current Proposal to determine whether further action is necessary.

## V. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act [110] that the proposed rule change (SR–FINRA–2014–0005), as modified by Partial Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[111]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24420 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

[108] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[109] 15 U.S.C. 78o–3(b)(6).

[110] 15 U.S.C. 78s(b)(2).

[111] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73318; File No. SR–ISE–2014–49]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 723 to Add a New PIM ISO Order Type

October 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2014 the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to add a new PIM ISO order type. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's rules to add a new PIM ISO order type.

The Price Improvement Mechanism (''PIM'') is a process that allows Electronic Access Members (''EAM'') to provide price improvement opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a ''Crossing Transaction''). A Crossing Transaction is comprised of the order the EAM represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. A Crossing Transaction must be entered only at a price that is equal to or better than the national best bid or offer (''NBBO'') and better than the limit order or quote on the ISE orderbook on the same side of the Agency Order.

An intermarket sweep order (''ISO'') is defined in Rule 1900(h) as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by Members at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Rule 1900.[3] ISOs are immediately executable within the Exchange's options trading system or cancelled, and shall not be eligible for routing as set out in Rule 1900. Simultaneously with the routing of an ISO to the Exchange's options trading system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Protected Offer in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

The Exchange proposes to implement a PIM ISO order type (''PIM ISO'') that will allow the submission of an ISO into the PIM. Specifically, a PIM ISO is the transmission of two orders for crossing pursuant to Rule 723 without regard for better priced Protected Bids or Protected Offers because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order, meaning that any execution(s) obtained from the away side will be given to the agency side of the order.

The Exchange will accept a PIM ISO provided the order adheres to the current PIM order acceptance requirements outlined above, but without regard to the NBBO. The Exchange will execute the PIM ISO in the same manner that it currently executes PIM orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO order. There is no other impact to PIM functionality. Specifically, liquidity present at the end of the PIM auction will continue to be included in the PIM auction as it is with PIM orders not marked as ISOs.

The Exchange will announce the implementation of this order type in an information circular.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change promotes just and equitable principles or trade and removes impediments to a free and open market in that it promotes competition, as described below. Specifically, the proposal allows the Exchange to offer its members an order type that is already offered by another exchange.[6] In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PIM. Finally, the proposal does not unfairly discriminate among members because all Members are eligible to submit a PIM ISO order.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to adopt a PIM ISO order type is pro-competitive because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PIM. The proposed rule change will also allow the Exchange to compete with other markets that already allow an ISO order type in their price improvement mechanisms.[7]

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on

[3] Under Rule 1900, a ''Protected Quotation'' includes a Protected Bid or Protected Offer. A ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. ''Bid'' or ''Offer'' means the bid price or the offer price communicated by a member of an Eligible Exchange to any broker or dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. The ''OPRA Plan'' means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended. ''Best Bid'' and ''Best Offer'' mean the highest priced Bid and the lowest priced Offer. Finally, ''Eligible Exchange'' means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Act that: (i) Is a Participant Exchange in The Options Clearing Corporation (''OCC'') (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan; and (iii) if the national securities exchange is not a party to the OPRA Plan, is a participant in another plan approved by the Commission providing for comparable trade-through and locked and crossed market protection.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* NASDAQ OMX PHLX LLC (''PHLX'') Rule 1080, Commentary .09.

[7] *Id.*

this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2014–49 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–49. 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–ISE–2014–49 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24419 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73321; File No. SR–NYSEArca–2014–113]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting Changes in the Concentration Policies of ARK Innovation ETF and ARK Genomic Revolution ETF as Well as a Change in the Name of the ARK Genomic Revolution ETF to the ARK Genomic Revolution Multi-Sector ETF

October 8, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect changes in the concentration policies of ARK Innovation ETF and ARK Genomic Revolution ETF, as well as a change in the name of the ARK Genomic Revolution ETF to the ARK Genomic Revolution Multi-Sector ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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

The Commission has approved listing and trading on the Exchange of shares (''Shares'') of the ARK Innovation ETF and ARK Genomic Revolution ETF, (each, a ''Fund'' and collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] Shares of the Funds have not commenced trading on the Exchange.

The Funds are series of the ARK ETF Trust (''Trust''). The Shares are offered by the Trust, which is registered with the Commission as an open-end management investment company.[5] The investment adviser to the Funds is ARK Investment Management LLC (''Adviser'').

In this proposed rule change, the Exchange proposes to reflect a change to the Funds' concentration policies as well as the descriptions of the health care sector, which the Adviser will utilize to implement each Fund's investment objective, as described below.[6]

ARK Genomic Revolution Multi-Sector ETF

As described in the Prior Release, the investment objective of the ARK Genomic Revolution Multi-Sector ETF[7] is long-term growth of capital. The Fund will invest under normal circumstances[8] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of genomics.[9] As stated in the Prior Release, the Fund may invest its remaining assets in other securities and financial instruments, as described in the Prior Release.

The Prior Release stated that the Fund will be concentrated in issuers in any industry or group of industries in the health care sector. The Adviser wishes to supplement the description of the Fund's concentration policy to state that the Fund will be concentrated in issuers in any industry or group of industries in the health care sector, including, in particular, issuers having their principal business activities in the biotechnology industry.

The Prior Release stated that the issuers in the health care sector include manufacturers and distributors of health care equipment and supplies, owners and operators of health care facilities, health maintenance organizations and managed health care plans, health care providers and issuers that provide services to health care providers. The Adviser wishes to revise the description of the health care sector to state that, while the health care sector includes the biotechnology industry, other industries in the health care sector include medical laboratories and research and drug manufacturers.

ARK Innovation ETF

As described in the Prior Release, the ARK Innovation ETF's investment objective is long-term growth of capital. The Fund will invest under normal circumstances[10] primarily (at least 65% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation.[11] As stated in the Prior Release, the Fund may invest its remaining assets in other securities and financial instruments, as described in the Prior Release.

The Prior Release stated that the Fund will be concentrated in issuers in any industry or group of industries in the industrials and information technology sectors. The Adviser wishes to revise the description of the Fund's concentration policy to state that it will not be concentrated in any industry.

Other Investments

The Prior Release stated that each Fund will be classified as a ''non-diversified'' investment company under the 1940 Act[12] and therefore may concentrate its investments in any particular industry or group of industries, such that: (i) ARK Genomic Revolution Multi-Sector ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector; and (ii) ARK Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, the industrials sector, the information technology sector, or the telecommunications services sector.[13]

The Adviser wishes to revise the description of the Funds' concentration to state that each Fund will be classified as a ''non-diversified'' investment company under the 1940 Act[14] and that neither of the Funds will be concentrated in any industry, except that ARK Genomic Revolution Multi-Sector ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, including issuers having their principal business activities in the biotechnology industry.[15]

The Adviser represents that there is no change to the Funds' investment

[4] *See* Securities Exchange Act Release No. 72641 (July 18, 2014), 79 FR 43108 (July 24, 2014) (SR–NYSEArca–2014–64) (order approving listing and trading on the Exchange of the ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF under NYSE Arca Equities Rule 8.600) (''Prior Order''). *See also* Securities Exchange Act Release No. 72314 (June 4, 2014), 79 FR 33229 (June 10, 2014) (SR–NYSEArca–2014–64) (''Prior Notice,'' and together with the Prior Order, the ''Prior Release'').

[5] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On September 11, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333–191019 and 811–22883) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 31009 (April 7, 2014) (File No. 812–14172) (''Exemptive Order'').

[6] The changes described herein will be filed with the Commission in an amendment to the Funds' Registration Statement. *See* note 5, *supra.* The Adviser represents that it will manage the Funds in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

[7] The name of the ARK Genomic Revolution Multi-Sector ETF has been changed from the ARK Genomic Revolution ETF.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] As described in the Prior Release, companies relevant to this theme are those that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments, improvements and advancements in genetics into their business, such as by offering new products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

[10] *See* note 8, *supra.*

[11] As described in the Prior Release, companies relevant to this theme are those that rely on or benefit from the development of new products or services, technological improvements and advancements in scientific research relating to the areas of genomics, industrial innovation or the increased use of shared technology, infrastructure, and services.

[12] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[13] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[14] *See* note 12, *supra.*

[15] *See* note 13, *supra.*

objectives. The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the Adviser represents that there are no changes to the Funds' investment objectives and the proposed changes will clarify the Funds' concentration policies and the descriptions of the health care sector. There are no changes to the Funds' statements regarding how their assets primarily will be invested in normal circumstances and how they may invest remaining assets.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the change in the name of the ARK Genomic Revolution Multi-Sector ETF is designed to clarify that such Fund invests, on a multi-sector basis, in genomic revolution companies.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing requirements in NYSE Arca Equities Rule 8.600. The Adviser represents that there is no change to the Funds' investment objectives. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

[16] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that hold equity securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 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.

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2014–113 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2014–113 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–24422 Filed 10–14–14; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #14154 and #14155]**

### New Mexico Disaster #NM–00046

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–4197–DR), dated 10/06/2014.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 07/27/2014 through 08/05/2014.

*Effective Date:* 10/06/2014.

*Physical Loan Application Deadline Date:* 12/05/2014.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/06/2015.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/06/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Guadalupe, Rio Arriba, San Miguel, and the Pueblo of Acoma.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations With Credit Available Elsewhere ... | 2.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.625 |
| *For Economic Injury:* | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.625 |

The number assigned to this disaster for physical damage is 14154B and for economic injury is 14155B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2014–24523 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration (''SBA'') under Section 309 of the Small Business Investment Act of 1958, as amended and Section 107.1900 of the SBA Rules and Regulations, SBA by this notice declares null and void the license to function as a small business investment company under Small Business Investment Company License No. 04/04–0235 issued to Hickory Venture Capital Corporation.

United States Small Business Administration.

Dated: October 2, 2014.

**Javier E. Saade,**

*Associate Administrator for Investment and Innovation.*

[FR Doc. 2014–24490 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 01/71–0375 issued to Saugatuck Capital Company IV SBIC, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: September 17, 2014.

**Javier E. Saade,**

*Associate Administrator for Investment.*

[FR Doc. 2014–24511 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 06/06–0312 issued to Retail and Restaurant Growth Capital, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: September 25, 2014.

**Javier E. Saade,**

*Associate Administrator for Investment.*

[FR Doc. 2014–24508 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0578 issued to Hudson Venture Partners, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: September 25, 2014.

**Javier E. Saade,**

*Associate Administrator for Investment.*

[FR Doc. 2014–24505 Filed 10–14–14; 8:45 am]

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## DEPARTMENT OF STATE

**[Public Notice 8915]**

### Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2:00 p.m. to 3:30 p.m., on Tuesday, October 28, 2014, in Room 4477 of the Harry S. Truman Building at the U.S. Department of State, 2201 C

Street NW., Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic and Business Affairs, Charles H. Rivkin, and Committee Chair Ted Kassinger. The ACIEP serves the U.S. government in a solely advisory capacity, and provides advice concerning topics in international economic policy. The October 28 meeting topic will be the U.S.-Africa trade and investment relationship.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should *provide* their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID, U.S. military ID, passport [country], or driver's license [state]), date of birth, and citizenship, to Gregory Maggio by *email (MaggioGF@state.gov), fax: (202) 647–5953, or telephone (202) 647–2231. This information must be provided no later than Tuesday, October 21.* All persons wishing to attend the meeting *must use the 21st Street entrance (not the ''jogger's entrance'' or the C Street entrance) of the State Department.* Although, there is currently construction at the 21st Street entrance, it is still open. Because of escorting requirements, non-U.S. government attendees should plan to *arrive no later than 15 minutes before the meeting begins.* Requests for reasonable accommodation should be made to Gregory Maggio *before Tuesday, October 21.* Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

If you have questions, please contact Gregory Maggio, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic and Business Affairs, at tel: (202) 647–2231 or *MaggioGF@state.gov.*

Dated: October 8, 2014.

**Gregory F. Maggio,**

*Designated Federal Officer, U.S. Department of State.*

[FR Doc. 2014–24529 Filed 10–14–14; 8:45 am]

**BILLING CODE 4710–07–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Agreement on Government Procurement: Effective Date of Amendments for the Netherlands With Respect to Aruba

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** For the purpose of U.S. Government procurement that is covered by Title III of the Trade Agreements Act of 1979, the effective date of the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012, World Trade Organization (WTO), for the Netherlands with respect to Aruba (Aruba) is October 31, 2014.

**DATES:** *Effective Date:* October 31, 2014.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street NW., Washington DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Scott Pietan ((202) 395–9646), Director of International Procurement Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC 20508.

**SUPPLEMENTARY INFORMATION:** Executive Order 12260 (December 31, 1980) implements the 1979 and 1994 Agreement on Government Procurement, pursuant to Title III of the Trade Agreements Act of 1979 as amended (19 U.S.C. 2511–2518). In section 1–201 of Executive Order 12260, the President delegated to the United States Trade Representative the functions vested in the President by sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516).

The Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012 (''Protocol''), entered into force on April 6, 2014 for the United States and the following Parties: Canada, Chinese Taipei, Hong Kong, Israel, Liechtenstein, Norway, European Union, Iceland, and Singapore. See **Federal Register** 2014–05719. The Protocol entered into force on April 16, 2014 for Japan. See **Federal Register** 2014–08927.

The Protocol provides that following its entry into force, the Protocol will enter into force for each additional Party to the 1994 Agreement 30 days following the date on which the Party deposits its instrument of acceptance. On June 4, 2014, Aruba deposited its instrument of acceptance to the Protocol. Effective October 31, 2014 for Aruba, all references in Title III of the Trade Agreement Act of 1979 and in Executive Order 12260 to the Agreement on Government Procurement shall refer to the 1994 Agreement as amended by the Protocol.

With respect to those Parties which have not deposited their instruments of acceptance, all references in Title III of the Trade Agreement Act of 1979 and in Executive Order 12260 to the Agreement on Government Procurement shall continue to refer to the 1994 Agreement until 30 days following the deposit by such Party of its instrument of acceptance of the Protocol.

For the full text of the Government Procurement Agreement as amended by the Protocol and the new annexes that set out the procurement covered by all of the Government Procurement Agreement Parties, see *GPA–113: http://www.ustr.gov/sites/default/files/GPA%20113%20Decision%20on%20the%20outcomes%20of%20the%20negotiations%20under%20Article%20XXIV%207.pdf.*

**Michael B.G. Froman,**

*United States Trade Representative.*

[FR Doc. 2014–24415 Filed 10–14–14; 8:45 am]

**BILLING CODE 3290–F5–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Tier 2 Environmental Impact Statement: Morgan, Johnson and Marion Counties, Indiana

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public about the resumption of environmental activities leading to a Tier 2 Environmental Impact Statement (EIS) for the proposed Section 6 of I–69, located in Morgan, Johnson and Marion Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway. This Notice of Intent (NOI) updates the NOI published in the April 29, 2004 **Federal Register**. The purpose of this NOI is to advise that pursuant to the March 24, 2004 Tier 1 Record of Decision (ROD) for this project, a range of alternatives

will be evaluated which may include alternatives outside of the corridor selected in the Tier 1 ROD. All alternatives evaluated will connect Section 5 of I–69 in Martinsville with I–465 in Indianapolis.

**FOR FURTHER INFORMATION CONTACT:** Michelle Allen, Planning and Environmental Specialist, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–7344 or Laura Hilden, Director of Environmental Services, Indiana Department of Transportation, 100 North Senate Avenue, Room N642, Indianapolis, Indiana 46204.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), began in 2004 to prepare a Tier 2 EIS on a proposal to build Section 6 of the Evansville-to-Indianapolis I–69 highway. Section 6 is located in Morgan, Johnson and Marion Counties, Indiana. The NOI for these activities was published in the **Federal Register** on April 29, 2004. The proposed action described in that NOI involved the construction of an interstate highway generally following State Route (SR) 37 from SR 39 south of Martinsville and proceeding north for approximately 25.9 miles to Interstate 465 in Indianapolis.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU 3.

The FHWA approved the ROD on the Tier 1 Final EIS for the I–69 SIU 3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis. The Tier 1 ROD identified six (6) Sections of Independent Utility that would be advanced to Tier 2 studies.

Tier 2 NEPA studies have concluded in Sections 1, 2, 3, 4, and 5. Sections 1 through 3 (connecting Evansville, Oakland City, Washington, and Crane Naval Surface Warfare Center) are completed and open to traffic. Section 4 (connecting Crane Naval Surface Warfare Center and Bloomington) is under construction, and is expected to be open to traffic in 2015. Section 5 (connecting Bloomington and Martinsville) is under construction and major construction activities associated with Section 5 are anticipated to be complete by the end of 2016.

The 2004 NOI for Section 6 stated that alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, the Tier 1 ROD permitted alternatives outside the selected corridor to be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Due to the potential for increased impacts and/or changed conditions, the resumed Tier 2 studies in Section 6 may consider alternatives outside the selected Tier 1 corridor. All alternatives considered will connect Section 5 of I–69 in Martinsville with I–465 in Indianapolis.

Scoping coordination occurred with appropriate state and federal resource agencies at the outset of Tier 2 studies in Section 6. Opportunities also were afforded the public to participate in the scoping process. These scoping activities resulted in the identification of preliminary alternatives within the Section 6 corridor between Martinsville and Indianapolis. When Section 6 studies resume, these preliminary alternatives will remain under consideration for the study.

With the resumption of Section 6 studies, the appropriate federal and state resource agencies will be included in additional scoping activities. These scoping activities will identify additional alternatives connecting Section 5 in Martinsville with I–465 in Indianapolis. These alternatives may be outside the Tier 1 corridor for much or most of their length. The public will also have opportunities to comment during this scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address Section 6 will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

Interchange location and preliminary design, access to abutting properties, and location of grade separations with intersecting roads will be determined in this Tier 2 EIS.

The range of alternatives appropriate for the Section 6 Tier 2 EIS will be determined in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 7, 2014.

**Richard J. Marquis,**

*Division Administrator, Federal Highway Administration, Indianapolis, Indiana.*

[FR Doc. 2014–24453 Filed 10–14–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Vehicle-to-Vehicle Security Credential Management System; Request for Information

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice—Request for Information (RFI).

**SUMMARY:** On August 18, 2014, NHTSA announced an advance notice of proposed rulemaking (ANPRM) for V2V communications, and concurrently released an extensive research report on the technology, as the formal start to the regulatory process. This notice, a Request for Information (RFI), seeks information related to the security system that will support V2V operations but will not be established by NHTSA regulation. This RFI will help the agency: (1) Become aware of private entities that may have an interest in exploring the possibility of developing and/or operating components of a V2V Security Credential Management System (SCMS); (2) Receive responses to the questions posed about the establishment of an SCMS provided in the last section of this RFI; and (3) Obtain feedback, expressions of interest, and comments from all interested public, private, and academic entities on any aspect of the SCMS.

The Background section of this RFI provides an overview of the technical and organizational aspects of the current V2V security design, of which the SCMS is an integral part. The SCMS encompasses all technical,

organizational, and operational aspects of the V2V security system that is needed to support trusted, safe/secure V2V communications and to protect driver privacy appropriately. The primary managerial component of the envisioned SCMS (called the SCMS Manager) would be responsible for managing all other component entities (called Certificate Management Entities or CMEs) which support the different V2V security functions that, together, ensure the operational integrity of the total system.

**DATES:** Responses to this RFI should be submitted by 11:59 p.m., E.T., on December 15, 2014.

**ADDRESSES:** *Responses:* You may submit responses, identified by Docket No. NHTSA–2014–0023, by any of the following methods:

Internet: To submit responses electronically, go to *http://www.regulations.gov* and follow the online instructions for submitting comments. Alternatively, go to *http://www.safercar.gov/v2v/index.html* and click the yellow button labeled ''Submit responses on the SCMS Request for Information'' to go directly to the docket in regulations.gov.

Facsimile: Written responses may be faxed to 1–202–493–2251.

Mail: Send responses to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: If you plan to submit written responses by hand or by courier, please do so at U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. You may call the Docket Management Facility at 1–800–647–5527.

**FOR FURTHER INFORMATION CONTACT:** For questions about the program discussed herein, contact John Harding, NHTSA, Intelligent Technologies Research Division, 202–366–5665, *john.harding@dot.gov.* For legal questions, interpretations and counsel, please contact Rebecca Yoon, Office of the Chief Counsel, 202–366–8909, *rebecca.yoon@dot.gov,* 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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## I. Purpose of This Notice

NHTSA seeks responses from parties potentially interested in establishing and operating a V2V SCMS. Respondents can express interest, provide comments concerning the establishment of an SCMS, provide information concerning security approaches for a V2V environment, and discuss the technical and organizational aspects of the SCMS. While comments are welcome on any area of the RFI, NHTSA is particularly interested in responses related to interest in establishing an SCMS, including but not limited to some or all of the legally distinct CMEs that make up the SCMS, along with responses to the questions detailed in the Summary of Questions section of this RFI.

## II. RFI Guidelines

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. This RFI notice is NOT a solicitation for proposals, applications, proposal abstracts, or quotations. This RFI notice is not to be construed as a commitment on the part of the Government to award a contract or grant, nor does the Government intend to directly pay for any information or responses submitted as a result of this RFI notice.

The Government prefers that submissions NOT include any information that might be considered proprietary or confidential. The Government intends to publicly release a summary of responses to this RFI. Such a summary may identify the number and types of respondents (e.g., public agency, private entity, or academic institution). If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter, as specified in our confidential business information regulation (49 CFR part 512.), that delineates that information.

Responses should clearly identify the name(s) of the responding organization(s) or individual(s) and a designated point of contact, to include address, email, and phone number.

## III. Background on V2V and the Agency's Actions Thus Far

The U.S. Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) announced on February 3, 2014, that it will begin taking steps to enable vehicle-to-vehicle (V2V) communication technology for light vehicles. This technology would improve safety by enabling nearby V2V devices to ''talk'' to each other using dedicated short range communication (DSRC) to exchange, up to ten times per second, basic safety data such as speed and position. This data could then be used by vehicles to warn drivers of impending danger from other vehicles, and ultimately could help avoid many crashes altogether.

On August 18, 2014, NHTSA announced an advance notice of proposed rulemaking (ANPRM) for V2V communications, and concurrently released an extensive research report on the technology. The research report contains a comprehensive discussion of the agency's current vision for an SCMS in terms of governance, design, and potential costs. The ANPRM contains a number of SCMS and security-related questions on which the agency is seeking responses, which may also assist those responding to this RFI. Although we provide a brief summary below, NHTSA believes that respondents will be in the best position to respond comprehensively to this RFI if they also review the research report and the questions in the ANPRM. Responses to this RFI will be maximally helpful to the agency if they are focused on the specific issue of commenters' potential interest in operating an SCMS and how they might approach doing so, as well as the other points raised specifically in this RFI. Responses to the RFI will be collected in Docket No. NHTSA–2014–0024. NHTSA requests

that respondents who wish to address V2V issues more broadly, including those issues related to SCMS and security beyond what is discussed in this RFI, please comment to the ANPRM and research report at Docket No. NHTSA–2014–0022. The response period for the ANPRM closes on October 20, 2014.

In order to function safely, a V2V system must have trusted communication between V2V devices and message content that is protected from outside interference. In order to create the required environment of trust, a V2V system must include security infrastructure to secure each message, as well as a communications network to convey security and related information from vehicles to the entities providing system security (and vice versa).

During the Connected Vehicle Safety Pilot Model Deployment (i.e., Model Deployment), concluded in the Ann Arbor, MI area in 2013 and 2014, V2V devices installed in roughly 2,800 light vehicles were able to transmit and receive messages from one another using security credentials supplied by a prototype security management system. This system was based on a design jointly developed by DOT and the Crash Avoidance Metrics Partnership (CAMP) Vehicle Safety Communications 3 (VSC3) Consortium, a consortium of eight automobile manufacturers. The security system successfully provided trusted and secure communications among the equipped vehicles deployed for Model Deployment. This was accomplished with relatively few problems given the magnitude of this first-of-its-kind demonstration project.

In the future, however, if the agency mandates V2V communications devices for all new light vehicles, a much larger security infrastructure and communications network would be necessary to provide that required trust. At this point, DOT and NHTSA anticipate that private entities will create, fund, and manage the security and communications components of a V2V system. While NHTSA has identified several potential types of entities that might be interested in participating in a V2V security system, NHTSA has not identified any private entities that have expressed a willingness to do so.

## IV. Security Overview and Operational Characteristics

In this section, the agency provides an overview of the discussion of communications security issues associated with V2V, including the nature of the SCMS, as well as a discussion of the agency's legal relationship with a private SCMS system. For a complete discussion of these issues, please see Part IX of the research report.

### *A. Technical Aspects*

In contrast to other types of safety technologies currently widespread, or increasingly present, in the vehicle fleet, safety applications based on V2V are cooperative—meaning that participating vehicles must exchange (i.e. broadcast and receive) and analyze data in real-time. This cooperative exchange of vehicle to vehicle messages, which represents a new opportunity for vehicle safety, supplies the information needed by a vehicle to prepare driver alerts and warnings about potential hazardous situations. It also gives vehicles the ability to use that information to generate information about mobility and environmental conditions, and communicate with road-side infrastructure. However, a cooperative system can only work when participants in the system are able to trust the alerts and warnings issued by their V2V devices that are based, at least in part, upon information received from other V2V devices.

For this reason, a primary requirement for a V2V system is ''trust''—a requirement that thousands of data messages will be authenticated, in real-time, as being unaltered and coming from a trusted source. It is also a critical element in achieving ''interoperability''—so that vehicles of different make/model/year will be able to talk to each other and exchange trusted data without pre-existing agreements or altering vehicle designs. In furtherance of system-wide trust, a V2V system also needs to be secure against internal and external threats or attacks.

Thus, the three primary elements of the V2V system that require security are the:

- V2V communications (the medium, the messages/data, the certificates, and any other element that supports message exchange);
- V2V devices; and
- V2V security system itself (through organizational, operational, and physical controls).

In addition to these requirements, the V2V system needs to be: (1) Ultimately scalable to meet the needs of over 350 million users across the nation (such as light vehicles, heavy vehicles, motorcycles, pedestrians, bicycles, etc.), (2) extendable to accommodate other types of applications (such as V2I mobility, traffic management, and environmental applications), and (3) financially sustainable to ensure its continued operation over time.

In considering which security technologies would most effectively provide trusted message exchange and secure communications for safety-critical applications, DOT and NHTSA, along with CAMP security experts, compared three different security approaches —symmetric encryption, group signature, and asymmetric public key infrastructure (PKI). When assessing these alternatives, the V2V research team was looking for an option that:

- Protects driver privacy appropriately by not requiring participants to disclose their identities;
- Works quickly enough to fit within the bandwidth constraints of DSRC and the expected processing constraints of the V2V on-board equipment;
- Does not require over-the-air bytes for security that exceed the constraints of DSRC bandwidth and size of the Basic Safety Message (BSM) in the message payload; and
- Supports non-repudiation.[1]

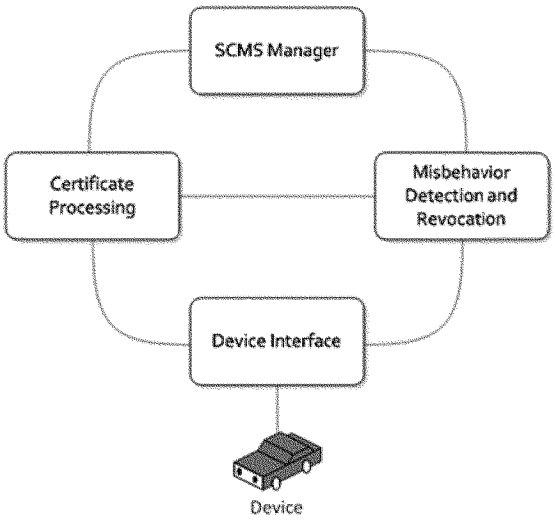
After considering the characteristics of each security approach, the research development team preliminarily determined that the PKI option (asymmetric key) using the signature method offered the most effective approach to achieving communications security and trusted messaging for a very large set of users. For this reason, the research team chose that approach to secure the BSM that is at the center of the current V2V system design. Significantly, the effectiveness of this approach is highly dependent upon technical design decisions relating to *how* the approach is deployed in a given environment.

### *B. V2V Security Design Concept: Functions, Components, Communications*

Figure 1 presents the high level, basic components/functions of the V2V security system. They are similar to the basic functions of any Public Key Infrastructure (PKI) security system.

[1] Non-repudiation in public-key technology is traditionally defined as the inability of a person (to whom a public key has been bound by a recognized certification authority through issuance of a public key certificate) to deny having made some digital signature.

## Figure 1 Simplified V2V Security System




For reference, Table 1 contains a list of abbreviations used to describe the system discussed in more detail below:

TABLE 1—SECURITY RELATED ACRONYMS

| Acronym | Definition |
|---|---|
| BSM | basic safety message. |
| CA | certificate authority. |
| CME | certificate management entity. |
| CP | certificate policy. |
| CRL | certificate revocation list. |
| DCA | device configuration manager. |
| ECA | enrollment certificate authority. |

TABLE 1—SECURITY RELATED ACRONYMS—Continued

| Acronym | Definition |
|---|---|
| FIPS | Federal Information Processing Standards. |
| LA | linkage authority. |
| LOP | location obscurer proxy. |
| MA | misbehavior authority. |
| PCA | pseudonym certificate authority. |
| PII | personally identifiable information. |
| PKI | public-key infrastructure. |
| RA | registration authority. |
| SCMS | security credential management system. |

Figure 2 illustrates multiple security and privacy operations and components that DOT envisions for a V2V system to accomplish the distribution of certificates in a way that is trusted and that protects consumers' privacy. The fundamental operations are indicated as (1) Overall Management, (2) Registration and Enrollment, (3) Certificate Management and (4) Misbehavior Management. The text following this illustration contains definitions for each component.

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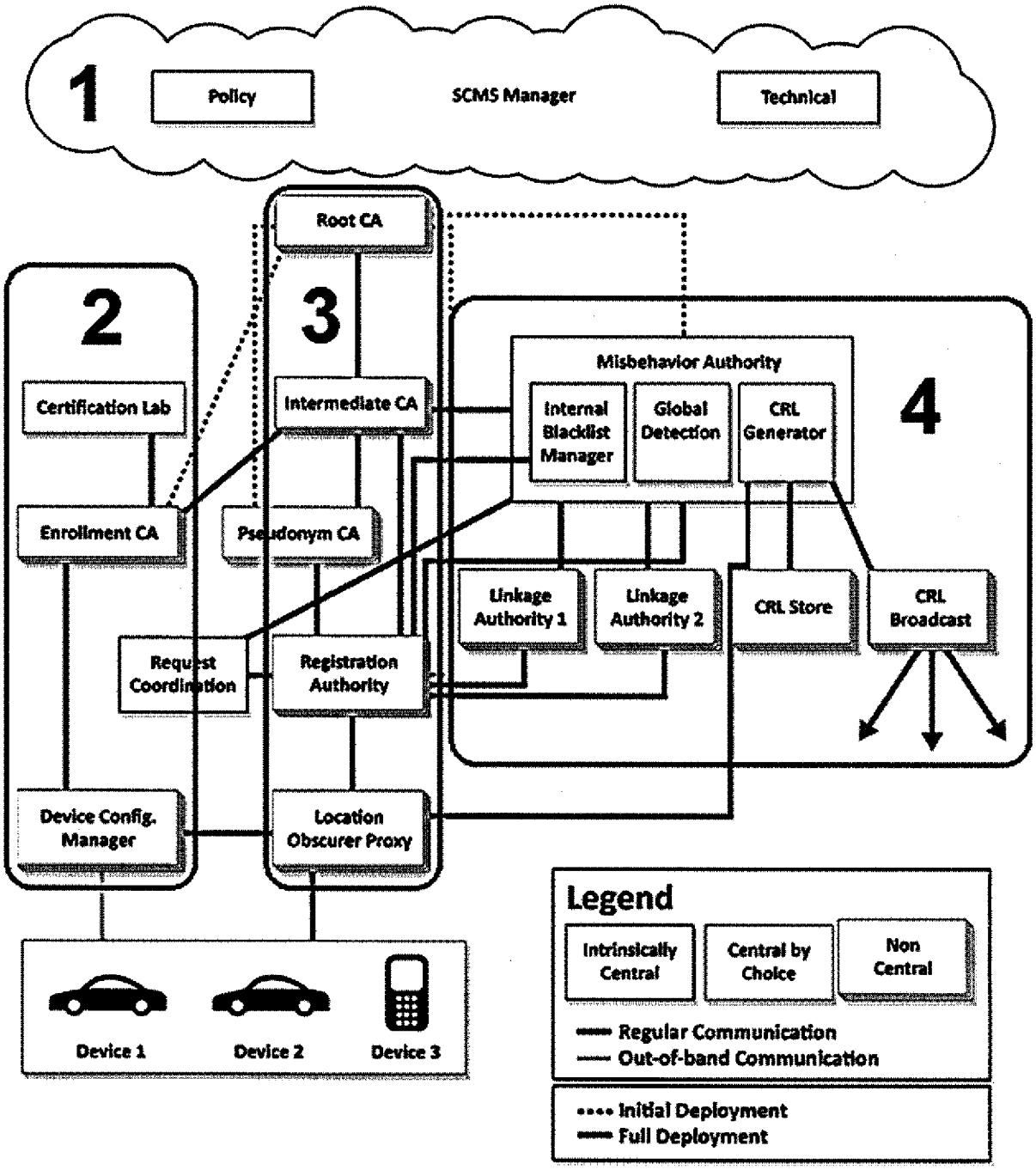
**Figure 2 Current V2V Security System Design for Deployment and Operations[2]**




[2] This image presents both an initial deployment model as well as a full deployment model. Note that this diagram shows the initial deployment model in which there is no Intermediate Certificate Authority (CA) and the Root CA talks to the Misbehavior Authority (MA), Pseudonym Certificate Authority,(PCA) and Enrollment Certificate Authority (ECA) (dotted lines). In the full deployment model, these entities communicate with the Intermediate CA instead of the Root CA to protect the Root CA from unnecessary exposure (solid line).

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The following discussion of SCMS functions focuses on communications and activities within the SCMS. The technical design for the SCMS includes several different operating functions that, together, make up the overall SCMS structure. It is envisioned that single or multiple operating functions

will be carried out by individual, legally distinct CMEs (including the SCMS Manager) that, together, will make up the SCMS organization. The agency is interested in respondents providing their views on potential structure of the entire SCMS organization, including the distinction, if one is needed, between separate components and responsibilities.

That said, we note that the interaction between the components shown in Figure 2 is all based on machine-to-machine performance. No human judgment is involved in creation, granting, or revocation of the digital certificates. The functions are performed automatically by processors in the various V2V components, including the vehicle's on-board equipment (OBE). The role of personnel within the SCMS is to manage the overall system, protect and maintain the computer hardware and facilities, update software and hardware, and address unanticipated issues.[3]

Generally, these SCMS operating functions fall into two categories: ''pseudonym functions'' and ''bootstrap functions,'' discussed further below. In order for the SCMS to support the security needs of the V2V system, the various SCMS functions (housed in different CME organizations) must work together to exchange information securely and efficiently.

*C. Pseudonym Functions/Certificates*

The security design employs short-term digital certificates used by a vehicle's V2V device to authenticate and validate BSMs that are sent and received. Since these BSMs provide the information needed for V2V-based safety warning technologies to operate, it is important that they are trustworthy. A valid certificate indicates the BSM was transmitted from a trusted source. A BSM with a revoked (invalid) certificate is ignored by other V2V devices. In order to protect privacy appropriately, these short-term certificates do not contain any information about the vehicles and their occupants (e.g., drivers/occupants or vehicle make/model/VIN), but they serve as credentials that permit vehicles to participate in the V2V system.

Pseudonym functions create, manage, distribute, monitor, and revoke short-term certificates for vehicles. They include the following functions:

• *Intermediate Certificate Authority (Intermediate CA),* which is an extension of the Root CA, shielding it from direct access to the internet. It can authorize other CMEs (or possibly an Enrollment Certificate Authority [ECA]) using authority from the Root CA, but does not hold the same authority as the Root CA in that it cannot self-sign a certificate. The Intermediate CA provides flexibility in the system because it removes the need for the highly protected Root CA to establish contact with every SCMS entity as they are added to the system over time. Additionally, the use of Intermediate CAs lessens the impact of an attack by maintaining protection of the Root CA.

• *Linkage Authority (LA),* which is the entity that generates linkage values. The LA comes in pairs of two, which we refer to as LA1 and LA2, in order to further protect privacy. The LAs for most operations communicate only with the RA and provide values, known as linkage values, in response to a request by the RA (see below) and PCA (see below). The linkage values provide the PCA with a means to calculate a certificate ID and a mechanism to connect all short-term certificates from a specific device for ease of revocation in the event of misbehavior.

• *Location Obscurer Proxy (LOP),* which obscures the location of OBE seeking to communicate with the SCMS functions, so that the functions are not aware of the geographic location of a specific vehicle. All communications from the OBE to the SCMS components must pass through the LOP. Additionally, the LOP may shuffle misbehavior reports that are sent by OBEs to the MA (see below) during full deployment. This function increases participant privacy but does not increase or reduce security.

• *Misbehavior Authority (MA),* which acts as the central function to process misbehavior reports, as well as to produce and publish the certificate revocation list (CRL). It works with the PCA, RA, and LAs to acquire necessary information about a certificate to create entries to the CRL through the CRL Generator. The MA eventually may perform global misbehavior detection, involving investigations or other processes to identify levels of misbehavior in the system. The MA is not an external law enforcement function, but rather an internal SCMS function intended to detect when messages are not plausible or when there is potential malfunction or malfeasance within the system. The extent to which the CMEs share externally information generated by the MA about devices sending inaccurate or false messages—whether with individuals whose credentials the system has revoked, regulatory agencies or law enforcement—will depend on law, organizational policy, and/or contractual obligations applicable to the CMEs and their component functions.

• *Pseudonym Certificate Authority (PCA),* which issues the short-term certificates used to ensure trust in the system. In earlier designs their lifetime was fixed at five minutes. The validity period of certificates is still on the order of ''minutes'' but is now a variable length of time, making them less predictable and thus harder to track. Certificates are the security credentials that authenticate messages (BSM) from a device. In addition to certificate issuance, the PCA collaborates with the MA, RA, and LAs to identify linkage values to place on the CRL if misbehavior has been detected. Individual PCAs may be limited to a particular manufacturer or a particular region.

• *Registration Authority (RA),* which performs the necessary key expansions before the PCA performs the final ones. It receives certificate requests from the OBE (by way of the LOP), requests and receives linkage values from the LAs, and sends certificate requests to the PCA. It shuffles requests from multiple OBEs to prevent the PCA from correlating certificate IDs with users. It also acts as the final conduit to batching short-term certificates for distribution to the OBE. Lastly, it creates and maintains a blacklist of enrollment certificates so it will know to reject certificate renewal requests from revoked OBEs.

• *Request Coordination,* which is critical in preventing an OBE from receiving multiple batches of certificates from different RAs. The Request Coordination function coordinates activities with the RAs to ensure that certificate requests during a given time period are responded to appropriately and without duplication. Note that this function is only necessary if there is more than one RA in the SCMS.

• *Root Certificate Authority (Root CA),* which is the master root for all other CAs; it is the ''center of trust'' of the system. It issues certificates to subordinate CAs in a hierarchical fashion (as well as MA, LAs and RAs), providing their authentication within the system so all other users and functions know they can be trusted. The Root CA produces a self-signed certificate (verifying its own trustworthiness) using out-of-band communications. This enables trust that can be verified between ad hoc or disparate devices because they share a common trust point. It is likely that the Root CA will operate in a separate, offline environment because compromise of this function is a

[3] The SCMS manager would establish policies and procedures that influence the configuration of the system parameters.

catastrophic event for the security system.

• *SCMS Manager,* which is the function that will provide the policy and technical standards for the entire V2V system. Just as any large-scale industry ensures consistency and standardization of technical specifications, standard operating procedures (SOPs), and other industry-wide practices such as auditing, the SCMS Manager would establish SOPs, including in such areas as interoperability, security, privacy and auditing, and manage the activities required for smooth and expected operation of the SCMS. This could happen in a number of ways. Often in commercial industries, volunteer industry consortia take on this role. In other industries, or in public or quasi-public industries, this role may be assumed by a regulatory or other legal or policy body.

Regardless of how the SCMS ''industry'' establishes and operates a central administrative body, it is expected that one will be established for the V2V SCMS. As no decisions about ownership or operation have been made, we do not advocate for public or private ownership of the CMEs that will make up the SCMS. Rather, in our discussions and analyses, we identify the basic functions that we expect the SCMS Manager will perform. The expectation is that the CMEs that make up the SCMS, either voluntarily or contractually, will agree to adhere to the SOPs, audit standards, and other practices established by the SCMS Manager. In accordance with input from DOT, the SCMS Manager will develop applicable guidance, practices, SOPs, auditing standards, or additional industry-wide procedures in coordination with, or so as to dovetail with Federal guidance or regulations applicable to V2V communications. NHTSA also assumes that the CMEs will endow the SCMS manager with authority to remove from the SCMS or revoke the ''credentials'' of CMEs that misbehave or do not comply with applicable standards.

*D. ''Bootstrap''/Initialization Functions/ Enrollment Certificate*

The security design also includes functions that carry out the bootstrapping process, which establishes the initial connection between a V2V device and the SCMS. The chief functional component of this process is the Enrollment Certificate Authority (ECA), which assigns a long-term enrollment certificate to each V2V device.

Initialization functions include:

• *Certification Lab,* which instructs the Enrollment CA on polices and rules for issuing enrollment certificates, *i.e.* device enrollment criteria. This is usually done when a new device is released to the market or if the SCMS Manager releases new rules and guidelines. The Enrollment CA uses information from the Certification lab to confirm that devices of the given type are entitled to an enrollment certificate. At this time, specific details regarding the Certification and Enforcement are not defined.[4]

• *Device Configuration Manager (DCM),* which is responsible for giving devices access to new trust information, such as updates to the certificates of one or more authorities, and relaying policy decisions or technical guidelines issued by the SCMS Manager. It also sends software updates to devices. The DCM coordinates initial trust distribution with devices by passing on credentials for other SCMS entities, and provides a device with information it needs to request short term certificates from an RA. The DCM also plays a role in the bootstrap process by ensuring that a device is cleared to receive its enrollment certificate from the ECA. It also provides a secure channel to the ECA. There are two types of connections used from devices to the DCM: In-band and out-of-band communications. In-band communication utilizes the LOP, while out-of-band communication is sent directly from the device to the ECA, by way of the DCM.

• *Enrollment Certificate Authority (ECA),* which verifies the validity of the device type with the Certification Lab. Once verified, the ECA then produces the enrollment certificate and sends it to the OBE. Once the OBE has a valid enrollment certificate, it is able to request and receive certificates from the SCMS. Individual PCAs may be limited to a particular manufacturer or a particular region.

*E. Privacy Considerations*

Risks to consumer privacy, whether actual or perceived, are intertwined with consumer and industry acceptance of V2V technologies. For this reason, privacy considerations are critical to the analysis underlying NHTSA's decision about how to proceed with regulation.

At the outset, readers should understand some very important points about the V2V system as contemplated by NHTSA. The system will not collect or store any data on individuals or individual vehicles, nor will it enable the government to do so. There is no data in the basic safety messages broadcast by V2V devices or collected by the V2V security system intended to be used by law enforcement or private entities to personally identify a speeding or erratic driver.[5] The system—presumably operated by private entities—will not permit tracking through space or time of vehicles linked to specific owners or drivers or persons. Third parties attempting to use the system to track a vehicle would find it extremely difficult to do so, particularly in light of far simpler and cheaper means available for that purpose. The system will not collect financial information, personal communications, or other information linked to individuals. It will enroll V2V enabled vehicles automatically, without collecting any information identifying specific vehicles or owners.

The system will not provide a ''pipe'' into the vehicle for extracting data. While the system needs to enable NHTSA and motor vehicle manufacturers to find lots or production runs in the event of defective and/or non-compliant V2V devices, it will do so without use of VIN numbers or other information that could identify specific drivers or vehicles.

There are two primary categories of V2V system functions that involve the transmission, collection, storage, and sharing of V2V data by, and between, the V2V system components and other entities: system safety and system security.

The V2V system's safety functionality (*i.e.,* the safety applications that produce crash warnings) requires that V2V devices broadcast and receive a basic safety message containing information about vehicle position, heading, speed, and other information relating to vehicle state and predicted path. The BSM, however, contains no personally identifying information (PII) and is broadcast in a very limited geographical range, typically less than 1 km. Nearby devices installed in other vehicles will use that information to warn drivers of crash-imminent

[4] At this point, the extent and level of testing which the Certification Lab will actually perform is still to be determined. The role of the labs could range from simply managing a checklist of requirements to performing extensive technical certification tests, including: device performance, FCC compliance, cryptographic testing (at the level of FIPS–140), and/or interoperability testing. The intent is that the SCMS Manager, after it is created, will determine the full roles and responsibilities of the Certification Lab. Vehicle and device manufacturers may decide to rely in part on a certification lab to support their own certification of compliance with any relevant standards NHTSA may issue.

[5] Definition of the current basic safety message data elements is found in Table V–1 and Table V–2 of the agency's V2V research report, ''Vehicle-to-Vehicle Communications: Readiness of V2V Technology for Application V1.0 August, 2014''.

situations. Except as necessary to identify devices in the case of malfunction, the system will not collect, and motor vehicles will not store, the messages or data that are sent or received by V2V devices.

*F. Device Non-Compliance and Potential Recalls*

Currently, as discussed in the report, NHTSA may need to conduct further research into how to ensure that all V2V devices subject to a recall can be identified, and that owners can be notified about the issue and be provided instructions for how to remedy a potential condition. Section VIII.B.3 of the agency's V2V research report discusses the possibility that for vehicles manufactured with V2V devices installed, the SCMS may be able to create a link at the time of manufacture between specific installed V2V devices or production lots of devices and enrollment certificates that later may help vehicle manufacturers and NHTSA identify defective V2V equipment, potentially linking device batches to enrollment certificates. However, it is not yet clear how such a linkage would be created for V2V devices that are not installed by the manufacturer. The agency welcomes discussion from respondents on the potential approach discussed in the report along with other potential approaches, based on a respondent's experience, which NHTSA may employ to fulfill its defect and non-compliance identification responsibilities.

The security needs of the V2V system require the exchange of certificates and other communications between: (1) V2V devices and (2) the entity or entities providing security for the V2V system (i.e., the Security Credential Management System). These two-way communications are encrypted and subject to additional security measures. These measures are designed to prevent SCMS insiders and others from unauthorized access to information that might enable linkage of BSM data or security credentials to specific motor vehicles.

NHTSA also needs to ensure that the V2V system is protected from defective and non-compliant devices. In order to do so, the V2V security system will likely need to collect and share with manufacturers, such that they can comply with Federal regulations, on a very limited basis, some V2V data linking V2V device production lots to security credentials. However, as currently envisioned, neither the V2V system nor NHTSA will collect, store, or have access to information that links production lots of defective V2V devices with specific VINs or owners.

NHTSA and the DOT take privacy very seriously. If NHTSA moves forward with regulating V2V technologies, we are committed to doing so in a manner that both protects individual privacy appropriately and promotes this important safety technology.

**V. SCMS Organizational Options**

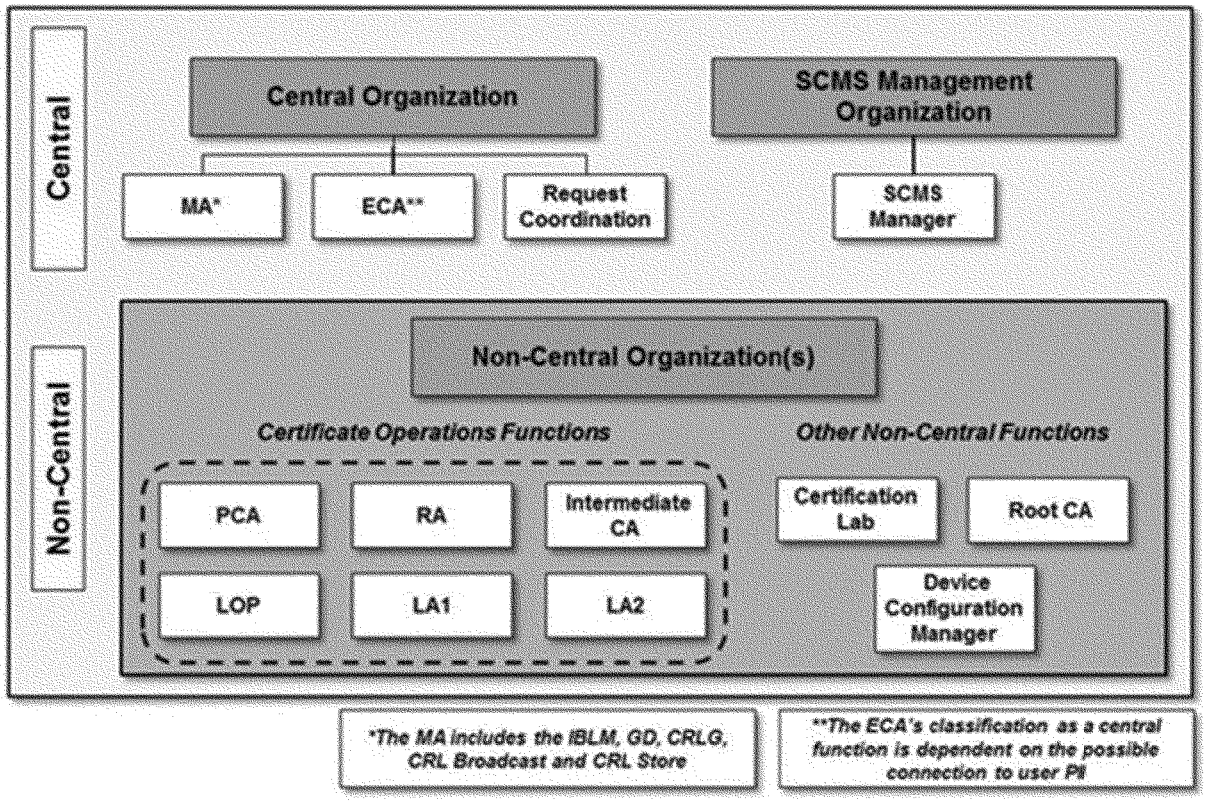
The above discussion of SCMS functions focused on activities and communications within the SCMS. The current section discusses the DOT research performed by Booz Allen Hamilton (BAH), with input from CAMP and the Vehicle Infrastructure Integration Consortium (VIIC), on the development of an SCMS organization. The purpose of BAH's research was to generate organizational options for an SCMS capable of enabling secure and efficient communications, protecting privacy appropriately, and minimizing operational costs. BAH developed a number of different organizational options by grouping the SCMS functions in CAMP's design into legally/administratively distinct entities. BAH's analysis of the organizational options for the SCMS, detailed below, focused primarily on organizational connections and separations, as well as the closely-related process of characterizing functions as ''central'' or ''non-central'' (which is intimately tied to the issue of system ownership and operation). It also examined the cost, security risk, and operational/policy implications of the different SCMS models.

BAH began by identifying multiple organizational models that, together, captured all possible configurations of the SCMS functions identified by CAMP. DOT initially selected a small number of these organizational models for BAH to further consider. As CAMP's technical design evolved, DOT instructed BAH to reconfigure the models to reflect additional SCMS functions added to the SCMS design by CAMP, as well as CAMP's new categorization of functions as either ''central'' or ''non-central.'' Based on its independent PKI research, as well as new insights into the security design communicated by CAMP, BAH then simplified the initial organizational design proposed by CAMP to remove certain organizational separations of functions that BAH determined were not necessary for security or privacy reasons.

Ultimately, the organization of the SCMS—the final grouping of functions and estimates of any efficiencies—will be controlled by the organization(s) that manage the SCMS and own and operate the component CMEs. However, NHTSA and DOT anticipate being able to influence the organization and operation of the SCMS (and thereby ensure adequate separation to assure secure, privacy-appropriate V2V communications) through an agreement or MOU with the SCMS Manager and/or through participation on a SCMS ''governance board.''

BAH's SCMS organizational model/analysis, Figure 2, is based on CAMP's current SCMS technical design and represents BAH's perspective of how functions within the SCMS may be grouped.

**Figure 2 Security Certificate Management System Organizational Model**




Organizational separation of functions is an example of a policy control often used to mitigate privacy risks in PKI systems—but such separations come with increased costs and may negatively impact the system's ability to identify and revoke the credentials of misbehaving devices. Ultimately, more than one function may be co-located within the same SCMS component organization. However, grouping of SCMS functions and any resulting efficiencies/risk trade-offs will depend, in large part, on: (1) The system's ownership, operational structure, and governance in accordance with DOT, and (2) the preferences of the entity or entities that own and operate the SCMS Manager and CME component entities.

The SCMS Manager is intended to serve as the entity that provides system management, primarily by enforcing and auditing compliance with uniform technical and policy standards and guidance for the SCMS system-wide. The uniform standards/guidance will need to establish and ensure consistency, effectiveness, interoperability, and appropriate security and privacy protection across the CMEs, in order to facilitate necessary communications, sharing of information, and operational connections. The SCMS Manager will need to have mechanisms to ensure that all CME entities have policies, practices, technologies, and communications consistent with system-wide standards and guidance. The SCMS Manager may (but need not) be the body that develops the standards, guidance, or policies applicable system-wide; however, it would be the entity charged with overseeing standards and policy compliance by the CME entities that, together with the SCMS Manager, make up the SCMS. The agency anticipates existing PKI technical standards and industry best practices likely will form the basis for many of the policies and procedures applicable across the SCMS.[6]

## VI. The Legal Relationship Between NHTSA and the SCMS

As currently envisioned by NHTSA, deployment of V2V technologies requires existence of an SCMS to provide necessary security functions. In its February 3, 2014, announcement, NHTSA expressed its intent to begin working on a regulatory proposal to require V2V devices in new motor vehicles in a future year, and on August 18, 2014, NHTSA announced an advance notice of proposed rulemaking to start the regulatory process for V2V technology. A subsequent NHTSA V2V regulatory proposal, a notice of proposed rulemaking (NPRM), potentially could extend to many aspects of the hardware, software, and communications, making up significant parts of the V2V system. However, NHTSA, at this time, anticipates that establishment of the SCMS itself, which will provide security services necessary for secure reliable V2V messaging within the V2V system, will not be encompassed in its regulatory proposal. Instead, as discussed elsewhere in today's RFI, NHTSA envisions that constitution and operation of the SCMS will be undertaken by one or more private entities, working collaboratively with NHTSA. NHTSA and DOT do not currently envision the Federal government being the owner or operator of the SCMS.

There is a wide range of collaborative relationships that NHTSA potentially could enter into with the private entity or entities that manage or make up the SCMS. The overarching goal of the relationship(s) would be to ensure the existence and operation of an SCMS needed to support the V2V system in a

[6] BAH SCMS Design and Analysis Report, at 29.

way that appropriately protects consumer privacy and system security and does not impose inordinate costs on OEMs, vehicle drivers, or others. Ultimately, the nature and scope of the relationship(s) will turn on the specific terms upon which the parties agree.

Section IV of the research report contains discussion of the agency's authority to enter into agreements documenting the collaborative relationship between NHTSA and the private entity or entities that constitute and operate the SCMS supporting V2V communications. As discussed for the first time in this RFI, such an agreement would likely address or provide minimum requirements in the following areas:

- *Service Period:* How long the entity or entities would commit to ensuring availability of security services required to support the V2V system;
- *Organization:* Legal/administrative separation between, and the legal relationship among, CMEs that make up the SCMS;
- *Operation:* Certificate, security, privacy, audit, interoperability, and related operational policies;
- *Governance:* Initially, and on an ongoing basis, transparent mechanisms for obtaining input on issues relevant to SCMS constitution and operation from (1) the CMEs that make up the SCMS and (2) other stakeholders;
- *System Access:* To ensure support for V2V, V2I, and V2X applications and users (consumers and manufacturers) in the U.S., Canada and Mexico;
- *Fees:* Service and user classes for V2V, V2I, and V2X users (consumers and manufacturers);
- *Privacy:* Controls, enforcement, reporting (internal and to NHTSA), and data policies that provide clear notice to consumers of (among other things) what data is being collected, how it is used, and, for opt-in services, giving consumers control over access to their data;
- *Security:* Controls, enforcement, and reporting (internal and to NHTSA);
- *Continuity of Operation:* Procedural mechanisms to ensure continued support for the V2V system;
- *Liability/Insurance:* Liability and business interruption insurance;
- *Cooperation:* Procedures for working with Federal and State law enforcement and consumer fraud authorities to address any issues that threaten the system's safety or security.

## VII. Specific Questions for This Notice

Specific questions posed in this notice follow. Respondents are reminded that feedback on any aspects of this notice is welcome from all interested public, private, and academic entities. If your responses relate to *how* NHTSA should implement a requirement for V2V, and the agency's authority to require V2V, rather than to the SCMS issues outlined in this notice, please submit such responses as comments to the rulemaking docket for the ANPRM (NHTSA–2014–0022) rather than this docket. While all feedback regarding the agency's regulatory announcements and the ANPRM is welcome from all parties, NHTSA is particularly interested, regarding this request for information, in hearing from those entities interested in establishing an SCMS. Respondents may respond, to some, all, or none of these specific questions:

1. SCMS ownership and operation are inextricably linked to SCMS governance. DOT research to date has focused on the likelihood of private ownership and operation of the SCMS ''industry,'' with governance being largely ''self-governance'' by private industry participants and stakeholders. Other basic organizational models that could apply, besides this private model, are: public, and public-private. What model is most appropriate and what are the risks, if any, associated with a private ''self-governance'' approach and how would you mitigate them?

2. The SCMS has many functions that are needed to establish the trusted environment required for V2V communications. The SCMS consists of both central and non-central functions to be carried out by legally distinct CMEs that can be owned and operated by various individual entities. What is your interest in helping to establish an SCMS? Which SCMS functions are you most interested in performing, either on your own or as part of a larger consortium? What information or other resources do you need to initiate planning, development, and implementation of the identified SCMS functions? The agency would also appreciate respondents providing potential lead times associated with standing up an SCMS and making it fully operational to support a national implementation of V2V technology, because lead time will help the agency understand when V2V technology could potentially be rolled out most successfully.

3. In relation to the SCMS Manager function, will the establishment of either a binding or non-binding ''governance board'' provide the appropriate level of stakeholder guidance and direction to facilitate a viable and self-sustaining business entity? If not, why not, and what additional or other type of governance or oversight might be needed?

4. In order for the SCMS to function, what standards and policies applicable to individual CMEs will need to be developed and implemented? Who do you envision will establish the various standards, policies, procedures, auditing processes, and other related industry-wide processes?

5. NHTSA and DOT anticipate being able to influence the organization and operation of the SCMS (and thereby ensure adequate separation to assure secure, privacy appropriate V2V communications) through some type of agreement with the SCMS Manager or through participation on an SCMS ''governance board.'' In the ''Legal Relationship between NHTSA and the SCMS'' section of this Request for Information, we identify some likely components of an agreement between NHTSA and the SCMS Manager or entities making up the SCMS. Are there other components that such an agreement should cover? If so, please identify them and explain their importance. If the SCMS established a ''governance board,'' how should the board be constituted? Should the board's decisions be binding on the SCMS? Typically, NHTSA and other Federal government entities participate as non-voting liaisons or ex officio members of private boards (NHTSA, for example, regularly assigns agency employees to be non-voting liaisons on Society of Automotive Engineers (SAE) and Transportation Research Board (TRB) Committees and Boards). Would it be viable for NHTSA to participate in this manner?

6. The agency asks respondents to provide their projections of initial capital investment for SCMS functions overall and components they may potentially be interested in ''standing up'' and supporting.

7. Additionally, the agency welcomes feedback on how respondents envision SCMS financial sustainability and its relation to any data collection or fees, if any, that would be permitted under the agreement with DOT.

8. If you are interested in performing certain functions related to the SCMS, explain how you would ensure that privacy concerns are addressed in performance of those functions.

**Authority:** 49 U.S.C. 30101 et. seq.; 49 CFR 1.95.

Issued in Washington.

**Daniel C. Smith,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 2014–24482 Filed 10–14–14; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2014–0086]**

### Pipeline Safety: Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice; Issuance of Advisory Bulletin.

**SUMMARY:** PHMSA published Advisory Bulletin ADB–2012–10 in the **Federal Register** on December 5, 2012, to remind operators of gas transmission and hazardous liquid pipeline facilities of their responsibilities under current regulations to perform evaluations of their Integrity Management (IM) programs using meaningful performance metrics. PHMSA is issuing this Advisory Bulletin to expand that reminder by informing owners and operators of gas and hazardous liquid pipelines that PHMSA has developed guidance on the elements and characteristics of a mature program evaluation process that uses meaningful metrics.

**FOR FURTHER INFORMATION CONTACT:** Chris McLaren by phone at 281–216–4455 or by email at *chris.mclaren@dot.gov.* All materials in this docket may be accessed electronically at *http://www.regulations.gov.* Information about PHMSA may be found at *http://www.phmsa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

PHMSA has long recognized and communicated the critical importance of operator self-evaluation as part of an effective safety program. PHMSA has promoted and required the development and implementation of processes to perform program evaluations, including the regular monitoring and reporting of meaningful metrics to assess operator performance.

PHMSA further communicated this expectation in Advisory Bulletin ADB–2012–10, which was published in the **Federal Register** on December 5, 2012. That Advisory Bulletin explicitly reminded operators of gas transmission and hazardous liquid pipeline facilities of their responsibilities under current regulations to perform evaluations of their IM programs using meaningful performance metrics.

PHMSA has also recognized and emphasized the importance of operator senior management responsibilities to fully understand and acknowledge the implications of these program evaluations and to take the necessary steps to address deficiencies and make necessary program improvements. As these responsibilities are so important, PHMSA requires senior executives of operators to certify the IM program performance information they annually submit to PHMSA.

As required by the IM rules, operators must have a process to measure the effectiveness of their programs; a process that determines whether the program is effective in assessing and evaluating pipeline integrity and in improving the integrity of pipeline systems. Program evaluations can help organizations make better management decisions and support continual process improvement. These evaluations should include an assessment gauging how an operator's performance satisfies its identified safety performance goals.

Program and other evaluations may be conducted at different levels, including the company or corporate level, at a system level to gauge one pipeline system's performance against that of other systems within the organization or for selected assets with similar characteristics. Effective program evaluations should include all aspects of an operator's organization, not just the integrity group.

Incident/accident investigations and abnormal operations and root cause analysis frequently reveal that management systems and organizational program deficiencies or failures are important contributors to pipeline accidents. For this reason, it is important that program evaluations also identify potential organizational or programmatic deficiencies and failures that could have the potential to lead to pipeline incidents/accidents.

Operators should take effective corrective measures addressing IM program evaluation outcomes to improve programmatic activity as well as pipeline system performance and integrity. IM program evaluation processes should be formally controlled by operators and be an integral part of the operator's quality control and quality assurance program. The formal process should include management's commitment to monitor and evaluate performance metrics.

Specific sections in the Federal IM regulations that directly require the need for operator program evaluation and the use of meaningful performance metrics include the following:

- For hazardous liquid pipelines, §§ 195.452(f)(7) and 195.452(k) require methods to measure program effectiveness. Appendix C to 49 CFR 195 provides specific guidance on establishing performance measures, including the need to select measures based on the understanding and analysis of integrity threats to each pipeline segment. API Standard 1160, ''Managing Integrity for Hazardous Liquid Pipelines,'' also provides additional guidance on the program evaluation process and the use of performance measures in improving performance.
- For gas transmission pipelines, §§ 192.911(i) and 192.945 define the requirements for establishing performance metrics and evaluating IM program performance. The gas requirements invoke ASME B31.8S–2004, Managing System Integrity of Gas Pipelines. Section 9 of this standard provides guidance on the selection of performance measures.
- For gas distribution systems, § 192.1007(e) requires development and monitoring of performance measures to evaluate the effectiveness of IM programs. An operator must consider the results of its performance monitoring in periodically reevaluating threats and risks. Guidance from ANSI/GPTC Z380, ''Guide for Gas Transmission and Distribution Piping Systems, 2012 Edition'' and Section 9 of ASME B31.8S–2004, ''Managing System Integrity of Gas Pipelines'' can also be used for the selection of performance measures that can be applied to gas distribution systems.

When performing routine pipeline system inspections, PHMSA noted weaknesses in the development and implementation of program evaluations, including weaknesses in using meaningful metrics to identify opportunities for program improvements and corrective actions.

Additionally, NTSB Recommendation P–11–19, which was generated following the San Bruno, CA, failure investigation, recommended PHMSA develop and implement standards for IM and other performance-based safety programs that require operators of all types of pipeline systems to assess the effectiveness of their programs using clear and meaningful metrics and identify and then correct deficiencies.

In response to PHMSA's self-identified concerns and the NTSB recommendation, PHMSA developed a guidance document titled ''Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics,'' which is available at *http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Pipeline/Regulations/IMPEG.pdf.*

Major topic areas addressed in the guidance document include:

- Establishing Safety Performance Goals.
- Identifying Required Metrics.
- Selecting Additional Meaningful Metrics.
- Metric Monitoring and Data Collection.
- Program Evaluation Using Metrics.

The guidance document includes tables listing regulation-required metrics and other programmatic and threat-specific metrics that operators could include in their documented IM program evaluations.

- Table 1 lists the IM-related metrics documented in pipeline operators' annual reports.
- Table 2 lists the threat-specific metrics required by § 192.945 for gas transmission and required by § 192.1007(g) for gas distribution systems.
- Table 3 provides guidance for operators and inspectors to identify meaningful metrics to help understand and measure the effectiveness of the individual program elements and processes used in an IM program.
- Table 4 provides guidance for operators and inspectors to identify meaningful threat-specific metrics that may be required to effectively measure the performance of gas transmission, hazardous liquid transmission and gas distribution pipeline IM programs.

**II. Advisory Bulletin (ADB–2014–05)**

*To:* Owners and Operators of Natural Gas and Hazardous Liquid Pipelines.

*Subject:* Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics.

*Advisory:* The Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing this Advisory Bulletin to inform owners and operators of natural gas and hazardous liquid pipelines that PHMSA has developed guidance on the elements and characteristics of a mature IM program evaluation process using meaningful metrics. This guidance document titled ''Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics,'' is available on PHMSA's public Web site at *http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Pipeline/Regulations/IMPEG.pdf,* and should be used when operators develop and perform IM program evaluations. This guidance document provides additional specificity to several of the topics detailed in a previously issued Advisory Bulletin, ADB–2012–10, ''Using Meaningful Metrics in Conducting Integrity Management Program Evaluations.''

Operators under the current regulations are required to perform program evaluations and use meaningful metrics. PHMSA's ''Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics'' builds on existing standards and regulations to provide a more detailed and comprehensive description of the steps involved in program evaluations as well as the selection of meaningful performance metrics to support these evaluations. The guidance expands and clarifies PHMSA's expectations for operator processes when measuring IM program effectiveness.

PHMSA inspectors will use the program evaluation guidance within ''Guidance for Strengthening Pipeline Safety Through Rigorous Program Evaluation and Meaningful Metrics'' as criteria when evaluating the effectiveness of operator IM program evaluations to assure operators are developing sound program evaluation processes and are developing and applying a robust and meaningful set of performance metrics in their program evaluations.

**Authority:** 49 U.S.C. Chapter 601 and 49 CFR 1.97.

Issued in Washington, DC, on October 09, 2014.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2014–24439 Filed 10–14–14; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on November 4, 2014 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and P.L. 103–202, § 202(c)(1)(B) (31 U.S.C. § 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to P.L. 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. § 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for

additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: October 7, 2014.

**Matthew S. Rutherford,**

*Acting Under Secretary (for Domestic Finance).*

[FR Doc. 2014–24411 Filed 10–14–14; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

**[Docket No. TTB–2014–0002]**

## Proposed Information Collections; Comment Request (No. 49)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

**DATES:** We must receive your written comments on or before December 15, 2014.

**ADDRESSES:** As described below, you may send comments on the information collections listed in this document using the ''Regulations.gov'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *http://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2014–0002 on ''Regulations.gov,'' the Federal e-rulemaking portal, to submit comments via the Internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2014–0002 at *http://www.regulations.gov.* A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/forms/c comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

**FOR FURTHER INFORMATION CONTACT:** Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on this notice to this email address).

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

### Information Collections Open for Comment

Currently, we are seeking comments on the following forms, recordkeeping requirements, or questionnaires:

*Title:* Registration of Volatile Fruit-Flavor Concentrate Plants; REC 5520/2.

*OMB Control Number:* 1513–0006.

*TTB Form Number:* 5520.3.

*TTB Recordkeeping Requirement Number:* 5520/2.

*Abstract:* Under provisions of the Internal Revenue Code of 1986, as amended (IRC), at 26 U.S.C. 5511, persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required by regulation to file an application to do so using TTB F 5520.3. TTB uses the application information to identify persons engaging in such manufacture since these products contain ethyl alcohol and have potential for use as alcohol beverages, which would have Federal excise tax implications. The application constitutes registry of a still, which is a statutory requirement of the IRC at 26 U.S.C. 5179. Subsequent to the original application, manufacturers are required to use TTB F 5520.3 to report any changes that affect the accuracy of the form, such as a change in name, plant location, or ownership. Records to support the information provided on TTB F 5520.3 must be retained for 3 years.

*Current Actions:* We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 80.

*Estimated Total Annual Burden Hours:* 160.

*Title:* Annual Report of Concentrate Manufacturer; and Usual and Customary Business Records—Volatile Fruit-Flavor Concentrate, TTB REC 5520/1.

*OMB Number:* 1513–0022.

*TTB Form Number:* 5520.2.

*TTB Recordkeeping Requirement Number:* 5520/1.

*Abstract:* As authorized by the IRC at 26 U.S.C. 5511, manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to ensure the protection of the revenue. The report, TTB F 5520.2, accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. This information is required to verify that alcohol is not being diverted,

thereby jeopardizing tax revenues. The records used to compile this report are usual and customary business records that the manufacturer would maintain in the course of doing business. These reports and records must be retained for 3 years from the date they were prepared or 3 years from the date of the last entry, whichever is later.

*Current Actions:* We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 80.

*Estimated Total Annual Burden Hours:* 27.

*Title:* Claim—Alcohol, Tobacco, and Firearms Taxes.

*OMB Control Number:* 1513–0030.

*TTB Form Number:* 5620.8.

*Abstract:* This form is used to file a claim for credit, refund, abatement, remission, or allowance of Federal excise tax on taxable articles (alcohol, beer, tobacco products, firearms, and ammunition), such as when articles have been lost due to theft or when there has been an overpayment of tax. It is also used to request a drawback of tax paid on distilled spirits used in the production of nonbeverage products.

*Current Actions:* We are submitting this information collection as a revision. The form remains unchanged; however, we are updating the estimated number of respondents and the estimated total annual burden hours to reflect a decrease in the number of respondents.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 4,600.

*Estimated Total Annual Burden Hours:* 4,600.

*Title:* Report of Wine Premises Operations.

*OMB Control Number:* 1513–0053.

*TTB Form Number:* 5120.17.

*Abstract:* The information submitted to TTB on TTB F 5120.17 is used to monitor wine operations to ensure collection of the Federal excise tax on wine and to ensure wine is produced in accordance with Federal law and regulations. This report also provides raw data on wine premises activity.

*Current Actions:* We are submitting this information collection as a revision. The form remains unchanged; however, we are updating the estimated number of respondents and the estimated total annual burden hours to reflect an increase in the number of respondents.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 9,750.

*Estimated Total Annual Burden Hours:* 36,960.

*Title:* Offer in Compromise of Liability Incurred under the Federal Alcohol Administration Act, As Amended.

*OMB Control Number:* 1513–0055.

*TTB Form Number:* 5640.2.

*Abstract:* Persons who have committed violations of the Federal Alcohol Administration Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. TTB F 5640.2 identifies the violation(s) to be compromised by the person committing them, amount of offer, and justification for acceptance.

*Current Actions:* We are submitting this information collection as a revision. The form remains unchanged; however, we are updating the estimated number of respondents and the estimated total annual burden hours to reflect an increase in the number of respondents.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Total Annual Burden Hours:* 40.

*Title:* Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report, TTB REC 5170/2.

*OMB Number:* 1513–0065.

*TTB Recordkeeping Requirement Number:* 5170/2.

*Abstract:* Daily records of receipt and disposition of distilled spirits by wholesale liquor dealers are mandated by law in the IRC at 26 U.S.C. 5122. This law also requires a record of all wine and beer received by a wholesale dealer. Records of receipt and disposition describe the activities of wholesale dealers, and they provide an audit trail of taxable commodities from point of production to point of sale. Records of disposition are required only for distilled spirits. TTB requires the monthly report only in exceptional circumstances to ensure that a particular wholesale dealer is maintaining the required records. The record retention requirement is 3 years.

*Current Actions:* We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 50.

*Estimated Total Annual Burden Hours:* 1,200.

*Title:* Federal Firearms and Ammunition Quarterly Excise Tax Return.

*OMB Number:* 1513–0094.

*TTB Form Number:* 5300.26.

*Abstract:* A Federal excise tax is imposed on the sale of pistols and revolvers, other firearms, and shells and cartridges (ammunition) sold by firearms manufacturers, producers, and importers. The IRC at 26 U.S.C. 6001 and 6011 establishes the authority to require a return to be made for the excise tax. The information collected on this return is used to determine how much Federal excise tax is owed, and to verify that a taxpayer has correctly determined and paid the appropriate tax liability.

*Current Actions:* We are submitting this information collection as a revision. The form remains unchanged; however, we are updating the estimated number of respondents and the estimated total annual burden hours to reflect a decrease in the number of respondents.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; Individuals or households.

*Estimated Number of Respondents:* 650.

*Estimated Total Annual Burden Hours:* 18,200.

*Title:* Certification of Proper Cellar Treatment for Imported Natural Wine.

*OMB Number:* 1513–0119.

*Abstract:* Under provisions of the IRC at 26 U.S.C. 5382, importers of natural wine (except for natural wine produced and imported subject to certain international agreements or treaties) must certify compliance with proper cellar treatment standards. TTB requires importers of natural wine to supply this certification in order to comply with that statutory requirement.

*Current Actions:* We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 4,000.

*Estimated Total Annual Burden Hours:* 6,600.

Dated: October 10, 2014.

**Angela Jeffries,**

*Acting Director, Regulations and Rulings Division.*

[FR Doc. 2014–24585 Filed 10–14–14; 8:45 am]

BILLING CODE 4810–31–P

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Renewal of Charter of Advisory Committee on Actuarial Examinations

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Renewal of Advisory Committee.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries announces the renewal of the charter of the Advisory Committee on Actuarial Examinations.

**FOR FUTHER INFORMATION CONTACT:** Patrick McDonough, 703–414–2173.

**SUPPLEMENTARY INFORMATION:** The purpose of the Advisory Committee on Examinations (Advisory Committee) is to advise the Joint Board for the Enrollment of Actuaries (Joint Board) on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Advisory Committee's functions include, but are not necessarily limited to, considering and recommending examination topics, developing examination questions, recommending proposed examinations and pass marks, and as requested by the Joint Board, making recommendations relative to the examination program.

Dated: October 6, 2014.

**David Ziegler,**

*Chairman, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2014–24404 Filed 10–14–14; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held November 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Theresa Singleton at 1–888–912–1227 or 202–317–3329.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, November 19, 2014 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Singleton. For more information please contact Ms. Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24406 Filed 10–14–14; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1–888–912–1227 or (202) 317–3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, November 26, 2014, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Mr. Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or (202) 317–3332 or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24407 Filed 10–14–14; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 20, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, November 20, 2014, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24405 Filed 10–14–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Linda Rivera at 1–888–912–1227 or (202) 317–3337.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, November 19, 2014 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 317–3337, or write TAP Office, 1111 Constitution Avenue NW, Room 1509– National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24414 Filed 10–14–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 13, 2014.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or (954) 423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, November 13, 2014, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24412 Filed 10–14–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Russ Pool at 1–888–912–1227 or 206–220–6542.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, November 19, 2014, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Russ Pool. For more information please contact Mr. Pool at 1–888–912–1227 or 206–220–6542, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: October 7, 2014.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2014–24408 Filed 10–14–14; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

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Part II

## Nuclear Regulatory Commission

10 CFR Part 52

Economic Simplified Boiling Water Reactor Design Certification; Final Rule

**Nuclear Regulatory Commission**

**10 CFR Part 52**

**[NRC–2010–0135]**

**RIN 3150–AI85**

## Economic Simplified Boiling-Water Reactor Design Certification

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is adopting a new rule certifying the Economic Simplified Boiling-Water Reactor (ESBWR) standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an ESBWR design may do so by referencing this design certification rule (DCR). The applicant for certification of the ESBWR design is GE-Hitachi Nuclear Energy (GEH).

**DATES:** This final rule is effective on November 14, 2014. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Office of the Federal Register (OFR) as of November 14, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2010–0135 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0135. Address questions about NRC dockets to Carol Gallagher, telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in a table in Section VII, ''Availability of Documents,'' of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** George M. Tartal, Office of New Reactors, telephone: 301–415–0016, email: *George.Tartal@nrc.gov;* or David Misenhimer, Office of New Reactors, telephone: 301–415–6590, email: *David.Misenhimer@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

#### *A. Need for the Regulatory Action*

The NRC is amending its regulations related to licenses, certifications, and approvals for nuclear power plants. This final rule certifies the ESBWR standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an ESBWR design may do so by referencing this DCR.

#### *B. Major Provisions*

Major provisions of the final rule include changes to:

- specify which documents contain the requirements for the ESBWR design,
- specify how a nuclear power plant license applicant can reference the ESBWR design,
- describe how the NRC considers matters within the scope of the design to be resolved for proceedings involving a license or application referencing the ESBWR design, and
- describe the processes for changes to and departures from the ESBWR design.

#### *C. Costs and Benefits*

The NRC did not prepare a regulatory analysis to determine the expected quantitative or qualitative costs and benefits of the final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are NRC approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by an applicant for a combined license (COL). Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the NRC concludes that preparation of a regulatory analysis is neither required nor appropriate.

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## I. Background

Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' subpart B, presents the process for obtaining standard design certifications. On August 24, 2005, GEH tendered its application for certification of the ESBWR standard plant design (ADAMS Accession No. ML052450245) with the NRC. The NRC published a notice of receipt of the application in the **Federal Register** (70 FR 56745; September 28, 2005). GEH submitted this application in accordance with subpart B of 10 CFR part 52. On December 1, 2005, the NRC formally accepted the application as a docketed application for design certification (Docket No. 52–010) (70 FR 73311; December 9, 2005). The pre-application information submitted before the NRC formally accepted the application can be found in ADAMS under Docket No. PROJ0717 (Project No. 717).

The NRC staff issued a final safety evaluation report (FSER) for the ESBWR design in March 2011. The FSER is available in ADAMS under Accession No. ML103470210. The NRC subsequently published the FSER in April 2014 as NUREG–1966, ''Final Safety Evaluation Report Related to the Certification of the Economic Simplified Boiling-Water Reactor Standard Design'' (ADAMS Accession No. ML14100A304). The NRC also published a proposed rule to certify the ESBWR design in the **Federal Register** on March 24, 2011 (76 FR 16549), and a supplemental proposed rule on May 6, 2014 (79 FR 25715). The FSER and the proposed rule were based on the NRC's review of Revision 9 of the ESBWR DCD.

On April 17, 2014, the NRC issued an advanced supplemental safety evaluation report (SER) (ADAMS Accession No. ML14043A134) to address several matters identified by the NRC and revisions to the ESBWR DCD in Revision 10. The advanced supplemental SER was referenced in the supplemental proposed rule (79 FR 25715; May 6, 2014). The supplemental FSER will be published as Supplement No. 1 to NUREG–1966 before this final rule becomes effective. Because Revision 10 of the DCD was issued after the ESBWR proposed rule was published, all of the substantive changes in Revision 10 of the DCD are addressed in the **SUPPLEMENTARY INFORMATION** section of this document, including a discussion of why the change was or was not addressed in a supplemental proposed rule.

In its application for design certification, GEH also requested the NRC to provide an SDA for the ESBWR design. An SDA for the ESBWR design was issued in March 2011 (ADAMS Accession No. ML110540310) following the NRC staff's issuance of the ESBWR FSER. On June 3, 2014, GEH requested that the NRC retire the SDA at the time of issuance of the final ESBWR design certification rule (ADAMS Accession No. ML14154A094). After this final rule is published, the NRC intends, as a separate action from this rulemaking, to withdraw the SDA.

The application for design certification of the ESBWR design has been referenced in the following COL applications as of the date of this document: (1) Detroit Edison Company, Fermi Unit 3, Docket No. 52–033 (73 FR 73350; December 2, 2008); (2) Dominion Virginia Power, North Anna Unit 3, Docket No. 52–017 (73 FR 6528; February 4, 2008); (3) Entergy Operations, Inc., Grand Gulf Unit 3, Docket No. 52–024 (73 FR 22180; April 24, 2008) (APPLICATION SUSPENDED); (4) Entergy Operations, Inc., River Bend Unit 3, Docket No. 52–036 (73 FR 75141; December 10, 2008) (APPLICATION SUSPENDED); and (5) Exelon Nuclear Texas Holdings, LLC, Victoria County Station Units 1 and 2, Docket Nos. 52–031 and 52–032 (73 FR 66059; November 6, 2008) (APPLICATION WITHDRAWN).

## II. Summary and Analysis of Public Comments on the ESBWR Proposed Rule and Supplemental Proposed Rule

### *A. Overview of Public Comments*

The NRC published a proposed rule to certify the ESBWR design in the **Federal Register** on March 24, 2011 (76 FR 16549). The period for submitting comments on the proposed DCR, ESBWR DCD, or draft environmental assessment (EA) closed on June 7, 2011. The NRC received a total of 10 public comments on the proposed rule. The types of comments, the organization of comments, the comment identification format, and comment responses follow.

The NRC also published a supplemental proposed rule to request public comments on two specific topics regarding the ESBWR design certification. The supplemental proposed rule was published in the **Federal Register** on May 6, 2014 (79 FR 25715). The period for submitting comments on these specific topics closed on June 5, 2014. The NRC received no public comments on the supplemental proposed rule.

#### Types of Comments

The NRC received two types of comment submissions on the proposed rule for the ESBWR design certification. A comment submission means a communication or document, submitted to the NRC by an individual or entity, with one or more individual comments addressing a subject or an issue. The two types of comment submissions were:

1. Comment submissions that were not identical or similar in content (unique comment submissions); and
2. Comment submissions self-characterized as ''petitions'' or comment submissions related to such ''petitions'' (petitions).

The NRC received four unique comment submissions, including three comment submissions from private citizens and one comment submission from a non-government organization. Table 1 provides summary information on the unique comment submissions and their ADAMS Accession numbers.

In addition, in light of the Fukushima Dai-ichi accident and during the public comment period on the proposed rule, the NRC received a series of petitions to suspend adjudicatory, licensing, and

rulemaking activities, including the ESBWR design certification rulemaking. The NRC subsequently authorized responsive and supplemental filings on these petitions. In its *Memorandum and Order,* CLI–11–05, September 9, 2011, 74 NRC 141 (2011) (this decision is available on the NRC Web site in Volume 74 at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0750/*), the Commission addressed the petitions and the responsive and supplemental filings and determined that the petitions should be denied in the relevant adjudicatory proceedings; and, on its own motion referred the petitions to the NRC staff for consideration as comments in the ESBWR rulemaking. The staff considered the petitions and the responsive and supplemental filings and identified six comment submissions applicable to the ESBWR rulemaking. Table 2 provides summary information on these ''petition-related'' comment submissions and their ADAMS Accession numbers. Four of those comment submissions were ''petitions'' filed during the public comment period. One of the comment submissions was a responsive filing to the ''petitions.''

The sixth of these comment submissions, self-characterized as a ''petition'' and referred to the NRC staff in CLI–11–05, was received on August 15, 2011, after the close of the public comment period. As stated in the proposed rule, comments received after June 7, 2011, ''will be considered if it is practical to do so, but assurance of consideration cannot be given'' to comments received after this date. The NRC determined that it was practical to consider this comment. This comment opposed issuance of the final ESBWR rule.

TABLE 1—UNIQUE COMMENT SUBMISSIONS

| Comment submission No. | Commenter | ADAMS Accession No. |
|---|---|---|
| 1 | Paul Daugherty | ML110880057 |
| 2 | Farouk Baxter | ML110880315 |
| 3 | Patricia T. Birnie, Chairman, General Electric Stockholders' Alliance | ML11158A088 |
| 4 | Anonymous | ML11187A303 |

TABLE 2—COMMENT SUBMISSIONS SELF-CHARACTERIZED AS PETITIONS AND RESPONSIVE FILINGS

| Comment submission No. | Commenter | ADAMS Accession No. |
|---|---|---|
| 1 (Note 1) | Various organizations and individuals | ML111040472 |
| 2 (Note 1) | Various organizations and individuals | ML111080855 |
| 3 | Various organizations and individuals | ML111100618 |
| 4 | Jerald G. Head, Senior VP, Regulatory Affairs, GE Hitachi Nuclear Energy | ML11124A103 |
| 5 | Various organizations and individuals | ML111260637 |
| 6 | ESBWR Intervenors | ML112430118 |

**Note 1:** Petition comment submission 2 was submitted as an amendment to petition comment submission 1. Therefore, the NRC is only addressing comments on petition comment submission 2 in this final rule and no further response is needed on petition comment submission 1.

Organization of Comments and Responses

Comments and the NRC's responses are organized into two categories: Comments on technical issues presented in the DCD, and comments regarding Fukushima lessons learned. Comments on technical issues include the inclusion of beyond-design-basis accidents into the design, design of the ancillary diesel generators, safety-related battery design, control rod drive design, and control room flood protection. Comments regarding Fukushima lessons learned include delaying certification of the ESBWR design until lessons learned have been incorporated and the NRC's obligation under the National Environmental Policy Act (NEPA) to evaluate new information (such as the NTTF report, ADAMS Accession No. ML111861807) relevant to the environmental impact of its actions prior to certifying the ESBWR design. The NRC received comments related to the draft EA for this rule but those comments did not include anything to suggest that: (i) A rule certifying the ESBWR standard design would be a major Federal action, or (ii) the severe accident mitigation design alternatives (SAMDA) evaluation omitted a design alternative that should have been considered or incorrectly considered the costs and benefits of the alternatives it did consider. Therefore, no change to the EA was warranted. The NRC received no comments on the two specific topics in the supplemental proposed rule. The detailed comment summaries and the NRC's responses are provided in Sections II.B and II.C of this document.

Comment Identification Format

All comments are identified uniquely by using the format [W][X]–[Y], where:

[W] represents the comment submission type (S = unique comment submission, P = petition).

[X] represents the comment submission identification number (refer to the comment submission tables).

[Y] represents the comment number, which the NRC assigned to the comment. In some instances, lower-case alphabetic characters [Ya, Yb, Yc * * *] were added to a comment number after the initial designation of comments.

The NRC has created a document (ADAMS Accession No. ML113130141) which compiles all comment submissions and annotates each comment submission with the comment number indicated in the right hand margin.

*B. Comments Regarding Technical Content in the DCD*

Design-Basis Accidents

*Comment: Beyond-Design-Basis Accidents (DBAs) should be included in the design, final safety analysis report (FSAR), and Technical Specifications (TS).* (S1–1)

*NRC Response:* The NRC agrees that beyond-DBAs should be considered in the ESBWR design and the FSAR. In its 1985 policy statement on severe accidents (50 FR 32138), the Commission defined the term ''severe accident'' as an event that is ''beyond

the substantial coverage of design basis events,'' (DBE) including events in which there is substantial damage to the reactor core (whether or not there are serious offsite consequences). Consistent with the objectives of standardization and early resolution of design issues, 10 CFR 52.47(a)(23) requires applicants for design certification to include a description and analysis of severe accident prevention and mitigation features in the new reactor designs. These features are discussed in Chapter 19 of the DCD (equivalent to an FSAR), and the staff's evaluation of them is found in Chapter 19 of the FSER.

The NRC disagrees that beyond-DBAs should be included in the TS. The TS prescribe safety limits, limiting safety system settings, limiting conditions for operation, surveillance requirements, and administrative controls associated with DBEs, but need not prescribe limits or settings for conditions that could be experienced during a beyond-DBE.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The NRC's current regulatory scheme requires significant re-evaluation and revision in order to expand or upgrade the design-basis for reactor safety as recommended by its NTTF report.* (P6–1)

*NRC Response:* The NRC considers this comment to be outside the scope of the ESBWR design certification rulemaking. The comment deals with the adequacy of the NRC's overall regulatory scheme for nuclear power reactors and does not directly address the adequacy of the ESBWR design certification.

Nonetheless, the NRC disagrees with the comment. The NRC's rules and regulations provide reasonable assurance of adequate protection of public health and safety and the common defense and security. However, the Commission has ''initiated a comprehensive examination of the implications of the Fukushima accident. . . . As a result [of that examination], the NRC may implement changes to its regulations and regulatory processes.'' CLI–11–05, 74 NRC at 168. If such changes are warranted, the NRC's ''regulatory processes provide sufficient time and avenues to ensure that design certifications and COLs satisfy any Commission-directed changes before any new power plant commences operations. . . . Whether [the Commission] adopt[s] the Task Force recommendations or require[s] more, or different, actions associated with certified designs or COL applications, [the Commission has] the authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation.'' *Id.* at 162–163.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The ESBWR environmental documents do not address the radiological consequences of DBAs or demonstrate that those reactors can be operated without undue risk to the health and safety of the public and conclude that any health effects resulting from the DBAs are negligible. This conclusion is based on a review of the DBAs considered in the ESBWR DCD (WEC 2008) and NUREG–0800, Standard Review Plan (SRP). The findings of the Fukushima NTTF report call into question whether this represents a full, accurate description and examination of all DBAs having the potential for releases to the environment. See Makhijani Declaration at 7. If the design-basis for the reactors does not incorporate accidents that should be considered in order to satisfy the adequate protection standard, then it is not possible to reach a conclusion that the design of the reactor adequately protects against accident risks. See Makhijani Declaration at 9.* (P6–3)

*NRC Response:* The NRC disagrees with this comment. The NRC notes that the Makhijani Declaration citations do not address DBAs as discussed in the comment, but rather the declaration specifically refers to beyond-DBEs. The NRC interprets the comment to be referring to the environmental report required to be provided by the design certification applicant per 10 CFR 52.47, ''Contents of applications; technical information,'' and 10 CFR 51.55, ''Environmental report—standard design certification.'' The environmental report (NEDO–33306; ADAMS Accession No. ML102990433) referenced in Chapter 19 of the ESBWR DCD and evaluated in Chapter 19 of the FSER, as well as the NRC's EA, addresses costs and benefits of severe accident mitigation design alternatives. Conversely, DBAs for the ESBWR, and their associated radiological consequences, are not addressed in the environmental report but rather are addressed in Chapter 15 of the ESBWR DCD and evaluated in Chapter 15 of the FSER. The environmental report addresses the costs and benefits of severe accident mitigation design alternatives but does not address the design basis accidents discussed in the comment. In any event, the Commission has stated that, if warranted and after ''a comprehensive examination of the implications of the Fukushima accident . . ., the NRC may implement changes to its regulations and regulatory processes.'' CLI–11–05, 74 NRC at 168. The NRC's ''regulatory processes provide sufficient time and avenues to ensure that design certifications and COLs satisfy any Commission-directed changes before any new power plant commences operations. . . .'' *Id.* at 162–163.

No change was made to the rule, the DCD, or the EA as a result of this comment.

Electrical Systems

*Comment: The ESBWR design is flawed because it has failed to comply with the requirements of Institute of Electrical and Electronics Engineers (IEEE) Standard 603, which requires the electrical portion of the safety systems that perform safety functions—specifically, alternating current (ac) power from the Ancillary Diesel Generators (ADGs)—be classified as Class 1E. The DCD acknowledges that ac power from the ADGs is not needed for the first 72 hours of an accident, but are needed to perform Class 1E functions (recharging the Class 1E direct current (dc) batteries that provide power during the first 72 hours of an accident) when no other sources of power are available. The ESBWR design has classified these ac power sources as commercial grade, nonsafety-related, and non-Class 1E* (S2–1, referencing ADAMS Accession No. ML102350160).

*NRC Response:* The NRC disagrees with the comment. The NRC's position remains as stated in the separate correspondence between the commenter and the NRC that is attached to the comment letter. Specifically, the NRC stated that the events described in the commenter's previous letters (no ac power available to the plant for 72 hours after initiation of the accident and all batteries are depleted) are not DBEs but are beyond design-basis, for which the requirements of IEEE Standard 603 do not apply. As stated in the staff requirements memorandum (SRM), dated January 15, 1997, concerning SECY–96–128, ''Policy and Key Technical Issues Pertaining to the Westinghouse AP600 Standardized Passive Reactor Design,'' dated June 12, 1996, the Commission approved Item IV—Post-72 Hour Actions. The approval specified that the post-72 hour systems, structures, and components (SSCs) are not required to be safety-related. In addition, as stated in NUREG–1242, Volume 3, Part 1, ''NRC Review of Electric Power Research Institute's Advanced Light Water Reactor Utility Requirements Document: Passive Plant

Designs, Chapter 1,'' August 1994, a passive advanced light-water reactor, such as the ESBWR design, need not include or rely upon an active safety-related ac power source to support safety system functions after 72 hours from the onset of an accident, but may rely on electrical power sources that are not safety-related after that time. Specifically, the ESBWR is designed so that safety-related passive systems are able to perform all safety functions for 72 hours after initiation of a DBE without the need for operator actions. The DBE is assumed to be resolved (except for long-term cooling) within 72 hours, and thus, the Class 1E batteries are designed for and need only function for 72 hours without being recharged.

In the ESBWR, the ADGs, which are the subject of the commenter's concern, are not used to recharge the Class 1E batteries. Rather, the ADGs provide power directly to post accident monitoring instrumentation, main control room lighting, the reactor pressure vessel (RPV) makeup pump, and containment cooling systems, among others. After 72 hours, consistent with NUREG–1242, nonsafety-related systems other than the ADGs are used to replenish safety-related passive systems so that they will perform long-term core cooling and containment integrity functions. These nonsafety-related systems are designed in accordance with quality standards commensurate with the importance of these functions and that provide reasonable assurance they will function when needed. In the event that the ADGs are not available, the Seismic Category I firewater storage tanks and Seismic Category I diesel pump and fire protection piping can be used to provide post-accident makeup water to the Isolation Condenser and Passive Containment Cooling System (PCCS) pools and Spent Fuel Pool (SFP) using the Fuel and Auxiliary Plant Cooling System (FAPCS) for long-term cooling beyond 72 hours.

The NRC also stated in its May 15, 2009, letter (in the referenced document) that the offsite power system, a nonsafety-related power source, is the preferred source of power for safety-related systems at all current plants. Further, the station blackout (SBO) rule, 10 CFR 50.63, ''Loss of all alternating current power,'' does not require the use of safety-related alternative ac power sources to cope with an SBO. Therefore, neither of these ac power sources—offsite power or alternate ac power source—is required to be safety-related or classified as Class 1E under IEEE 603. Thus, the ADGs need not be classified as Class 1E power sources as well.

In summary, the design bases of the passive safety systems are centered on the 72-hour capability and these safety-related systems must remain functional to assure the integrity of the reactor coolant pressure boundary and the capability to shut down the reactor and maintain it in a safe shutdown condition without operator action or support from nonsafety systems for the first 72 hours following the initiation of a DBE. Beyond 72 hours, these systems must continue to remain functional to provide such assurance for the following 4 days, with allowance for operator actions and support from nonsafety SSCs consistent with NUREG–1242.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The NRC should require GEH to relocate the safety-related dc batteries and their related systems above grade level so that they are not subject to external flooding. This recommendation is supported by the following points:*

*1. There is a fair chance of a failure of the dc supply as safety-related battery banks (Class-1E grade batteries) are housed below grade in the reactor building, as well as their electrical penetration to primary containment. In a natural disaster they may not remain watertight, as water may enter through the doors and incapacitate the battery banks.*

*2. Water may also enter the battery rooms if those doors are open for maintenance, testing, or replacement of cells.*

*3. ESBWR emergency core cooling systems (ECCS) are dependent on this dc supply. If the dc supply is lost, emergency cooling and depressurization systems will fail. There is no diversity for the core cooling and depressurization systems if the dc supply fails.* (S4–1)

*NRC Response:* The NRC disagrees with the comment. The safety-related dc batteries and their related systems do not need to be relocated above grade level. The NRC has reviewed the ESBWR DCD and has determined that the ESBWR safety-related SSCs (including the reactor building, which houses the dc batteries) are designed to withstand the effects of external flooding. With the exception of loads due to hurricane winds and wind-generated missiles beyond those considered in the ESBWR DCD, the NRC concluded that the ESBWR DCD meets the requirements of 10 CFR part 50, appendix A, ''General Design Criteria for Nuclear Power Plants,'' (GDC) 2, which requires the design bases of SSCs important to safety to include protection against natural phenomena (including earthquakes, tornadoes, floods, hurricanes, and tsunami) such that these SSCs will not lose the capability to perform their safety functions as a result of such phenomena. This conclusion is documented in the NRC's FSER for the ESBWR design.

In the following paragraphs, the NRC addresses each of the three supporting points for the comment.

*Supporting Point 1:* The NRC agrees that safety-related batteries are located below grade per the ESBWR DCD, Tier 2, Figure 1.2–2. This is acceptable because all components of safety-related dc electric systems are housed in structures which provide protection against external flood damage. The structures that may be subjected to a design-basis flood are designed to withstand the flood level by locating the plant grade elevation 1 ft. (0.30 m) above the flood level and incorporating structural provisions into the plant design to protect the SSCs from the postulated flood conditions. GEH's application for design certification was submitted with proposed vendor-specified site parameters. These values are provided in Table 2.0–1 (Tier 2) and in Table 5.1–1 (Tier 1) of the DCD. For the ESBWR design, the maximum groundwater level is 2 ft. (0.61 m) below plant grade and the maximum flood level is 1 ft. (0.30 m) below plant grade. The ESBWR design was evaluated using the vendor-specified flood levels and found to be safe. All exterior access openings are above flood level. The flood design incorporates reinforced concrete walls designed to resist the static and dynamic forces of the design-basis flood and water stops at construction joints to prevent in-leakage. External surfaces below flood and ground water levels are waterproofed. Penetrations are sealed and also capable of withstanding the static and dynamic forces of the design-basis flood. Watertight doors provide physical separation of flood zones. In addition, the applicant has specified the site parameters, design characteristics, and any additional requirements and restrictions necessary for a COL applicant to ensure that safety-related SSCs will be adequately protected from the site-specific probable maximum flood conditions. Based on the evaluation in Section 3.4 of the FSER, the NRC concludes that the ESBWR design regarding flood protection provides reasonable assurance that safety-related SSCs (including the safety-related dc batteries and their

related systems) will maintain their structural integrity or are located within structures that will maintain their integrity, and will perform their intended safety functions when subjected to a design-basis flood, and therefore, satisfy the requirements of GDC 2.

*Supporting Point 2:* The comment stated that water may enter the battery rooms if the watertight doors are open for maintenance, testing, or replacement of the battery cells. The NRC agrees that this scenario is possible for one division of safety-related battery banks. The ESBWR TS, under limiting condition of operation 3.8.1, restricts maintenance, testing, or replacement of the battery cells during plant operation to only one required division of safety-related battery banks. In addition, the COL applicant is required to develop plant operating and maintenance procedures that provide control for activities that are important to the safe operation of the facility, including limiting conditions of operation. However, there are four divisions of safety-related battery banks, which are physically separated by concrete walls and watertight doors. Only two divisions of dc systems are required for safe shutdown of the plant. If one of the safety-related battery room doors is open during a flood, as suggested in the comment, the other batteries will still be adequately protected by design features for physical separation to ensure the safety-related SSCs can perform their functions.

*Supporting Point 3:* The comment stated that the ESBWR ECCS is dependent on dc power, and if dc power is lost, emergency cooling and depressurization systems will fail. The ESBWR ECCS consists of the Gravity Driven Cooling System, the Isolation Condenser System, the Standby Liquid Control System, and the Automatic Depressurization System. The Gravity Driven Cooling System, Standby Liquid Control System, and the Automatic Depressurization System do rely on dc power for actuation (as pointed out in the comment). The four trains of Isolation Condenser System, on the other hand, automatically begin removal of decay heat and control RPV level above the top of active fuel upon loss of all ac and dc power because the only valve in the system relied upon to change position upon initiation of the system fails in the safe (open) position upon loss of power. Beginning 4 hours after the start of an accident, the Isolation Condenser System upper and lower header vent valves are opened periodically to remove non-condensable gases to maintain optimum heat removal and allow continued reactor cooldown. These valves are solenoid-operated valves and rely upon electric power to open.

The comment also suggests that there is no diversity for several systems that rely on the dc power supply. The NRC agrees that the Automatic Depressurization System, Gravity Driven Cooling System, the Suppression Pool Equalization Line Valves, and the Standby Liquid Control System all require safety-related dc power in order to perform their safety functions and therefore lack diversity in that regard, but does not agree that the Basemat Internal Melt Arrest Coolability (BiMAC) cooling system requires safety-related dc power to perform its safety function. As discussed below, the BiMAC cooling system—a non-safety system—is designed to automatically fire squib valves and drain water to the area below the RPV upon sensing high temperatures in the BiMAC without dependence on any of the four safety-related power sources. Also, as discussed above, the four trains of the Isolation Condenser System automatically begin removal of decay heat and control RPV level above the top of active fuel upon loss of all ac and dc power because the only valve in the system relied upon to change position upon initiation of the system fails in the safe (open) position upon loss of power. Decay heat can be removed with the Isolation Condenser System for 72 hours without any additional action. The ESBWR is designed such that the Isolation Condenser System heat exchanger pool can be replenished after 72 hours with the diesel driven fire pump to allow continued cooling with the Isolation Condenser System. Safety-related dc power is not needed to operate this pump. In light of these facts, the NRC concludes that the capability of the ESBWR to remove decay heat from the reactor core following an accident is sufficiently diverse. It should also be noted that the ESBWR safety-related 120 volts ac uninterruptible power supply (UPS) input is normally supplied by offsite power or a nonsafety-related onsite power system. During a loss of offsite and nonsafety-related onsite power, the UPS gets its power from 250 volts dc batteries. The ESBWR design includes an offsite power system, nonsafety-related standby diesel generators, and ADGs, any of which can mitigate the consequences of an accident if available. Safety-related UPS systems are housed in seismic Category I structures and meet GDCs 2, 4, and 17.

Common cause failure of the safety-related batteries in the ESBWR design would clearly be an event of substantial safety significance because dc power is used to power the distributed control and instrumentation system, which is used to actuate passive safety systems. However, the ESBWR design includes a number of defense-in-depth features for reducing the likelihood of losing all ability to accomplish key safety functions. As previously stated, the Isolation Condenser System automatically begins removal of decay heat and controls RPV level above the top of active fuel upon loss of all ac and dc power. All safety divisions (including concrete walls and watertight doors that separate the four safety-related battery banks) are physically separated.

The ESBWR design also includes design features specifically for the purpose of injecting water into the containment to flood the containment floor and cover core debris. The BiMAC cooling system is designed to automatically fire squib valves and drain water to the area below the RPV upon sensing high temperatures in the BiMAC, indicating core debris below the RPV. This occurs without operator action and without dependence on any of the four safety-related power sources.

No change was made to the rule, the DCD, or the EA as a result of this comment.

Control Rod Drive System

*Comment: Two Control Rod Drives (CRD) are scrammed by one hydraulic control unit (HCU). A single failure of one HCU will affect the scram function of two CRDs. It is done for cost saving. This is not acceptable in a safety system.* (S4–2)

*NRC Response:* The NRC disagrees with the comment. In Section 4.6.3 of the FSER, the NRC stated that a single failure in an HCU may result in the failure of two control rods. The DCD describes that the control rods are assigned to HCUs in a manner such that no 4X4 array of rods contain both rods connected to the same HCU. This arrangement assures that shutdown is achieved (among other things) assuming a single failure of an HCU. The NRC reviewed the effects of an HCU failure and concluded in Section 4.3 of the FSER that sufficient shutdown margin exists in the case of an HCU failure. In addition, TS 3.1.5 requires that all control rod scram accumulators are operable during Modes 1 (Power Operation) and 2 (Start-Up). If an accumulator is inoperable, the associated control rod pair is declared inoperable and Limiting Condition of Operation (LCO) 3.1.3, Control Rod Operability, is entered. This would

result in requiring the affected control rod to be fully inserted and disarmed, thereby satisfying the intended function in accordance with actions of LCO 3.1.3. If an accumulator is inoperable, TS require the affected control rod to be inserted and hence the scram function of two CRDs is satisfied. Finally, the ESBWR has a diverse method to scram the reactor. An electric motor is provided for each CRD for scram in addition to the hydraulic scram using the accumulator. Accordingly, the NRC has determined that the CRD system design is adequate.

No change was made to the rule, the DCD, or the EA as a result of this comment.

Control Room

*Comment: For safety reasons, the Control Room should be located at a sufficient height from the ground to prevent its flooding during a tsunami, tornado, hurricane, heavy rain, etc.* (S4–3)

*NRC Response:* The NRC agrees that the control room should be protected from flooding. GEH's application for SDA and design certification was submitted with proposed vendor-specified site parameters. The values for maximum groundwater is 2 feet (0.61 m) below plant grade as provided in Table 2.0–1 (Tier 2) of the DCD and the maximum flood level is 1 foot (0.30 m) below plant grade as provided in Table 5.1–1 (Tier 1) of the DCD.

The ESBWR design was evaluated using the vendor-specified flood levels and found to be safe. As described in Chapter 3 of the DCD, the ESBWR construction incorporates several water proofing features: The external walls below groundwater and flood levels are designed to withstand hydrostatic loads, construction and expansion joints have water stops, external surfaces below groundwater and flood levels are waterproofed, penetrations below groundwater and flood levels are sealed, and there are no exterior openings below grade.

If a COL application referencing the ESBWR design is submitted to the NRC, the COL applicant must demonstrate that the site-specific characteristics are bounded by the DCD site parameters. During the review of a COL application using this design, the staff will perform an independent analysis to verify that the flood levels and other relevant site characteristics are within the DCD parameters.

No change was made to the rule, the DCD, or the EA as a result of this comment.

Spent Fuel Pool

*Comment: The ESBWR design has an elevated SFP. This is a particularly troublesome feature in common with the Mark I BWR design, which is the design of the Fukushima reactors.* (P2–2)

*NRC Response:* The NRC disagrees with this comment. The ESBWR SFP design is different from the Mark I BWR design in that the ESBWR SFP is located entirely below grade. The ESBWR design does include an additional buffer pool located above grade in the reactor building. The buffer pool contains a small array of spent fuel racks that is used for temporary storage of spent fuel during refueling operations and also includes a location to store new fuel assemblies during power operations.

GDC 2 requires that the ESBWR spent fuel storage facilities (SFP and buffer pool) and the structure within which they are housed, as SSCs important to safety, be protected against the effects of natural phenomena without loss of their safety function. In addition, GDC 61 requires that the design prevents drainage of coolant inventory below an adequate shielding depth, provides adequate coolant flow to the spent fuel racks, and provides a system for detecting and containing pool liner leakage.

The reactor building and the concrete containment, which houses the SFP and additional buffer pool, are seismic Category I structures that are designed to meet the requirements of GDC 2 for protection against natural phenomena such as an earthquake, tornado, or hurricane in combination with normal and accident condition loads considering the effects due to the elevated location of the buffer pool. Information relating to the analysis and design of the reactor building is provided in DCD Sections 3.7 and 3.8 and Appendices 3A, 3B, 3F, and 3G. Through analysis and review of the design, the NRC determined that the reactor building and the concrete containment are structurally adequate to withstand all design-basis loads. The NRC concluded in the FSER that both pools are adequately protected from the effects of natural phenomena without loss of capability to perform their safety functions.

The NRC also concluded in its FSER that, because the SFP and buffer pools have anti-siphoning devices on all submerged Fuel and Auxiliary Pools Cooling System (FAPCS) piping, and there are no other drainage paths by which the level in the SFP or buffer pool could be reduced, coolant will not drain below an adequate shielding depth in either pool.

Cooling of spent fuel located in either the SFP or buffer pool is provided by the FAPCS. In the unlikely event that a loss of active cooling to the spent fuel assemblies occurs, there is enough water to keep the fuel assemblies cooled for a minimum of 72 hours before operator actions are needed. After 72 hours, additional water can be provided through safety-related connections to the fire protection system or another onsite or offsite water source. The NRC concluded in the FSER that cooling for both ESBWR SFP and buffer pools will be maintained.

Finally, the NRC concluded in the FSER that, because the spent fuel pool and buffer pool are equipped with stainless steel liners, concrete walls, and leak detection drains, both detection and containment of pool liner leakage capability are provided.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*C. Comments Regarding the NRC's Response to Fukushima Dai-ichi Accident*

Some commenters favored delaying (in some fashion) the ESBWR rulemaking until lessons are learned from the Fukushima Dai-ichi Nuclear Power Plant (Fukushima) accident that occurred on March 11, 2011, and the NRC applies the lessons learned to United States (U.S.) nuclear power plants, including the ESBWR design. Background on how the Commission responded to the Fukushima accident and how the ESBWR design addresses Fukushima NTTF recommendations is discussed in Section III of the **SUPPLEMENTARY INFORMATION** section of this document.

As discussed in Section III of the **SUPPLEMENTARY INFORMATION** section of this document, the NRC concludes that no changes to the ESBWR design are warranted at this time to provide reasonable assurance of adequate protection of public health and safety. Moreover, even if the Commission concludes at a later time that some additional action is needed for the ESBWR design, the NRC has ample opportunity and legal authority to modify the ESBWR DCR to implement design changes, as well as to take any necessary action to ensure that COLs that reference the ESBWR make any necessary design changes.

*Comment: The NRC should suspend the certification of the ESBWR reactor design and rescind the final design approval it granted on March 9, 2011. Based on the recent events at the Fukushima Dai-ichi site, the NRC should first undertake a far more*

*rigorous, long-term review of the design and the regulatory implication of the events, implement new regulations to protect public health and safety, and revise the environmental analyses to evaluate the potential health, environmental and economic costs of reactor and SFP accidents.* (S3–1, P3–1, P3–2)

*NRC Response:* The NRC declines to suspend the ESBWR rulemaking. See *Memorandum and Order,* CLI–11–05, 74 NRC 141 (2011) (ADAMS Accession No. ML112521106).

Background on how the Commission responded to the Fukushima accident and how the ESBWR design addresses Fukushima NTTF recommendations is discussed in Section III of the **SUPPLEMENTARY INFORMATION** section of this document. In that section, the NRC concludes that no changes to the ESBWR design are required at this time to provide reasonable assurance of adequate protection of public health and safety. If the Commission concludes at a later time that some additional action is needed for the ESBWR design, the NRC has ample opportunity and legal authority to modify the ESBWR DCR to implement design changes, as well as to take any necessary action to ensure that COLs that reference the ESBWR also make any necessary design changes.

For these reasons the NRC does not regard delays in the ESBWR design certification process to be appropriate. No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The Atomic Energy Act (AEA) and NEPA preclude the NRC from approving standardized plant designs until it has completed the investigation of the Fukushima accident and considered the safety and environmental implications of the accident with respect to its regulatory program. NEPA imposes on agencies a continuing obligation to gather and evaluate new information relevant to the environmental impact of its actions. The need to supplement under NEPA when there is new and significant information is also found throughout the NRC regulations, e.g., 10 CFR 51.92(a)(2), 51.50(c)(iii), 51.53(b), and 51.53(c)(3)(iv). The conclusions and recommendations presented in the NTTF report constitute ''new and significant information'' whose environmental implications must be considered before the NRC may certify the ESBWR design and operating procedures.* (P2–2, P6–2)

*NRC Response:* The NRC disagrees with this comment. The comment did not explain what particular provision of the AEA precludes the NRC from issuing a standard DCR. Furthermore, NEPA has no ''continuing obligation'' to gather and evaluate new information relevant to the environmental impact of its actions, because the Commission has determined that issuance of a standard DCR is not a major Federal action significantly affecting the quality of the human environment. See the EA at page 1 (ADAMS Accession No. ML111730382).

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The whole nuclear culture must be reviewed before any reactor designs are certified for potential construction, and that all licensing of new reactor designs be put on hold until the NRC's systems of regulations, oversight, and enforcement are thoroughly reviewed and, where required, are made more restrictive.* (S3–2)

*NRC Response:* The NRC considers this comment to be outside the scope of the ESBWR design certification rulemaking. The comment addresses overall nuclear industry safety culture and does not directly address the adequacy of the ESBWR design certification.

Nonetheless, the NRC disagrees with the comment. The NRC considers that its regulatory framework and requirements provide a rigorous and comprehensive design certification and license review process that examines the full extent of siting, system design, and operations of nuclear power plants.

The NRC will continue to process existing applications for new design certifications and licenses in accordance with the schedules that have been established.

Background on how the Commission responded to the Fukushima accident and how the ESBWR design addresses Fukushima near-term task force recommendations is discussed in Section III of the **SUPPLEMENTARY INFORMATION** section of this document. In that section, the NRC concludes that no changes to the ESBWR design are warranted at this time to provide reasonable assurance of adequate protection of public health and safety. Moreover, even if the Commission concludes at a later time that some additional action is needed for the ESBWR design, the NRC has ample opportunity and legal authority to modify the ESBWR DCR to implement design changes, as well as to take any necessary action to ensure that COLs that reference the ESBWR also make any necessary design changes.

For these reasons the NRC does not regard delays in the ESBWR design certification process to be appropriate. No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The NRC should include a review of public health challenges worldwide from radiation in its decision-making process.* (S3–3)

*NRC Response:* The NRC considers this comment to be outside the scope of the ESBWR DCR. The comment addresses the NRC's generic process and criteria for regulatory decision making, and does not directly address the adequacy of the ESBWR design.

Nonetheless, the NRC disagrees with the comment. The NRC interprets the comment's reference to the ''decision-making process'' to mean the Commission's decision whether to certify the ESBWR design. The NRC reviewed the design and has found that it complies with the NRC's regulations, which provide reasonable assurance of adequate protection of public health and safety, including protection of the public from radiation. The comment did not provide any data, analyses, or other technical information to suggest why the EBSWR design would be unable to provide adequate protection of the public from radiation. No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The NTTF recommended that licensees reevaluate the seismic and flooding hazards at their sites and if necessary update the design-basis and SSCs important to safety to protect against the updated hazards. NTTF Report, page 30. The ESBWR environmental documents must be supplemented in light of this new and significant information. The NTTF's findings and recommendations are directly relevant to environmental concerns and have a bearing on the proposed action and its impacts. They demonstrate a need to reevaluate the seismic and flooding hazards on the ESBWR reactors, the environmental consequences such hazards could pose, and what, if any, design measures could be implemented (i.e., through NEPA's requisite ''alternatives'' analysis) to ensure that the public is adequately protected from these risks.* (P6–4)

*NRC Response:* The NRC disagrees with the comment. Recommendation 2 of the NTTF, which is the subject of the comment, was focused on licensees of nuclear power reactors and was addressed through site-specific evaluations of the adequacy of the design of the reactors as applied to the site-specific seismic and flooding characteristics. By contrast, the ESBWR design certification—as any other design certification—is not approved for use on

any specific site. Rather, the ESBWR design specifies ''design parameters,'' including maximum flood levels and seismic ground motion frequencies and magnitudes, representing the values for which the NRC has determined the ESBWR may safely be placed. A nuclear power plant applicant intending to use the ESBWR must show that the actual site characteristics for the site that the applicant intends to use for the ESBWR fall within the ESBWR-specified design parameters. Thus, NTTF Recommendation 2 is not relevant to the adequacy of the ESBWR design certification. Rather, the NRC regards this NTTF recommendation as an issue relevant to the determination whether a referenced design certification has been adequately demonstrated to be appropriate at the COL applicant's designated site.

In addition, the NRC does not agree that NTTF Recommendation 2 demonstrates that the NRC must ''reevaluate the seismic and flooding hazards on the ESBWR reactors, the environmental consequences such hazards could pose, and what, if any, design measures could be implemented'' through a NEPA ''alternatives'' analysis. Recommendation 2 of the NTTF can best be thought of as a determination to ensure that each site's seismic and flooding characteristics are adequately justified based upon current information. The recommendation does not concern the adequacy of the NRC's substantive regulatory requirements governing protection against seismic and flooding events or their application to any specific reactor design (such as the ESBWR). Thus, even if Recommendation 2 were adopted in full by the Commission and fully implemented, those implementing actions would be directed at licensees of existing nuclear power plants and applicants for new nuclear power plants. The NRC's implementing actions would not be directed at the ESBWR design certification. For these reasons, the NRC does not agree with the comment that ESBWR's EA must be supplemented to address the NTTF Recommendation 2 and implementing actions.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The NTTF report makes several significant findings when it comes to increasing and improving mitigation measures for new reactor designs and recommends a number of specific steps licensees could take in this regard. Accordingly, the ESBWR environmental report must be supplemented to consider the use of these additional mitigation measures to reduce the project's environmental impacts. See 40 CFR 1502.14(f), 1502.16, 1508.25(b)(3).* (P6–5)

*NRC Response:* The NRC disagrees with the comment. The NTTF report explicitly states that by the ''nature of their passive designs and inherent 72-hour coping capability for core, containment, and SFP cooling with no operator action required, the ESBWR and AP1000 designs have many of the design features and attributes necessary to address the Task Force recommendations. The Task Force supports completing those design certification rulemaking activities without delay.'' (see NTTF Report, pages 71–72). Specifically, the NTTF report does not recommend any actions for the ESBWR design in the near term.

NEPA's obligation to evaluate new information relevant to the environmental impact does not attach unless and until the Commission determines whether ''new and significant'' information has arisen and there is a ''major Federal action'' being undertaken by the NRC for which the new information is relevant and material. The Commission has stated that ''[a]lthough the Task Force completed its review and provided its recommendations to us, the agency continues to evaluate the accident and its implications for U.S. facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan event for U.S. facilities. Therefore, any generic NEPA duty—if one were appropriate at all—does not accrue now. If, however, new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, the agency will assess the significance of that information as appropriate.'' CLI–11–05, 74 NRC at 167.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: Before certifying the ESBWR, the NRC must evaluate the relative costs and benefits of adopting all of the NTTF report recommendations, and specifically Recommendations 4 and 7, in light of the NRC's increased understanding regarding accident risks and the strength of its regulatory program to prevent or mitigate them.* (P6–6)

*NRC Response:* The NRC disagrees with the comment. The NTTF report explicitly states that by ''nature of their passive designs and inherent 72-hour coping capability for core, containment, and SFP cooling with no operator action required, the ESBWR and AP1000 designs have many of the design features and attributes necessary to address the Task Force recommendations. The Task Force supports completing those design certification rulemaking activities without delay.'' *Id.,* at 71–72. Specifically, the NTTF report does not recommend any actions, to include Recommendations 4 and 7, for the ESBWR design in the near term. Any potential need to address these recommendations, by addressing ''prestaging of any needed equipment for beyond 72 hours,'' and the establishment of inspection, test, analysis, and acceptance criteria (ITAACs) ''to confirm effective implementation of minimum and extended coping, as described in detailed Recommendation 4.1'' of the NTTF report would be placed on COL applicants referencing the ESBWR design. *Id.,* at 72.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The comment questions the summary conclusions in Section 7 of the NTTF report regarding Recommendations 4 and 7. Both of these recommendations are contrary to the certification process as currently followed by the NRC in which an applicant for a COL can incorporate by reference a certified reactor design. Directly contrary to this long-standing process, the process suggested in the NTTF report pushes the Fukushima lessons learned onto a COL applicant rather than resolved these issues during the design certification process. Each reactor then becomes a prototype as case-by-case review of potential design and operational changes are made after construction begins. If the phrase ''completing those design certification rulemaking activities without delay'' is an endorsement of the current rulemaking on the ESBWR DCD Revision 9 without consideration of the other Fukushima-driven recommendations (or the subsequent revision to the DCD), the comment questions the depth into which the NTTF analyzed the ESBWR reactor design.* (P6–7)

*NRC Response:* The NRC considers this comment to be outside the scope of the ESBWR design certification rulemaking. The comment presents the commenter's views on Recommendations 4 and 7 of the NTTF Report, but does not address the adequacy of the ESBWR design, the rule, or the EA.

Nonetheless, the NRC disagrees with the comment. The NTTF suggestions that COL applicants or holders address Recommendations 4 and 7, rather than the design certification applicant during the certification process, would not necessitate those COLs to be considered ''prototypes.'' The Commission has stated that ''the agency continues to evaluate the accident and its implications for U.S, facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan event for U.S. facilities.'' CLI–11–05, 74 NRC at 167. Should changes need to be made to the ESBWR design as a result of the evaluation of the Fukushima event, the Commission has stated that ''we have the authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation.'' *Id.* at 163. Further, it is not contrary to the certification process to require changes resulting from Fukushima lessons learned on COLs. The NRC may, under 10 CFR 52.97(c), place conditions upon the COL that the ''Commission deems necessary and appropriate.'' Further, the requirements under 10 CFR 52.63(a)(1) provide a mechanism for the NRC to modify certified designs. Such design changes would be applied to all COL holders referencing this design under 10 CFR 52.63(a)(3). As a result, all COL holders referencing the certified design would be required to make such changes. Moreover, in appropriate (but relatively limited) circumstances the NRC could also impose changes as an ''administrative exemption'' to the issue finality provisions of 10 CFR 52.63 and the ESBWR analogous to what the NRC did in the aircraft impact assessment (AIA) final rule, 10 CFR 50.150 (72 FR 56287; October 3, 2007).

No change was made to the rule, the DCD, or the EA as a result of this comment.

Emergency Petition

*NRC Note: The Emergency Petition is comment submissions P1 and P2 in this ESBWR design certification rulemaking proceeding.*

*Comment: The emergency petition is out of process and should be dismissed on that basis alone. However, if this petition is not so dismissed, the NRC should treat this petition, for aspects related to the single issue specifically regarding the ESBWR design certification rulemaking, as a public comment on the proposed rule.* (P4–1)

*NRC Response:* The NRC need not address, in this rulemaking, the comment's suggestion that the emergency petition is out of process because the Commission considered the merits of it and related filings in its *Memorandum and Order,* CLI–11–05, 74 NRC at 141 (2011) (ADAMS Accession No. ML112521106). The Commission determined that the Emergency Petition should be denied in the relevant adjudicatory proceedings and, on its own motion referred the emergency petition to the NRC staff for consideration as comments in the ESBWR rulemaking.

To the extent that it is relevant to the ESBWR design certification rulemaking, the NRC agrees that the Emergency Petition should be treated as a public comment on the proposed rule. Comments in the Emergency Petition are addressed in this comment response portion of this statement of considerations for the final ESBWR DCR.

No change was made to the rule, the DCD, or the EA as a result of this comment.

*Comment: The responses, filed by various industry representatives and COL applicants in accordance with an April 19, 2011, Commission Order (ADAMS Accession No. ML111101277) and setting forth those representatives' and applicants' views on an ''Emergency Petition'' (ADAMS Accession No. ML111080855), were based on mischaracterizations of the Emergency Petition, incorrect representations regarding the NRC's response to the Three Mile Island accident, and incorrect interpretations of the law. Therefore, the responses should be rejected and the Emergency Petition should be granted.* (P5–1)

*NRC Response:* On September 9, 2011, the Commission issued a Memorandum and Order on the Emergency Petition, CLI–11–05, 74 NRC 141 (ADAMS Accession No. ML112521106), which referred both the Emergency Petition and certain documents filed with the NRC to the NRC staff for ''consideration as comments'' in the applicable design certification rulemaking. CLI–11–05, 74 NRC at 176. Comment submission P5 was one of the documents referred by the Commission to the staff for consideration as comments. In accordance with the Commission's direction in CLI–11–05, comment submission P5 has been considered in the ESBWR rulemaking in a manner consistent with other comment submissions filed in the ESBWR rulemaking. Thus, the NRC reviewed the submission to determine the nature of the comments within this comment submission, if it is within the scope of the ESBWR rulemaking, and if so, what substantive response is appropriate. Based upon that review, the NRC determined that comment submission P5 is essentially a procedural reply to responses filed by other entities on the Emergency Petition. The NRC has determined that the reply does not contain any new substantive comments on the adequacy of the ESBWR design that were not already presented in the Emergency Petition and, therefore, has concluded that no further response is needed. No change was made to the rule, the DCD, or the EA as a result of this comment.

## III. Regulatory and Policy Issues

This document addresses the regulatory and policy issues that were addressed in the March 2011 proposed rule, the May 2014 supplemental proposed rule, and those not addressed in either the proposed rule or the supplemental proposed rule. The regulatory and policy issues addressed in the March 2011 proposed rule are: (1) Access to safeguards information (SGI) and sensitive unclassified non-safeguards information (SUNSI), and (2) human factors engineering (HFE) operational program elements exclusion from finality. An additional regulatory and policy issue addressed in the May 2014 supplemental proposed rule is incorporation by reference of public documents and issue resolution associated with non-public documents. The NRC provided an opportunity for public comment in the supplemental proposed rule on the issue resolution associated with non-public documents, but not for incorporation by reference of public documents. A number of regulatory and policy issues were not included in either the March 2011 proposed rule or the May 2014 supplemental proposed rule. These are: (1) How the ESBWR design addresses Fukushima NTTF recommendations, (2) changes to Tier 2* information, (3) change control for severe accident design features, and (4) other changes to the ESBWR rule language and difference between the ESBWR rule and other DCRs.

Each of these issues identified above is discussed below.[1]

[1] Some of the regulatory and policy issues discussed below arose after the close of the public comment period on the March 24, 2011, proposed rule. The public was afforded an opportunity to comment on some of these issues in the May 16, 2014, supplemental proposed rule. Section V of the **SUPPLEMENTARY INFORMATION** section of this document describes the NRC's bases for not offering a comment opportunity for some of the regulatory and policy issues that arose after the close of the public comment period on the proposed rule.

*A. How the ESBWR Design Addresses Fukushima NTTF Recommendations*

The application for certification of the ESBWR design was prepared and submitted, and the NRC staff's review of the application was completed, before the March 11, 2011, Great Tohoku earthquake and tsunami and subsequent events at the Fukushima Dai-ichi Nuclear Power Plant in Japan. In response to the events at Fukushima, the NRC established the NTTF to conduct a systematic and methodical review of NRC processes and regulations to: (1) Determine whether the agency should make additional improvements to its regulatory system; and (2) make recommendations to the Commission for policy directions. On July 12, 2011, the NTTF issued a 90-day report, SECY–11–0093 (ADAMS Accession Number ML11186A950), ''Near Term Report and Recommendations for Agency Actions Following the Events in Japan,'' identifying 12 recommendations. Among other recommendations, the NTTF supported completing the ESBWR design certification rulemaking activity without delay (see NTTF Report, pages 71–72).

On September 9, 2011, in SECY–11–0124, ''Recommended Actions to Be Taken Without Delay from NTTF Report,'' (ADAMS Accession No. ML11245A144) the NRC staff submitted to the Commission for its consideration NTTF recommendations that should be partially or entirely initiated without delay. In SECY–11–0124, the NRC staff concluded that the following subset of actions would provide the greatest potential for improving safety in the near term:

(1) Recommendation 2.1: Seismic and Flood Hazard Reevaluations
(2) Recommendation 2.3: Seismic and Flood Walkdowns
(3) Recommendation 4.1: Station Blackout Regulatory Actions
(4) Recommendation 4.2: Equipment Covered under 10 CFR 50.54(hh)(2) (subsequently renamed ''Mitigation Strategies for Beyond-Design-Basis External Events'' with the issuance of Order EA–12–049)
(5) Recommendation 5.1: Reliable Hardened Vents for Mark I Containments
(6) Recommendation 8: Strengthening and Integration of Emergency Operating Procedures, Severe Accidents Management Guidelines, and Extensive Damage Mitigation Guidelines
(7) Recommendation 9.3: Emergency Preparedness Regulatory Actions (staffing and communications).

On October 3, 2011, in SECY–11–0137, ''Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned'' (ADAMS Accession No. ML11272A203), the NRC staff identified two additional actions that would have the greatest potential for improving safety in the near term. The additional actions are: (1) Inclusion of Mark II containments in the staff's recommendation for reliable hardened vents associated with NTTF Recommendation 5.1 and (2) the implementation of SFP instrumentation proposed in Recommendation 7.1.

The NRC staff determined that the following two near term recommendations are applicable and should be considered for the ESBWR design certification: (1) Recommendation 4.2, Mitigation Strategies for Beyond-Design-Basis External Events (onsite equipment and connections only) and (2) Recommendation 7.1, SFP Instrumentation. The remaining Commission-approved near term recommendations are applicable only to COLs and existing plants (Recommendations 2.1 and 9.3), only to existing plants (Recommendations 2.3 and 5.1), or are planned to be addressed through rulemaking (Recommendations 4.1, 4.2, 7.1, 8, and 9.3).

On February 17, 2012, in SECY–12–0025, ''Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami,'' (ADAMS Accession No. ML12039A103) the NRC staff provided the Commission with proposed orders and requests for information to be issued to all power reactor licensees and holders of construction permits. In SECY–12–0025, the staff indicated its intent to address similar requirements in its reviews of pending and future design certification and COL applications.

On March 9, 2012, in the SRM to SECY–12–0025, the Commission approved issuing the proposed orders with some modifications. On March 12, 2012, the NRC issued Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events''; and Order EA 12–051, ''Order Modifying Licenses With Regard to Reliable Spent Fuel Pool Instrumentation'' to the appropriate licensees and permit holders (ADAMS Accession Nos. ML12054A735 and ML12054A679, respectively).

The NRC staff provides 6-month updates to the Commission on all Fukushima-related activities, including the NTTF recommendations that will be addressed in the longer term. The latest update is provided in SECY–14–0046, ''Fifth 6-Month Status Update on Response to Lessons Learned from Japan's March 11, 2011, Great Tōhoku Earthquake and Subsequent Tsunami,'' dated April 17, 2014 (ADAMS Accession No. ML14064A523).

The NRC considered Recommendation 4.2, as modified by SRM–SECY–12–0025, using the requirements in Order EA–12–049. SECY–12–0025 outlines a three-phase approach to developing the strategies. The initial phase requires the use of installed equipment and resources to maintain or restore core cooling, containment, and SFP cooling without alternating current power or loss of normal access to the ultimate heat sink. The transition phase requires providing sufficient, portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from offsite. The final phase requires obtaining sufficient offsite resources to sustain those functions indefinitely.

As discussed in multiple sections of the DCD, and in the FSER, the ESBWR is designed such that the reactor core and associated coolant, control, and protection systems, including station batteries and other necessary support systems, provide sufficient capacity and capability to ensure that the core will be cooled and there will be appropriate containment integrity and adequate cooling for the spent fuel for 72 hours in the event of an SBO—loss of all normal and emergency ac power.

The ESBWR design credits the isolation condenser system for the first 72 hours of an event in which all ac power sources are lost. Beyond the first 72 hours, the isolation condenser system pool and SFP need to be refilled. The ESBWR design includes provisions to refill the isolation condenser system pool and SFP with onsite equipment without reliance on ac power, such as by the diesel-driven fire pump. In addition, after the first 72 hours of an event, accident mitigation is achieved through the ancillary diesel, which supplies ac power to various components such as: PCCS vent fans, motor driven fire pump, control room habitability area ventilation system air handling units, and emergency lighting. The standby diesels are also needed to support FAPCS operations. Both the ancillary and standby diesels supply short-term and long-term safety loads.

For the reasons set forth in Section 22.5 of the FSER, the NRC found that the applicant has included sufficient nonsafety-related equipment in the RTNSS program to ensure that safety

functions relied upon in the post-72-hour period are successful. Emergency procedures are to be developed by the COL applicant to support emergencies, which includes the period after 72 hours from the onset of the loss of all ac power. Further, the nonsafety-related equipment relied upon in the post-72-hour period has been designed in accordance with Commission policy (as described in Section 22.5.6.2 of the FSER) for use of augmented design standards for protection from external hazards and the NRC is engaging with COL applicants to ensure they have established appropriate availability controls for this equipment. Availability controls will be addressed in connection with a COL application referencing the ESBWR standard design.

The ESBWR design supports a COL applicant refilling the pools with offsite equipment, such as local fire pumpers. In the period beyond seven days from the onset of the event, the COL applicant will be responsible for describing how it will make available offsite sources, such as diesel fuel oil for the ancillary and standby diesel generators and water makeup to support long term cooling. The COL applicant must address the ability of offsite support to sustain these functions indefinitely, including procedures, guidance, training and acquisition, staging or installing needed equipment. Therefore, the NRC concludes that the ESBWR design, as described in the DCD, satisfies the underlying purpose of Order EA–12–049 insofar as it includes additional equipment to maintain or restore core and spent fuel pool cooling and containment function in the event of the loss of all ac power. While the ESBWR design includes all of the necessary design features in this respect, the COL applicant must address the programmatic aspects of Order EA–12–049. The NRC staff has already engaged with COL applicants on these arrangements. To the extent a COL applicant proposes to rely on additional equipment to perform required functions in the event of a loss of all ac power, that equipment is outside the scope of the standard ESBWR design and the NRC staff will evaluate it in connection with the COL application.

The NRC considered Recommendation 7.1, as modified by SRM–SECY–12–0025, using the requirements in Order EA–12–051, which describes the key parameters to be used to determine that a level instrument is considered reliable. JLD–ISG–2012–03, Revision 0, ''Compliance with Order EA–12–051, Reliable Spent Fuel Pool Instrumentation,'' (ADAMS Accession No. ML12221A339) endorses with exceptions and clarifications the methodologies described in the industry guidance document NEI 12–02, Revision 1, ''Industry Guidance for Compliance with NRC Order EA–12–051, To Modify Licenses with Regard to Reliable Spent Fuel Pool Instrumentation,'' (ADAMS Accession No. ML122400399) and provides an acceptable approach for satisfying the applicable requirements.

The NRC finds that the ESBWR design has design features that satisfy the underlying purpose of Order EA–12–051 for reliable SFP level instrumentation, except for two matters. The exceptions are whether the safety-related level instrumentation: (1) Are designed to allow the connection of an independent power source, and (2) will maintain its design accuracy following a power interruption or change in power source without recalibration. While the ESBWR design includes all of the necessary design features in this respect, the DCD did not include any information addressing these two matters. In addition, the NRC is currently developing a rulemaking which would address spent fuel pool instrumentation for beyond design basis events/accidents. This rulemaking may adopt different requirements than what is currently considered acceptable to meet the underlying purpose of order EA–12–051 and its related guidance. For these reasons, the NRC is excluding from issue finality and issue resolution these two aspects of the ESBWR spent fuel pool instrumentation design features. The exclusions have two consequences. First, any combined license applicant referencing the ESBWR design certification rule will have to provide information demonstrating that the NRC's requirements on these two matters are met. Second, the NRC need not address the factors of 10 CFR 52.63 either when it reviews the combined license application for adequacy with respect to these two matters, or in connection with any amendment of the ESBWR design certification rule imposing requirements to govern those matters.

*B. Incorporation by Reference of Public Documents and Issue Resolution Associated With Non-Public Documents*

In Section III, ''Scope and Contents,'' of the proposed ESBWR DCR (76 FR 16549; March 24, 2011), the only document for which the NRC proposed to obtain approval from the Office of the Federal Register (OFR) for incorporation by reference into the ESBWR design certification rule was the ESBWR DCD, Revision 9 (DCD Revision 9). Such approval would make DCD Revision 9 a legally-binding requirement on any referencing combined license applicant and holder by virtue of publication in the **Federal Register** as a final rule. This was based upon the assumption that the DCD specified all necessary requirements in Tier 1 and Tier 2 (with the exception of non-public documents containing proprietary information,[2] security-related information,[3] and SGI).

After the close of the public comment period, the NRC recognized that Tier 2, Section 1.6, ''Material Incorporated by Reference and General Reference Material,'' of the ESBWR DCD states that a number of documents are ''incorporated by reference'' into Tier 2 of the ESBWR DCD, and which contain information intended to be requirements. These documents were listed in Tables 1.6–1, ''Referenced GE/GEH Reports,'' and 1.6–2, ''Referenced non-GE/GEH Topical Reports,'' of the DCD Revision 9. Although some of the documents contain information which is intended to be requirements (based on the text of the DCD), neither Tables 1.6–1 and 1.6–2 of the DCD nor Section III of the proposed ESBWR design certification rule clearly stated which of these documents were intended as requirements. Documents intended as requirements (and which are publicly available) should have been listed in Section III of the ESBWR design certification rule as being approved for incorporation by reference by the Director of the OFR. Tables 1.6–1 and 1.6–2 also included documents that, although ''incorporated by reference'' into DCD Revision 9, were not intended to be requirements, but were references ''for information only.'' Thus, the ESBWR proposed rule did not clearly differentiate between these two different classes of documents. Finally, Tables 1.6–1 and 1.6–2 of DCD Revision 9 included both publicly-available documents and non-publicly available documents,[4] but for some of the documents which were not publicly available, GEH had not created a publicly-available version of that document to support the public comment process. The creation of publicly-available versions of non-public documents to support the public commenting process and transparency has been a long-standing practice for

[2] For purposes of this discussion, ''proprietary information'' constitutes trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act and the NRC's implementing regulation at 10 CFR part 9.

[3] For purposes of this discussion, ''security-related information'' means information subject to non-disclosure under 10 CFR 2.390(a)(7)(vi).

[4] The non-publicly available documents contain proprietary, security-related, and/or safeguards information.

both design certification rulemakings and licensing actions.

To address the NRC's concerns, for those non-public documents which include information intended to be treated as requirements and for which publicly-available versions were not previously created, GEH created publicly-available versions of those non-public documents. GEH also submitted Revision 10 to the DCD (DCD Revision 10), which included three tables in Section 1.6 that superseded Tables 1.6–1 and 1.6–2 in DCD Revision 9. These three tables—Tables 1.6–1, ''GE/GEH Reports Incorporated by Reference,'' 1.6–2, ''Non-GE/GEH Reports Incorporated by Reference,'' and 1.6–3, ''Referenced Reports (not Incorporated by Reference,''—collectively clarify which documents are intended to be requirements and which documents are references only.

The supplemental proposed rule (79 FR 25715; May 6, 2014): (1) Announced the availability of DCD Revision 10; (2) described the distinction between those documents intended as requirements versus those which were for information only; (3) requested public comments on the NRC's intent to treat 50 non-public, referenced documents in DCD Revision 10 (listed in Table 2 of the supplemental proposed rule) as requirements and matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification; and (4) clarified, but did not request public comments on, the NRC's intent to obtain approval for incorporation by reference from the Director of the OFR for both DCD Revision 10 and the 20 publicly-available documents referenced in DCD Revision 10 (listed in Table 3 of the supplemental proposed rule), which are intended by the NRC to be requirements.

The 50 non-publicly available documents listed in Table 3 below are considered by the NRC to be requirements applicable to any combined license applicant or holder of a combined license referencing the ESBWR design certification rule, where the language of DCD Revision 10 makes clear that any one of those documents is intended to be a requirement. In addition, the 50 non-public documents are within the scope of issue resolution under Section VI of Appendix E, and are accorded issue finality protection under that Section VI and 10 CFR 52.63.

TABLE 3—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS, ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE, AND ARE ACCORDED ISSUE FINALITY PROTECTION

| Document No. | Document title | Publicly-available ADAMS Accession No. | Non-publicly available ADAMS Accession No. |
|---|---|---|---|
| NEDE–33391, NEDO–33391 .. | GE Hitachi Nuclear Energy, ''ESBWR Safeguards Assessment Report,'' NEDE–33391, Class III (Safeguards, Security-Related, and Proprietary), Revision 3, March 2010, and NEDO–33391, Class I (Non-safeguards, Non-security related, and Non-proprietary), Revision 3, March 2014. | ML14093A138 | N/A (Safeguards information cannot be placed in ADAMS) |
| NEDC–31959P, NEDO–31959 | GE Nuclear Energy, ''Fuel Rod Thermal-Mechanical Analysis Methodology (GSTRM),'' NEDC–31959P (Proprietary), April 1991, and NEDO–31959 (Non-proprietary), April 1991. | ML14093A145 | ML14093A146 |
| NEDC–32992P–A, NEDO–32992–A. | GE Nuclear Energy, J.S. Post and A.K. Chung, ''ODYSY Application for Stability Licensing Calculations,'' NEDC–32992P–A, Class III (Proprietary), July 2001, and NEDO–32992–A, Class I (Non-proprietary), July 2001. | ML14093A250 | ML012610605 |
| NEDC–33139P–A, NEDO–33139–A. | Global Nuclear Fuel, ''Cladding Creep Collapse,'' NEDC–33139P–A, Class III (Proprietary), July 2005, and NEDO–33139–A, Class I (Non-proprietary), July 2005. | ML14094A227 | ML14094A228 |
| NEDE–31758P–A, NEDO–31758–A. | GE Nuclear Energy, ''GE Marathon Control Rod Assembly,'' NEDE–31758P–A (Proprietary), October 1991, and NEDO–31758–A (Non-proprietary), October 1991. | ML14093A142 | ML14093A143 |
| NEDC–32084P–A, NEDO–32084–A. | GE Nuclear Energy, ''TASC–03A, A Computer Program for Transient Analysis of a Single Channel,'' NEDC–32084P–A, Revision 2, Class III (Proprietary), July 2002, and NEDO–32084–A, Class 1 (Non-proprietary), Revision 2, September 2002. | ML100220484 | ML100220485 |
| NEDC–32601 P–A, NEDO–32601–A. | GE Nuclear Energy, ''Methodology and Uncertainties for Safety Limit MCPR Evaluations,'' NEDC–32601P–A, Class III (Proprietary), and NEDO–32601–A, Class I (Non-proprietary), August 1999. | ML14093A216 | ML003740145 |
| NEDC–32983P–A, NEDO–32983–A. | GE Nuclear Energy, ''GE Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluations,'' Licensing Topical Report NEDC–32983P–A, Class III (Proprietary), Revision 2, January 2006, and NEDO–32983–A, Class I (Non-proprietary), Revision 2, January 2006. | ML072480121 | ML072480125 |
| NEDC–33075P–A, NEDO–33075–A. | GE Hitachi Nuclear Energy, ''General Electric Boiling Water Reactor Detect and Suppress Solution—Confirmation Density,'' NEDC–33075P–A, Class III (Proprietary), and NEDO–33075–A, Class I (Non-proprietary), Revision 6, January 2008. | ML080310396 | ML080310402 |
| NEDC–33079P, NEDO–33079 | GE Nuclear Energy, ''ESBWR Test and Analysis Program Description,'' NEDC–33079P, Class III (Proprietary), Revision 1, March 2005, and NEDO–33079, Class I (Non-proprietary), Revision 1, November 2005. | ML053460471 | ML051390233 |

TABLE 3—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS, ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE, AND ARE ACCORDED ISSUE FINALITY PROTECTION—Continued

| Document No. | Document title | Publicly-available ADAMS Accession No. | Non-publicly available ADAMS Accession No. |
|---|---|---|---|
| NEDC–33083P–A, NEDO–33083–A. | GE Nuclear Energy, ''TRACG Application for ESBWR,'' NEDC–33083P–A, Revision 1, Class III (Proprietary), September 2010, and NEDO–33083–A, Revision 1, Class I (Non-proprietary), September 2010. | ML102770606 | ML102770608 |
| NEDC–33237P–A, NEDO–33237–A. | Global Nuclear Fuel, ''GE14 for ESBWR—Critical Power Correlation, Uncertainty, and OLMCPR Development,'' NEDC–33237P–A, Revision 5, Class III (Proprietary), and NEDO–33237–A, Revision 5, Class I (Non-proprietary), September 2010. | ML102770246 | ML102770244 |
| NEDC–33238P, NEDO–33238 | Global Nuclear Fuel, ''GE14 Pressure Drop Characteristics,'' NEDC–33238P, Class III (Proprietary), and NEDO–33238, Class I (Non-proprietary), December 2005. | ML060050328 | ML060050330 |
| NEDC–33239P–A, NEDO–33239P–A. | Global Nuclear Fuel, ''GE14 for ESBWR Nuclear Design Report,'' NEDC–33239P–A, Class III (Proprietary), and NEDO–33239–A, Class I (Non-proprietary), Revision 5, October 2010. | ML102800405 | ML102800408 (part 1)<br>ML102800425 (part 2) |
| NEDC–33240P–A, NEDO–33240–A. | Global Nuclear Fuel, ''GE14E Fuel Assembly Mechanical Design Report,'' NEDC–33240P–A, Revision 1, Class III (Proprietary), and NEDO–33240–A, Revision 1, Class I (Non-proprietary), September 2010. | ML102770060 | ML102770061 |
| NEDC–33242P–A, NEDO–33242–A. | Global Nuclear Fuel, ''GE14 for ESBWR Fuel Rod Thermal-Mechanical Design Report,'' NEDC–33242P–A, Revision 2, Class III (Proprietary), and NEDO–33242–A, Revision 2, Class I (Non-proprietary), September 2010. | ML102730885 | ML102730886 |
| NEDC–33326P–A, NEDO–33326–A. | Global Nuclear Fuel, ''GE14E for ESBWR Initial Core Nuclear Design Report,'' NEDC–33326P–A, Revision 1, Class III (Proprietary), and NEDO–33326–A, Revision 1, Class I (Non-proprietary), September 2010. | ML102740191 | ML102740193 (part 1)<br>ML102740194 (part 2) |
| NEDC–33374P–A, NEDO–33374–A. | GE-Hitachi Nuclear Energy, ''Safety Analysis Report for Fuel Storage Racks Criticality Analysis for ESBWR Plants,'' NEDC–33374P–A, Revision 4, Class III (Proprietary), September 2010, and NEDO–33374–A, Revision 4, Class I (Non-proprietary), September 2010. | ML102860687 | ML102860688 |
| NEDC–33456P, NEDO–33456 | Global Nuclear Fuel, ''Full-Scale Pressure Drop Testing for a Simulated GE14E Fuel Bundle,'' NEDC–33456P, Class III (Proprietary), and NEDO–33456, Class I (Non-proprietary), Revision 0, March 2009. | ML090920867 | ML090920868 |
| NEDE–10958–PA, NEDO–10958–A. | General Electric Company, ''General Electric Thermal Analysis Basis Data, Correlation and Design Application,'' NEDE–10958–PA, Class III (Proprietary), and ''General Electric BWR Thermal Analysis Basis (GETAB): Data, Correlation and Design Application,'' NEDO–10958–A, Class I (Non-proprietary), January 1977. | ML102290144 | ML092820214 |
| NEDE–24011–P–A–16, NEDO–24011–A–16. | Global Nuclear Fuel, ''GESTAR II General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–16, Class III (Proprietary), and NEDO–24011–A–16, Class I (Non-proprietary), Revision 16, October 2007. | ML091340077 | ML091340081 |
| NEDE–24011–P–A–US–16, NEDO–24011–A–US–16. | Global Nuclear Fuel, ''GESTAR II General Electric Standard Application for Reactor Fuel, Supplement for United States,'' NEDE–24011–P–A–US–16, Class III (Proprietary), and NEDO–24011–A–US–16, Class I (Non-proprietary), Revision 16, October 2007. | ML091340080 | ML091340082 |
| NEDE–30130–P–A, NEDO–30130–A. | General Electric Company, ''Steady State Nuclear Methods,'' NEDE–30130–P–A, Class III (Proprietary), April 1985, and NEDO–30130–A, Class I (Non-proprietary), May 1985. | ML14104A064 | ML070400570 |
| NEDE–31152P, NEDO–31152 | Global Nuclear Fuel, ''Global Nuclear Fuels Fuel Bundle Designs,'' NEDE–31152P, Revision 9, Class III (Proprietary), May 2007, and NEDO–33152, Revision 9, Class I (Non-proprietary), May 2007. | ML071510287 | ML071510289 |
| NEDE–32176P, NEDO–32176 | GE Hitachi Nuclear Energy, J.G.M. Andersen, et al., ''TRACG Model Description,'' NEDE–32176P, Revision 4, Class III (Proprietary), January 2008, and NEDO–32176, Class I (Non-proprietary), Revision 4, January 2008. | ML080370271 | ML080370276 |

TABLE 3—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS, ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE, AND ARE ACCORDED ISSUE FINALITY PROTECTION—Continued

| Document No. | Document title | Publicly-available ADAMS Accession No. | Non-publicly available ADAMS Accession No. |
|---|---|---|---|
| NEDE–33083 Supplement 1P–A, NEDO–33083 Supplement 1–A. | GE Hitachi Nuclear Energy, B.S. Shiralkar, et al, ''TRACG Application for ESBWR Stability Analysis,'' NEDE–33083, Supplement 1P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33083, Supplement 1–A, Revision 2, Class I (Non-proprietary), September 2010. | ML102770552 | ML102770550 |
| NEDE–33083 Supplement 2P–A, NEDO–33083 Supplement 2–A. | GE Hitachi Nuclear Energy, ''TRACG Application for ESBWR Anticipated Transient Without Scram Analyses,'' NEDE–33083, Supplement 2P–A, Revision 2, Class III (Proprietary), October 2010 and NEDO–33083, Supplement 2–A, Revision 2, Class I (Non-proprietary), October 2010. | ML103000353 | ML103000355 |
| NEDE–33083 Supplement 3P–A, NEDO–33083 Supplement 3–A. | GE Hitachi Nuclear Energy, ''TRACG Application for ESBWR Transient Analysis,'' NEDE–33083, Supplement 3P–A, Revision 1, Class III (Proprietary), and NEDO–33083, Supplement 3–A, Revision 1, Class I (Non-proprietary), September 2010. | ML102770606 | ML102770608 |
| NEDE–33197P–A, NEDO–33197–A. | GE Hitachi Nuclear Energy, ''Gamma Thermometer System for LPRM Calibration and Power Shape Monitoring,'' NEDE–33197P–A, Revision 3, Class III (Proprietary), and NEDO–33197–A, Revision 3, Class I, (Non-proprietary), October 2010. | ML102810320 | ML102810341 |
| NEDE–33217P, NEDO–33217 | GE Hitachi Nuclear Energy, ''ESBWR Man-Machine Interface System and Human Factors Engineering Implementation Plan,'' NEDE–33217P, Class III (Proprietary), and NEDO–33217, Class I (Non-proprietary), Revision 6, February 2010. | ML100480284 | ML100480285 |
| NEDE–33220P, NEDO–33220 | GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Allocation of Function Implementation Plan,'' NEDE–33220P, Class III (Proprietary), and NEDO–33220, Class I (Non-proprietary), Revision 4, February 2010. | ML100480209 | ML100480202 |
| NEDE–33221P, NEDO–33221 | GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Task Analysis Implementation Plan,'' NEDE–33221P, Class III (Proprietary), and NEDO–33221, Class I (Non-proprietary), Revision 4, February 2010. | ML100480212 | ML100480213 |
| NEDE–33226P, NEDO–33226 | GE Hitachi Nuclear Energy, ''ESBWR—Software Management Program Manual,'' NEDE–33226P, Class III (Proprietary), Revision 5, February 2010, and NEDO–33226, Class I (Non-proprietary), Revision 5, February 2010. | ML100550837 | ML100550844 |
| NEDE–33243P–A, NEDO–33243–A. | GE Hitachi Nuclear Energy, ''ESBWR Control Rod Nuclear Design,'' NEDE–33243P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33243–A, Revision 2, Class I (Non-proprietary), September 2010. | ML102740171 | ML102740178 |
| NEDE–33244P–A, NEDO–33244–A. | GE Hitachi Nuclear Energy, ''ESBWR Marathon Control Rod Mechanical Design Report,'' NEDE–33244P–A, Class III (Proprietary), Revision 2, September 2010, and NEDO–33244–A, Revision 2, Class I (Non-proprietary), September 2010. | ML102770208 | ML102770209 |
| NEDE–33245P, NEDO–33245 | GE Hitachi Nuclear Energy, ''ESBWR—Software Quality Assurance Program Manual,'' NEDE–33245P, Class III (Proprietary), Revision 5, February 2010, and NEDO–33245, Class I (Non-proprietary), Revision 5, February 2010. | ML100550839 | ML100550847 |
| NEDE–33259P–A, NEDO–33259–A. | GE Hitachi Nuclear Energy, ''Reactor Internals Flow Induced Vibration Program,'' NEDE–33259P–A, Class III (Proprietary), Revision 3, October 2010, and NEDO–33259–A, Class I (Non-proprietary), Revision 3, October 2010. | ML102920241 | ML102920248 |
| NEDE–33261P, NEDO–33261 | GE Hitachi Nuclear Energy, ''ESBWR Containment Load Definition,'' NEDE–33261P, Class III (Proprietary), and NEDO–33261, Class I (Non-proprietary), Revision 2, June 2008. | ML082600720 | ML082600721 |
| NEDE–33268P, NEDO–33268 | GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Human-System Interface Design Implementation Plan,'' NEDE–33268P, Class III (Proprietary), and NEDO–33268, Class I (Non-proprietary), Revision 5, February 2010. | ML100480179 | ML100480180 |

TABLE 3—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS, ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE, AND ARE ACCORDED ISSUE FINALITY PROTECTION—Continued

| Document No. | Document title | Publicly-available ADAMS Accession No. | Non-publicly available ADAMS Accession No. |
|---|---|---|---|
| NEDE–33276P, NEDO–33276 | GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Verification and Validation Implementation Plan,'' NEDE–33276P, Class III (Proprietary), and NEDO–33276, Class I (Non-proprietary), Revision 4, February 2010. | ML100480182 | ML100480183 |
| NEDE–33295P, NEDO–33295 | GE Hitachi Nuclear Energy, ''ESBWR Cyber Security Program Plan,'' NEDE–33295P, Class III (Proprietary), Revision 2, September 2010, and NEDO–33295, Class I (Non-proprietary), Revision 2, September 2010. | ML102880103 | ML102880104 |
| NEDE–33304P, NEDO–33304 | GE Hitachi Nuclear Energy, ''GEH ESBWR Setpoint Methodology,'' NEDE–33304P, Class III (Proprietary), and NEDO–33304, Class I (Non-proprietary), Revision 4, May 2010. | ML101450251 | ML101450253 |
| NEDE–33312P, NEDO–33312 | GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Acoustic Load Definition,'' NEDE–33312P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33312, Class I (Non-proprietary), Revision 5, December 2013. | ML13344B157 | ML13344B163 |
| NEDE–33313P, NEDO–33313 | GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Structural Evaluation,'' NEDE–33313P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33313, Class I (Non-proprietary), Revision 5, December 2013. | ML13344B158 | ML13344B164 |
| NEDE–33408P, NEDO–33408 | GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology, PBLE01 Model Description,'' NEDE–33408P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33408, Class I (Non-proprietary), Revision 5, December 2013. | ML13344B159 | ML13344B176 (part 1)<br>ML13344B175 (part 2) |
| NEDE–33440P, NEDO–33440 | GE Hitachi Nuclear Energy ''ESBWR Safety Analysis—Additional Information,'' NEDE–33440P, Class III (Proprietary), and NEDO–33440, Class I (Non-proprietary), Revision 2, March 2010. | ML100920316 | ML100920317 (part 1)<br>ML100920318 (part 2) |
| NEDE–33516P–A, NEDO–33516–A. | GE Hitachi Nuclear Energy, ''ESBWR Qualification Plan Requirements for a 72-Hour Duty Cycle Battery,'' NEDE–33516P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33516–A, Revision 2, Class I (Non-proprietary), September 2010. | ML102880499 | ML102880500 |
| NEDE–33536P, NEDO–33536 | GE Hitachi Nuclear Energy, ''Control Building and Reactor Building Environmental Temperature Analysis for ESBWR,'' NEDE–33536P, Class III (Security-Related and Proprietary), Revision 1, October 2010, and NEDO–33536, Class I (Non-security Related and Non-proprietary), Revision 1, October 2010. | ML102780329 | ML102780330 |
| NEDE–33572P, NEDO–33572 | GE Hitachi Nuclear Energy, ''ESBWR ICS and PCCS Condenser Combustible Gas Mitigation and Structural Evaluation,'' NEDE–33572P, Class II (Proprietary), Revision 3, September 2010, and NEDO–33572, Revision 3, Class I (Non-proprietary), September 2010. | ML102740579 | ML102740566 |
| Letter w/attachment ..... | Letter from R.J. Reda (GE) to R.C. Jones, Jr. (NRC), MFN 098–96, ''Implementation of Improved Steady-State Nuclear Methods,'' Class III (Proprietary), July 2, 1996, and Letter from J.G. Head (GEH) to NRC Document Control Desk, MFN 098–96 Supplement 1, Class I (Non-proprietary), March 31, 2014. | ML14093A140 | ML14094A240 |

**Table 3 Note:** Documents whose document number contains ''NEDC'' or ''NEDE'' are non-public and documents whose document number contains ''NEDO'' are public.

*C. Changes to Tier 2* Information*

The NRC is making three changes from the proposed rule regarding Tier 2* matters under Section VIII, ''Processes for Changes and Departures,'' of the ESBWR rule language. These changes are described below.

First, paragraph VIII.B.6.c(1) is changed from ''ASME Boiler and Pressure Vessel Code, Section III'' to ''ASME Boiler and Pressure Vessel Code, Section III, Subsections NE (Division 1) and CC (Division 2) for containment vessel design.'' This redesignation of Tier 2* information in paragraph VIII.B.6.c.(1) applies only to the ASME BPV Code, Section III, Subsections NE (Division 1) and CC (Division 2) for the design of ASME BPV Code Class MC (metal containment) and CC (concrete containment) pressure-retaining components (e.g., the containment vessel). This change does not apply to the design and construction of mechanical pressure-boundary components because they are required to meet the design and construction requirements in Section III for ASME BPV Code Class 1, 2, and 3 mechanical

pressure-boundary components, which are incorporated by reference into 10 CFR 50.55a. The regulations in 10 CFR 50.55a include provisions in paragraphs 50.55a(c)(3), (d)(2) and (e)(2) for reactor coolant pressure boundary, Quality Group B, and Quality Group C (i.e., ASME BPV Code Classes 1, 2, and 3 components, respectively. These paragraphs provide the necessary regulatory controls on the use of later edition and addenda to the ASME BPV Code, Section III through the conditions the NRC established on the use of paragraph NCA–1140 of the ASME BPV Code, Section III. As a result, these rule requirements adequately control the ability of a licensee to use later editions or addenda of the ASME BPV Code, Section III such that a Tier 2* designation is not necessary.

Second, paragraph VIII.B.6.c(3) is changed from ''Motor-operated valves'' to ''Power-operated valves.'' This change is necessary to correct an error in the proposed rule text. Consistent with Revisions 9 and 10 of the ESBWR DCD, which were the versions of the DCD available for public comment, the only valves that are described in Tier 2* information in an ESBWR nuclear power plant are air-operated rather than motor-operated.

Third, the NRC discussed in the supplemental proposed rule its proposal to designate the revised ESBWR steam dryer analysis methodology as Tier 2* information throughout the life of any license referencing the ESBWR DCR. This is a change from Revision 9 of the ESBWR DCD, which identified much of this information (in its earlier form before the revisions reflected in Revision 10) as Tier 2. Therefore, the ESBWR steam dryer analysis methodology was not identified as Tier 2* information in the proposed rule.

In the supplemental proposed rule, the NRC proposed to designate the revised ESBWR steam dryer pressure load analysis methodology as Tier 2* for two reasons. First, the NRC's experience with other applications using this methodology highlights the importance of the proper application of the steam dryer pressure load analysis methodology. Therefore, it is necessary for the NRC to review any changes a referencing applicant or licensee proposes to the methodology from that which the NRC previously reviewed and approved. Second, in Revision 10 to the ESBWR DCD, GEH revised the designation of this methodology to Tier 2* and, therefore, the rule's designation is consistent with GEH's designation in the DCD.

The supplemental proposed rule provided an opportunity for public comment on the proposed designation as Tier 2* of certain information related to the pressure load analysis methodology supporting the ESBWR steam dryer design. The NRC staff did not receive any public comments on the proposal to designate information related to the ESBWR steam dryer pressure load analysis methodology as Tier 2* information. Therefore, the final rule designates the revised ESBWR steam dryer pressure load analysis methodology as Tier 2* information throughout the life of any license referencing the ESBWR DCR.

*D. Change Control for Severe Accident Design Features*

The **SUPPLEMENTARY INFORMATION** section of the amendment to 10 CFR part 52 (72 FR 49392, at 49394; August 28, 2007), states that the Commission codified separate criteria in paragraph B.5.c of Section VIII of each DCR for determining if a departure from design information that resolves these severe accident issues would require a license amendment. Originally, the final rule was applied specifically to changes to ex-vessel severe accident design features. In the SRM to SECY–12–0081, ''Risk-Informed Regulatory Framework for New Reactors,'' dated October 22, 2012, the Commission directed the staff to make the change process in paragraph B.5.c of Section VIII applicable to severe accident design features, both ex-vessel and non-ex-vessel, that are described in the plant-specific DCD. This policy was changed after issuance of the proposed ESBWR rule. The policy was changed to ensure that, for changes to Tier 2 information, the effects on all severe accident design features—and not just ex-vessel severe accident design features—are considered.

However, the NRC has not changed the rule language in paragraph B.5.c of Section VIII for the ESBWR rulemaking because all of the relevant severe accident design features (i.e., those that are non-ex-vessel) are described in Tier 1 information. Tier 1 information, by definition, includes change controls in Section VIII of the rule text that meet the underlying purpose of the Commission's direction. Therefore, this change was not necessary for the ESBWR design certification.

*E. Access to Safeguards Information (SGI) and Sensitive Unclassified Non-Safeguards Information (SUNSI)*

In the four currently approved design certifications (10 CFR part 52, appendices A through D), paragraph VI.E sets forth specific directions on how to obtain access to proprietary information and SGI on the design certification in connection with a license application proceeding referencing that DCR. These provisions were developed before the events of September 11, 2001. After September 11, 2001, Congress changed the statutory requirements governing access to SGI and the NRC has revised its rules, procedures, and practices governing control of and access to SGI and SUNSI. The NRC has determined that generic direction on obtaining access to SGI and SUNSI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SGI and SUNSI contained in paragraph VI.E of the four currently approved DCRs are not included in the DCR for the ESBWR. Instead, the NRC will specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the ESBWR DCR.

*F. Human Factors Engineering (HFE) Operational Program Elements Exclusion From Finality*

In the December 6, 1996, SRM (ADAMS Accession No. ML003754873) to SECY–96–077, ''Certification of Two Evolutionary Designs,'' dated April 15, 1996, the Commission set forth a policy that operational programs should be excluded from finality except where necessary to find design elements acceptable. For HFE programs for the ESBWR standard design, the Commission is implementing this policy in a manner different than for other existing DCRs. The difference in treatment of HFE for the ESBWR design arises from the level of detail of HFE review for the ESBWR as compared to earlier certified standard designs. For the earlier designs, the NRC staff reviewed the HFE programs at a ''programmatic'' level of design, while for the ESBWR, the staff reviewed the HFE programs at a more detailed ''implementation plan'' level of design. In providing this additional detail, GEH addressed existing NRC guidelines in NUREG–0711, Revision 2, ''Human Factors Engineering Program Review Model,'' which are comprehensive and go beyond the operational program information needed as input to the HFE design. Therefore, GEH included, in the DCD, details on two HFE operational program elements (procedures and training) that are not used to determine the adequacy of the HFE design. In keeping with the established Commission policy of not approving operational program elements through design certification except where necessary to find design elements acceptable, the NRC is excluding these two HFE operational program elements

in the ESBWR DCD from the scope of the design approved in the rule. This is done explicitly in Section VI, Issue Resolution, of the ESBWR rule, by excluding the two HFE operational program elements from the issue finality and issue resolution accorded to the design. In addition, the procedures and training elements included in the HFE program are redundant to what is reviewed as part of the operational programs described in Chapter 13, ''Conduct of Operations,'' of the SRP. Accordingly, the NRC is revising the HFE regulatory guidance in NUREG–0711, Revision 3, ''Human Factors Engineering Program Review Model,'' to address this overlap, but the corresponding revision to the SRP has not yet been completed. This exclusion is unique to the ESBWR design because all other DCDs for the previously certified designs do not include operational program descriptions of HFE procedures and training and the respective DCRs did not include specific exclusions from finality for them.

*G. Other Changes to the ESBWR Rule Language and Differences Between the ESBWR Rule and Other DCRs*

The language of the ESBWR design certification rule differs from the rule language of other DCRs in two substantive areas. First, paragraph IX was reserved for future use because the substantive requirements in this paragraph (for other DCRs) has since been incorporated into 10 CFR part 52 in a 2007 rulemaking (72 FR 49352; August 28, 2007) and thus are no longer needed in the four existing DCR appendices. The NRC intends to remove these requirements from Section IX of the four existing DCR appendices in future amendment(s) separate from this rulemaking.

The second difference involves documents incorporated by reference into the ESBWR design certification rule. In the first four DCRs, the DCD is the only document identified in Section III of the rule language as being approved by the Office of the Federal Register for incorporation by reference. However, the ESBWR final rule identifies the ESBWR DCD and 20 publicly-available documents referenced in the DCD, Tier 2, Section 1.6 as approved for incorporation by reference. These 20 documents, which are intended by the NRC and GEH to be requirements, are listed in a table in Section III of the ESBWR final rule language. By being approved by the Office of the Federal Register for incorporation by reference, Revision 10 of the DCD and the 20 publicly-available documents are considered to be requirements as if they had been published in the **Federal Register**.

## IV. Technical Issues

The NRC issued an FSER for the ESBWR design in March 2011, and subsequently published the FSER as NUREG–1966 in April 2014. The NRC issued an advanced supplemental SER in April 2014 (ADAMS Accession No. ML14043A134) and plans to publish Supplement No. 1 to NUREG–1966, as described in Section III of the **SUPPLEMENTARY INFORMATION** section of this document, before this final rule becomes effective. The FSER and its supplement provide the basis for issuance of a design certification under subpart B to 10 CFR part 52.

The significant technical issues that were resolved during the initial review of the ESBWR design (i.e., the NRC staff's review of Revision 9 of the ESBWR DCD and development of an FSER) are: (1) Regulatory treatment of nonsafety systems (RTNSS), (2) containment performance, (3) control room cooling, (4) feedwater temperature operating domain, (5) steam dryer analysis methodology, (6) aircraft impact assessment, (7) the use of ASME Code Case N–782, and (8) an exemption for the safety parameter display system. These issues were discussed in the March 2011 proposed rule. No public comments were received on these issues.

After publishing the proposed rule, the NRC addressed several issues that were changed in Revision 10 of the DCD or required a change to the FSER. The NRC staff reviewed these changes and developed an advanced supplemental SER as described above. The issues that were resolved in the advanced supplemental SER are: (1) Steam dryer analysis methodology, (2) loss of one or more phases of offsite power, (3) spent fuel assembly integrity in spent fuel racks, (4) Turbine Building Offgas System design requirements, (5) ASME Code statement in Chapter 1 of the ESBWR DCD, and (6) clarification of ASME component design ITAACs. The NRC also made changes to the advanced supplemental SER after the publication of the supplemental proposed rule.

After publication of the proposed rule, the NRC addressed two issues that were not addressed in Revision 10 of the DCD or in the advanced supplemental FSER. These issues are: (1) Hurricane-generated winds and missiles, and (2) changes to Tier 2* information.

Each of these issues identified above is discussed below. The public was afforded an opportunity to comment on some of these issues in the May 6, 2014 supplemental proposed rule. Section V of the **SUPPLEMENTARY INFORMATION** section of this document describes the NRC's bases for not offering a supplemental comment opportunity for any of the other technical issues that arose after the close of the public comment period on the proposed rule.

*A. Regulatory Treatment of Nonsafety Systems (RTNSS)*

The ESBWR safety analysis credits passive systems to perform safety functions for 72 hours following an initiating event. After 72 hours, nonsafety systems, either passive or active, replenish the passive systems in order to keep them operating or perform post-accident recovery functions directly. The ESBWR design also uses nonsafety-related active systems to provide defense-in-depth capabilities for key safety functions provided by passive systems. The challenge during the review was to identify the nonsafety SSCs that should receive enhanced regulatory treatment and to identify the appropriate regulatory treatment to be applied to these SSCs. Such SSCs are denoted as ''RTNSS SSCs'' in the context of the ESBWR design. As a result of the NRC's review, the applicant added Appendix 19A to the DCD to identify the nonsafety systems that perform these post-72 hour or defense-in-depth functions and the basis for their selection. The applicant's selection process was based on the guidance in SECY–94–084, ''Policy and Technical Issues Associated with the Regulatory Treatment of Non-Safety Systems in Passive Plant Designs.''

To provide reasonable assurance that RTNSS SSCs will be available if called upon to function, the applicant established availability controls in DCD Tier 2, Appendix 19ACM, and TS in DCD Tier 2, Chapter 16, when required by 10 CFR 50.36, ''Technical specifications.'' The applicant also included all RTNSS SSCs in the reliability assurance program described in Chapter 17 of DCD Tier 2 and applied augmented design standards as described in DCD Tier 2, Section 19A.8.3. For the reasons set forth in Section 22.5 of the FSER, the NRC finds the applicant's treatment of the RTNSS SSCs, as described in the DCD, acceptable.

*B. Containment Performance*

The PCCS maintains the containment within its design pressure and temperature limits for DBAs. The system is passive and does not rely upon moving components or external power for initiation or operation for 72 hours following a loss-of-coolant accident (LOCA). The PCCS and its

design basis are described in detail in Section 6.2.2 of the DCD Tier 2. The NRC identified a concern regarding the PCCS long-term cooling capability for the period from 72 hours to 30 days following a LOCA. To address this concern, the applicant proposed additional design features credited after 72 hours to reduce the long-term containment pressure. The features are the PCCS vent fans and passive autocatalytic hydrogen recombiners as described in DCD Tier 2, Section 6.2.1. These SSCs have been identified in DCD Appendix 19A as RTNSS SSCs.

The NRC staff's review of the PCCS design is documented in Section 6.2.2 of the FSER. The following is a summary of key points of that review. The applicant provided calculation results to demonstrate that the long-term containment pressure would be acceptable and that the design complies with GDC 38. The NRC's independent calculations confirmed the applicant's conclusion and the NRC accepts the proposed design and licensing basis. The NRC also raised a concern regarding the potential accumulation of high concentrations of hydrogen and oxygen in the PCCS and Isolation Condenser System, which could lead to combustion following a LOCA. The applicant modified the design of the PCCS and Isolation Condenser System heat exchangers to withstand potential hydrogen detonations. Accordingly, the NRC concludes that the design changes to the PCCS and Isolation Condenser System are acceptable and meet the applicable requirements.

*C. Control Room Cooling*

The ESBWR primarily relies on the mass and structure of the control building to maintain acceptable temperatures for human and equipment performance for up to 72 hours on loss of normal cooling. The NRC had not previously approved this approach for maintaining acceptable temperatures in the control building. The applicant proposed acceptance criteria for the evaluation of the control building structure's thermal performance based on industry and NRC guidelines. The applicant incorporated by reference an analysis of the control building structure's thermal performance as described in Tier 2, Sections 3H, 6.4, and 9.4. The applicant also proposed ITAACs to confirm that an updated analysis of the as-built structure continues to meet the thermal performance acceptance criteria. For the reasons set forth in Section 6.4.3 of the FSER, the NRC finds that the applicant's acceptance criteria are consistent with the advanced light water reactor control room envelope atmosphere temperature limits in NUREG–1242, ''NRC Review of Electric Power Research Institute's Advanced Light Water Reactor Utility Requirements Document,'' and the use of the wet bulb globe temperature index in evaluation of heat stress conditions as described in NUREG–0700, ''Human-System Interface Design Review Guidelines.'' For the reasons set forth in Section 9.4.1 of the FSER, the NRC finds the control building structure thermal performance analysis and ITAACs acceptable based on the analysis using bounding environmental assumptions. Accordingly, the NRC finds that the acceptance criteria, control building structure thermal performance analysis, and the ITAACs, provide reasonable assurance that acceptable temperatures will be maintained in the control building for 72 hours. Therefore, the NRC finds that the control building design in regard to thermal performance conforms to the guidelines of SRP Section 6.4 and complies with the requirements of the GDC 19.

*D. Feedwater Temperature Operating Domain*

In operating BWRs, the recirculation pumps are used in combination with the control rods to control and maneuver reactor power level during normal power operation. The ESBWR design is unique in that the core is cooled by natural circulation during normal operation, and there are no recirculation pumps. In Chapter 15 of the DCD, GEH references licensing topical report (LTR) NEDO–33338, Revision 1, ''ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis.'' This LTR describes a broadening of the ESBWR operating domain, which allows for increased flexibility of operation by adjusting the feedwater temperature. This increased flexibility reduces the duty (mechanical stress) to the fuel and minimizes the probability of pellet-clad interactions and associated fuel failures.

By adjusting the feedwater temperature, the operator can control the reactor power level without control blade motion and with minimum impact on the fuel duty. Control blade maneuvering can also be performed at lower power levels.

To control the feedwater temperature, the ESBWR design includes a seventh feedwater heater with high-pressure steam. Feedwater temperature is controlled by either manipulating the main steam flow to the No. 7 feedwater heater to increase feedwater temperature above the temperature normally provided by the feedwater heaters with turbine extraction steam (normal feedwater temperature) or by directing a portion of the feedwater flow around the high-pressure feedwater heaters to decrease feedwater temperature below the normal feedwater temperature. An increase in feedwater temperature decreases reactor power, and a decrease in feedwater temperature increases reactor power. As described in Section 15.1.6 of the FSER, the applicant provided analyses that demonstrated ample margin to acceptance criteria. For the reasons set forth in Section 15.1.6 of the FSER, the NRC concludes that the applicant has adequately accounted for the effects of the proposed feedwater temperature operating domain extension on the nuclear design. Further, the applicant has demonstrated that the fuel design limits will not be exceeded during normal or anticipated operational transients and that the effects of postulated transients and accidents will not impair the capability to cool the core. Based on the evaluation documented in Section 15.1.6 of the FSER, the NRC concludes that the nuclear design of the fuel assemblies, control systems, and reactor core will continue to meet the applicable regulatory requirements.

*E. Steam Dryer Analysis Methodology*

As a result of RPV steam dryer issues at operating BWRs, the NRC issued revised guidance in Regulatory Guide (RG) 1.20, ''Comprehensive Vibration Assessment Program for Reactor Internals During Preoperational and Initial Startup Testing,'' and SRP Sections 3.9.2, ''Dynamic Testing and Analysis of Systems, Structures, and Components,'' and 3.9.5, ''Reactor Pressure Vessel Internals,'' for the evaluation of the structural integrity of steam dryers in BWR nuclear power plants. The guidance requested that applicants for BWR nuclear power plant design certifications, licenses, or license amendments perform analyses to demonstrate that the steam dryer will maintain its structural integrity during plant operation when experiencing acoustic and hydrodynamic fluctuating pressure loads. This demonstration of RPV steam dryer structural integrity consists of three general steps:

(1) Predict the fluctuating pressure loads on the steam dryer,

(2) Use these fluctuating pressure loads in a structural analysis to demonstrate the adequacy of the steam dryer design, and

(3) Implement a steam dryer monitoring program for confirming the steam dryer design analysis results during the initial plant power ascension testing and periodic steam dryer inspections.

In its March 2011 FSER, the NRC staff described its review of the GEH methodology used to demonstrate the steam dryer structural integrity as described in Revision 9 of the ESBWR DCD and four referenced topical reports on which the NRC staff had issued separate SERs. The NRC staff concluded that the methodology was technically sound and provided a conservative analytical approach for definition of flow-induced acoustic pressure loading on the steam dryer, and that the design provided assurance of the structural integrity of the steam dryer and demonstrated conformance with GDCs 1, ''Quality Standards and Records,'' 2 ''Design Bases for Protection Against Natural Phenomena,'' and 4, ''Environmental and Dynamic Effects Design Bases.'' The NRC received no public comments on the proposed rule with respect to the steam dryer analysis methodology.

Following the publication of the proposed rule, the NRC staff identified safety issues applicable to the ESBWR steam dryer structural analysis based on information obtained during the NRC's review of a license amendment request for a power uprate at an operating BWR nuclear power plant. Consequently, the NRC staff communicated to GEH in a letter dated January 19, 2012 (ADAMS Accession No. ML120170304), that it was concerned that the bases for its FSER on the ESBWR DCD and its SERs on several applicable GEH topical reports were no longer valid. Specifically, errors were identified in the benchmarking GEH used as a basis for determining fluctuating pressure loading on the steam dryer and errors were identified in a number of GEH's modeling parameters. The NRC staff subsequently issued requests for additional information (RAIs) and held multiple public meetings and non-public meetings (in which the NRC staff and GEH discussed GEH proprietary information) to clarify and discuss the safety issues with the ESBWR steam dryer analysis methodology. The NRC staff also conducted an audit of the GEH steam dryer analysis methodology at the GEH facility in Wilmington, North Carolina, in March 2012, and a vendor inspection, at that facility, of the quality assurance program for GEH engineering methods in April 2012.

To document the resolution of those issues, GEH revised the ESBWR DCD by removing references to its LTRs that addressed the ESBWR steam dryer structural evaluation and to reference new engineering reports that describe the updated ESBWR steam dryer analysis methodology. The following four LTRs were removed by GEH (public and proprietary versions cited):

- NEDE–33313 and NEDE–33313P, ''ESBWR Steam Dryer Structural Evaluation,'' all revisions
- NEDE–33312 and NEDE–33312P, ''ESBWR Steam Dryer Acoustic Load Definition,'' all revisions
- NEDC–33408 and NEDC–33408P, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology,'' all revisions
- NEDC–33408, Supplement 1, and NEDC–33408P, Supplement 1, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology Supplement 1,'' all revisions

To replace the information formerly provided by the four LTRs, GEH revised the ESBWR DCD to reference three new engineering reports (public and proprietary versions cited):

- NEDO–33312 and NEDE–33312P, Rev. 5, December 2013, ''ESBWR Steam Dryer Acoustic Load Definition''
- NEDO–33408 and NEDE–33408P, Rev. 5, December 2013, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology—PBLE01 Model Description''
- NEDO–33313 and NEDE–33313P, Rev. 5, December 2013, ''ESBWR Steam Dryer Structural Evaluation''

GEH revised the following DCD sections to correct errors and provide additional information related to the design and evaluation of the structural integrity of the ESBWR steam dryer:

- Tier 1, Chapter 2, Section 2.1, ''Nuclear Steam Supply''
- Tier 1, Chapter 2, Section 2.1.1, ''Reactor Pressure Vessel and Internals''
- Tier 2, Chapter 1, Tables 1.6–1, 1.9–21, and 1D–1
- Tier 2, Chapter 3, Section 3.9.2, ''Dynamic Testing and Analysis of Systems, Components and Equipment''
- Tier 2, Chapter 3, Section 3.9.5, ''Reactor Pressure Vessel Internals''
- Tier 2, Chapter 3, Section 3.9.9, ''COL Information''
- Tier 2, Chapter 3, Section 3.9.10, ''References''
- Tier 2, Chapter 3, Appendix 3L, ''Reactor Internals Flow Induced Vibration Program''

The revisions to these documents enhance the detailed design and evaluation process related to the structural integrity of the ESBWR steam dryer in several ways. For example, the source of data used to benchmark the analysis methodology was modified in Revision 10 to the ESBWR DCD to a different operating nuclear power plant for which the NRC recently authorized an extended power uprate. In addition, the details of the design methodology were made more restrictive in several respects, including limiting the analysis methods for fillet welds and using more conservative data and assumptions. The changes also designate additional information as Tier 2* and clarify regulatory process steps for completing the detailed design and startup testing of the ESBWR steam dryer, including COL information items to be satisfied by a COL applicant, ITAACs to be met by a COL licensee, and model license conditions that may be proposed by a COL applicant.

The NRC staff reviewed the revised ESBWR DCD sections, new GEH engineering reports, and RAI responses and prepared an advanced supplemental SER to replace Section 3.9.5, ''Reactor Pressure Vessel Internals,'' of the original FSER. To maintain the description of the regulatory evaluation of all ESBWR reactor vessel internals in the same location, the advanced supplemental SER replaced the entire Section 3.9.5 in the original FSER, although only the ESBWR steam dryer discussion has been modified in the advanced supplemental SER in any significant respect. The advanced supplemental SER documents the NRC staff conclusion that Revision 10 to the ESBWR DCD and the referenced engineering reports provide sufficient information to support the adequacy of the design basis for the ESBWR reactor vessel internals. The advanced supplemental SER also documents the NRC staff conclusion that the design process for the ESBWR reactor vessel internals is acceptable and meets the requirements of 10 CFR part 50, appendix A, GDC 1, 2, 4, and 10; 10 CFR 50.55a; and 10 CFR part 52. Finally, the advanced supplemental SER documents the NRC staff conclusion that the ESBWR design documentation for the reactor vessel internals in Revision 10 to the ESBWR DCD is acceptable and provides the bases for the NRC staff conclusion that GEH's application for the ESBWR design certification meets the requirements of 10 CFR part 52, subpart B, that are applicable and technically relevant to the ESBWR standard plant design. The NRC adopts the above conclusions and finds, based on the application materials discussed in the FSER as modified by the advanced supplemental SER, that the ESBWR steam dryer design meets all applicable NRC requirements and may be incorporated by reference in a COL application.

The changes to the ESBWR steam dryer description in the DCD and supporting documentation may be regarded as significant changes which do not represent a ''logical outgrowth'' of the proposed rule and would therefore require an opportunity for public comment. To preclude any procedural challenges to the ESBWR final design certification rule in this area, the NRC staff published a supplemental proposed rule to provide an opportunity for public comment on these changes. The proposed rule and the supplemental proposed rule both provided an opportunity for public comment on the GEH evaluation methodology supporting the ESBWR steam dryer design. The NRC did not receive any comments on the proposed rule or the supplemental proposed rule related to the ESBWR steam dryer analysis methodology.

The NRC staff briefed the Advisory Committee for Reactor Safeguards (ACRS) Subcommittee on the ESBWR Design Certification on March 5, 2014, and the ACRS Full Committee on April 10, 2014, on its detailed review of the ESBWR steam dryer analysis methodology, including the significant improvements to the GEH Plant-Based Load Evaluation (PBLE01) methodology for the ESBWR steam dryer to resolve the technical issues with the reliability of the methodology. During the ACRS Subcommittee briefing, the Committee suggested that the NRC staff change the advanced supplemental SER to clarify the description of the steam dryer analysis methodology. Following the Full Committee meeting, the ACRS provided a letter to the Commission on April 17, 2014, that found that the ESBWR steam dryer design is adequate, and the associated structural analysis and planned startup test program are acceptable. In its letter, the ACRS noted that, ''the process agreed to by the staff and GEH provides a good basis for satisfactory operation of the ESBWR steam dryer. In light of this reevaluation, there is reasonable assurance that the ESBWR design can be constructed and operated without undue risk to the health and safety of the public.''

In preparing the supplemental FSER referenced in this final rule (Supplement No. 1 to NUREG–1966), the NRC staff modified the advanced supplemental SER referenced in the supplemental proposed rule to reflect the changes suggested during the March 5, 2014, ACRS subcommittee meeting. These changes include: (1) Clarifying an inconsistency in referring to steam flow rates, (2) clarifying the acceptable methods for the analysis of the stress in the fillet welds in the ESBWR steam dryer caused by acoustic and hydrodynamic fluctuating pressure loads, and for the three allowable methods proposed by GEH to analyze the stress in fillet welds in the ESBWR steam dryer, clarifying the description of (a) the test problem used by GEH to demonstrate the adequacy of those methods, (b) the limitations in the specific GEH engineering report for application of those methods, and (c) the results of the test problem in demonstrating the acceptability of each of the three fillet weld analysis methods. In addition, the supplemental FSER includes a new section that provides the conclusion of the review by the ACRS of the ESBWR steam dryer analysis methodology. The NRC's regulatory basis for the acceptance of the ESBWR steam dryer analysis methodology remains the same in the supplemental FSER as provided in the advanced supplemental SER referenced in the supplemental proposed rule. In addition, the NRC staff corrected a variety of typographical, grammatical, and format errors in the advanced supplemental SER. The NRC staff also added appendices to the supplemental SER, each of which correspond to and augment the appendices in the FSER.

*F. Aircraft Impact Assessment (AIA)*

Under 10 CFR 50.150, which became effective on July 13, 2009, designers of new nuclear power reactors are required to perform an assessment of the effects on the designed facility of the impact of a large, commercial aircraft. An applicant for a new DCR is required to submit a description of the design features and functional capabilities identified as a result of the assessment (key design features) in its DCD together with a description of how the identified design features and functional capabilities show that the acceptance criteria in 10 CFR 50.150(a)(1) are met.

To address the requirements of 10 CFR 50.150, GEH completed an assessment of the effects on the designed facility of the impact of a large, commercial aircraft. GEH also added Appendix 19D to DCD Tier 2 to describe the design features and functional capabilities of the ESBWR identified as a result of the assessment that ensure the reactor core remains cooled and the SFP integrity is maintained. These design features and their functional capabilities are summarized as follows:

- The isolation condenser system provides core cooling.
- The emergency core cooling system provides core cooling.
- The main steam isolation system maintains high pressure for core cooling with the isolation condenser system.
- The CRD system inserts control rods to shut down the reactor. This enables core cooling with the systems described above.
- The digital control and instrumentation system actuates the CRD system to shut down the reactor and enable core cooling and initiates the automatic depressurization system and gravity-driven cooling system for core cooling at low pressure.
- The reinforced concrete containment vessel protects key design features located inside the vessel from structural and fire damage.
- The location and design of the reactor building structure, including exterior walls, interior walls, intervening structures inside the building and barriers on large openings in the exterior walls protect the reinforced concrete containment vessel from impact.
- The location and design of the turbine building structure protect the adjacent wall of the reactor building from impact.
- The location and design of the fuel building structure protect the adjacent wall of the reactor building from impact.
- The location and design of fire barriers inside the reactor building protect credited core cooling equipment from fire damage.
- The location (below grade) and design of SFP structure protect the SFP from impact.

The acceptance criteria in 10 CFR 50.150(a)(1) are: 1) the reactor core will remain cooled or the containment will remain intact; and 2) spent fuel pool cooling or spent fuel pool integrity is maintained. For the reasons set forth in Section 19.2.7 of the FSER, the NRC finds that the applicant has performed an aircraft impact assessment using an NRC-endorsed methodology that is reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the acceptance criteria in 10 CFR 50.150(a)(1) are met. For the same reasons, the NRC finds that the applicant adequately described the key design features and functional capabilities credited to meet 10 CFR 50.150, including descriptions of how the key design features and functional capabilities show that the acceptance criteria in 10 CFR 50.150(a)(1) are met. Therefore, the NRC finds that the applicant meets the applicable requirements of 10 CFR 50.150(b).

*G. ASME Code Case N–782*

Under 10 CFR 50.55a(a)(3), GEH requested NRC approval for the use of ASME Code Case N–782, ''Use of Code Editions, Addenda, and Cases Section III, Division 1,'' as a proposed alternative to the rules of Section III, Subsection NCA–1140 regarding applied Code Editions and Addenda required by 10 CFR 50.55a(c), (d), and (e). ASME Code Case N–782 provides that the Code Edition and Addenda endorsed in a certified design or licensed by the regulatory authority may be used for systems and components subject to ASME Code, Section III requirements. These alternative requirements are in lieu of the requirements that base the Edition and Addenda solely on the date of an application for a construction permit and were issued to address new reactors licensed under 10 CFR part 52. Reference to ASME Code Case N–782 will be included in component and system design specifications and design reports to permit certification of these specifications and reports to the Code Edition and Addenda cited in the DCD. For the reasons set forth in Section 5.2.1.1.3 of the FSER, the NRC finds the use of ASME Code Case N–782 as a proposed alternative to the requirements of Section III, Subsection NCA–1140 under 10 CFR 50.55a(a)(3) acceptable for the ESBWR.

*H. Exemption for the Safety Parameter Display System*

The NRC is approving an exemption from 10 CFR 50.34(f)(2)(iv) as it relates to the safety parameter display system. This provision requires an applicant to provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, and is capable of displaying a full range of important plant parameters and data trends on demand and indicating when process limits are being approached or exceeded. The ESBWR design integrates the safety parameter display system into the design of the nonsafety-related distribution control and information system, rather than using a stand-alone console. For the reasons set forth in Section 18.8.3.2 of the FSER, the NRC finds that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that application of 10 CFR 50.34(f)(2)(iv) is not necessary to serve the underlying purpose of that rule in the context of the ESBWR design because the applicant has provided an acceptable alternative that accomplishes the purpose of the regulation. For the ESBWR, this purpose is accomplished by the plant alarm and display systems. In addition, the NRC finds that the proposed exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

*I. Hurricane-Generated Winds and Missiles*

Nuclear power plants must be designed to withstand the effects of natural phenomena, including those that could result in the most severe wind events (tornadoes and hurricanes). The design bases for plant structures, systems, and components must reflect consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin to account for the limited accuracy, quantity, and period of time in which the historical data have been accumulated. Initially, the U.S. Atomic Energy Commission, the predecessor to the NRC, considered tornadoes to be the bounding extreme wind events and issued RG 1.76, ''Design-Basis Tornado for Nuclear Power Plants,'' in April 1974, which reflected this technical position. RG 1.76 describes a design-basis tornado that a nuclear power plant should be designed to withstand without undue risk to the health and safety of the public. The design-basis tornado wind speeds were chosen so that the probability that a tornado exceeding the design-basis would occur was on the order of $10^{-7}$ per year per nuclear power plant.

In March 2007, the NRC issued Revision 1 of RG 1.76. Revision 1 of RG 1.76 relies on the Enhanced Fujita Scale, which was implemented by the National Weather Service in February 2007. The Enhanced Fujita Scale is a revised assessment relating tornado damage to wind speed, which resulted in a decrease in design-basis tornado wind speed criteria in Revision 1 of RG 1.76, although the probability that a tornado would exceed this reduced wind speed remained on the order of $10^{-7}$ per year per nuclear power plant. Because design-basis tornado wind speeds were decreased as a result of the analysis performed to update RG 1.76, it could no longer be assumed that the revised tornado design-basis wind speeds would bound design-basis hurricane wind speeds in all areas of the U.S. This prompted the NRC to research extreme wind gusts during hurricanes and their relationship to design-basis hurricane wind speeds, which resulted in the NRC developing a new regulatory guide, RG 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants.''

RG 1.221 evaluates missile velocities associated with several types of missiles considered for different hurricane wind speeds. The hurricane missile analyses presented in RG 1.221 are based on missile aerodynamic and initial condition assumptions that are similar to those used for the analyses of tornado-borne missile velocities adopted for Revision 1 to RG 1.76. However, the assumed hurricane wind field differs from the assumed tornado wind field in that the hurricane wind field does not change spatially during the missile's flight time, but does vary with height above the ground. Because the size of the hurricane zone with the highest winds is large relative to the size of the missile trajectory, the hurricane missile is subjected to the highest wind speeds throughout its trajectory. In contrast, the tornado wind field is smaller, so the tornado missile is subject to the strongest winds only at the beginning of its flight. This results in the same missile having a higher maximum velocity in a hurricane wind field than in a tornado wind field with the same maximum (3-second gust) wind speed.

RG 1.221 was issued in final form in October 2011 (76 FR 63541). Thus, formal NRC adoption of RG 1.221 occurred after the June 7, 2011, close of the public comment period for the proposed ESBWR DCR, and well after completion of the NRC's review of the ESBWR DCD and the FSER for the ESBWR design in March 2011.

Tornado loads on SSCs are addressed in Section 3.3.2 of the ESBWR DCD. However, Section 3.3.2 of the ESBWR DCD does not explicitly state whether the loads that would be experienced during a hurricane would be bounded under the load analysis for tornadoes. Tornado-generated missiles are addressed in Section 3.5.1.4 of the ESBWR DCD. Section 3.5.1.4 of the ESBWR DCD states that ''tornado generated missiles are determined to be the limiting natural phenomena hazard in the design of all structures required for safe shutdown of the nuclear power plant. Because tornado missiles are used in the design basis, they envelop missiles generated by less intense phenomena such as extreme winds.'' The DCD also provides the design-basis tornado and missile spectrum in Tier 1, Table 5.1–1 and Tier 2, Table 2.0–1, and states its conformance with certain positions in RGs 1.13, 1.27, 1.76, and 1.117.

Thus, the ESBWR applicant has not addressed, and the NRC has not specifically determined, whether the

ESBWR design is in conformance with GDCs 2 and 4 for hurricane wind and missile loads that are not bounded by the total tornado loads analyzed in the DCD. For these reasons, the NRC is only making a final safety determination on the acceptability of the ESBWR design with respect to loads on the applicable SSCs from hurricane winds and hurricane-generated missiles that are bounded by other loads analyzed in the DCD.

Accordingly, the NRC is excluding two issues from issue finality and issue resolution in the ESBWR DCD. First, with respect to the scope of the design in Section 3.3.2 of the ESBWR DCD, the NRC is excluding from finality the narrow issue of loads on applicable SSCs from hurricanes, but only to the extent that such loads are not bounded by other loads analyzed in the ESBWR DCD. Second, with respect to the scope of the design in Section 3.5.1.4 of the ESBWR DCD, the NRC is excluding from finality the narrow issue of loads on applicable SSCs from hurricane-generated missiles, but only to the extent that such loads are not bounded by other loads analyzed in the ESBWR DCD. This is accomplished in paragraph A.2.g of Section IV, ''Additional Requirements and Restrictions,'' and paragraph B.1 of Section VI, ''Issue Resolution,'' of the new appendix E to 10 CFR part 52, by excluding loads from hurricane winds and hurricane-generated missiles on the applicable SSCs from the finality accorded to the ESBWR design if they are not bounded as described. Under the exclusion, a COL applicant referencing the ESBWR DCR must demonstrate that loads from site-specific hurricane winds and hurricane-generated missiles are bounded by the total tornado load as analyzed in the ESBWR DCD. If the total tornado load analyses are not bounding, the COL applicant has several ways of addressing the exclusion, for example, demonstrating that the design can withstand the hurricane wind loads and hurricane-generated missile loads.

The NRC's narrow exclusion with respect to issue finality, as reflected in the ESBWR DCR language, does not require any change to the ESBWR design, the ESBWR DCD, or the NRC's EA supporting the ESBWR rulemaking. Nor are any changes required to the associated analyses for total tornado loads as described in the ESBWR DCD.

*J. Loss of One or More Phases of Offsite Power*

Bulletin 2012–01, ''Design Vulnerability in Electric Power System,'' as applied to passive plant designs such as the ESBWR, addresses the need for electric power system designs to be able to detect the loss of one or more of the three phases of an offsite power circuit connected to the plant electrical systems and provide an alarm in the control room. Bulletin 2012–01 was issued after the proposed rule was issued and the public comment period closed. In its response to Bulletin 2012–01, GEH provided additional details on the monitoring and alarm functions for all three phases of the offsite power circuits and included applicable information in Revision 10 to the DCD. GEH also added new ITAACs to ensure implementation of these design features by a COL holder. The NRC staff reviewed the ESBWR design features that can detect and provide an alarm for the loss of one or more of the three phases of an offsite power circuit. For the reasons set forth in Section 8.2.3, ''Staff Evaluation,'' of the supplemental FSER, the NRC concludes that no design vulnerability identified in Bulletin 2012–01 exists in the ESBWR electric power system.

*K. Spent Fuel Assembly Integrity in Spent Fuel Racks*

Prior to publishing the proposed rule, the NRC performed its review of the integrity of spent fuel racks based on SRP Section 9.1.2, ''New and Spent Fuel Storage.'' This section states that ''Designing the storage pool and fuel storage racks to meet seismic Category I requirements provides reasonable assurance that earthquakes will not cause a substantial coolant loss, a reduction in margin to criticality, or damage to the fuel assemblies.'' This section supports the NRC's requirements in GDC 2, which requires that nuclear power plant SSCs important to safety be designed to withstand the effects of natural phenomena, such as an earthquake without loss of capability to perform their safety functions. The ESBWR FSER concluded that the design of the SFP, the buffer pool, and the fuel storage racks complied with the requirements of GDC 2 and met the guidance of SRP Section 9.1.2.

After publication of the proposed rule, the NRC recognized that Appendix D, ''Guidance on Spent Fuel Racks,'' to SRP Section 3.8.4, ''Other Seismic Category I Structures,'' states that, ''It should be demonstrated that the consequent loads on the fuel assembly do not lead to damage of the fuel.'' In other words, though the spent fuel rack may have remained intact during a seismic event, because there are gaps between the rack and the fuel assemblies, the applicant should demonstrate that the spent fuel assemblies in the rack have not sustained damage during that seismic event. During the NRC staff's review of the ESBWR design and prior to its publication of its FSER, the NRC staff did not specifically review the design of the spent fuel in the spent fuel racks against this guidance, but only against that of SRP Section 9.1.2 as described above.

To confirm the structural integrity of the fuel in the spent fuel racks, the NRC staff conducted an audit on August 5 and September 8, 2011. The audit summary is available under ADAMS Accession No. ML112860614. GEH subsequently submitted additional information (ADAMS Accession No. ML11269A093) to address whether the consequent loads on the fuel assembly that result from the design-basis seismic event would lead to fuel damage. For the reasons set forth in Section 3.8.4 of the supplemental FSER, the NRC finds that the fuel assemblies maintain structural integrity when subject to the design-basis seismic loads, the fuel assemblies in the fuel storage racks are structurally adequate to withstand the design-basis seismic loads, and the fuel assemblies are in compliance with GDC 2.

*L. Turbine Building Offgas System Design Requirements*

Regulatory Guide (RG) 1.143, ''Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants,'' provides guidance on classifying and designing radioactive waste management systems (RWMSs). The Offgas System (OGS), which is part of the Gaseous Waste Management System, is classified as a Category RW–IIa (High Hazard) RWMS in accordance with RG 1.143. Following publication of the proposed rule, the NRC staff identified that while it had evaluated the OGS against the guidelines of RG 1.143, the NRC staff had not evaluated the structure housing the OGS (i.e., the turbine building), against the guidelines of RG 1.143. Subsequently, the NRC staff reviewed the information included in various sections of the ESBWR DCD regarding protection of the OGS. For the reasons set forth in Section 3.8.4.3 of the supplemental FSER, the NRC finds that the turbine building structure provides adequate protection for the OGS components to meet the design criteria in RG 1.143 for Category RW–IIa.

Because the NRC staff's evaluation of the turbine building structure came after completion of the FSER, issuance of the final SDA, and publication of the proposed rule, the NRC decided to

document the NRC staff's review on this issue in the supplemental FSER. The evaluation was performed using information already included in Revision 9 of the ESBWR DCD and that information did not change in Revision 10 of the DCD. Further, the NRC determined that no changes were required to the ESBWR DCD, the proposed rule text, or the EA supporting this rulemaking.

*M. ASME BPV Code Statement in Chapter 1 of the ESBWR DCD*

In Revision 10 to the ESBWR DCD, Tier 1, Section 1.1.1, ''Definitions,'' the applicant added a definition of ''ASME Code'' to its Tier 1 definitions. This addition addressed compliance with the ASME BPV Code and the use of alternatives to the ASME BPV Code requirements as permitted in 10 CFR 50.55a(a)(3). For the ESBWR DCR, several ITAACs in the ESBWR Tier 1 are required to verify that ASME BPV Code, Section III construction requirements have been met. During actual construction of a nuclear power plant, it is inevitable that departures from the ASME BPV Code construction requirements will be needed. These departures occur for various reasons such as unavailability of material, hardship in implementing fabrication sequences required by the Code, and the availability of newer and more effective construction techniques. As such, the regulations in 10 CFR 50.55a, ''Codes and standards,'' provide for the use of alternatives to Section III construction requirements to overcome such hardships and allow a degree of flexibility in constructing nuclear power plants without compromising safety requirements. Pursuant to 10 CFR 50.55a(a)(3), proposed alternatives to Section III requirements may be used when authorized by the NRC. Before using these alternatives, the applicant or licensee must demonstrate that: (1) the proposed alternative would provide an acceptable level of quality and safety, or (2) compliance with the specified requirements of 10 CFR 50.55a would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

During the construction of two nuclear power plants licensed under 10 CFR part 52 (Vogtle Electric Generating Plant, Units 3 and 4, and V.C. Summer Nuclear Station, Units 2 and 3), the question arose whether changes to ASME BPV Code requirements, such as the use of alternatives in accordance with 10 CFR 50.55a(a)(3), are permitted without the need to submit an exemption from the regulations pursuant to 10 CFR 50.12, ''Specific exemptions.'' The NRC staff found that this issue was previously discussed in the **SUPPLEMENTARY INFORMATION** section of a final rule dated August 28, 2007, amending the regulations to address 10 CFR part 52 requirements (72 FR 49352). Therein, the NRC stated in Section VI, ''Section-by-Section Analysis,'' for Section 52.7, ''Specific Exemptions,'' (at 72 FR 49438) that, ''§ 52.7 does not supersede the applicability of more specific dispensation provisions in other parts of Chapter I. For example, a holder of a COL would not require a separate part 52 exemption in order to obtain approval of an alternative to a provision of an applicable ASME Code provision that is otherwise required under 10 CFR 50.55a; the licensee need only satisfy the criteria in § 50.55a(a)(3) . . .'' The 2007 10 CFR part 52 final rule **SUPPLEMENTARY INFORMATION** clarified that using alternatives to ASME Code requirements authorized in accordance with 10 CFR 50.55a is sufficient and does not require a COL holder to submit an exemption when changes involve a departure from only ASME Code requirements.

To clarify the use of alternatives when verifying compliance with ASME BPV Code ITAACs, GEH proposed to clarify in its Tier 1 definitions in Revision 10 to the ESBWR DCD, Section 1.1.1, ''Definitions,'' that ''ASME Code'' means ASME BPV Code requirements or any alternative authorized by the NRC pursuant to 10 CFR 50.55a(a)(3). This change does not affect previous NRC safety findings in the FSER or change the status of how the ESBWR standard design complies with ASME BPV Code requirements. For the reasons set forth in Section 14.3 of the supplemental FSER, the NRC finds that these changes to the definition of ASME Code are acceptable.

*N. Clarification of ASME Component Design ITAACs*

Following the publication of the proposed rule, the NRC staff reviewed ITAACs for inspectability and consistency across several design certifications. This review identified the potential issue that the ITAACs related to verification of component design, as written in Revision 9 of the ESBWR DCD, might be viewed as requiring design verification of as-designed ASME BPV Code components, rather than as-built ASME BPV Code components, as originally intended. Verifying interim ASME BPV Code design reports at the design stage would result in an unnecessary regulatory burden with no benefit to safety. In Revision 10 of the ESBWR DCD, the ASME BPV Code component ITAACs were revised to clarify that the activities needed to satisfy the ITAACs are performed at the as-built stage. For the reasons set forth in Section 14.3.3 of the supplemental FSER, the NRC concludes that this clarification promotes efficient ITAAC closure and reduces potential confusion while having no effect on previous NRC safety findings.

*O. Corrections, Editorial, and Conforming Changes*

GEH made corrections and editorial changes in Revision 10 of the DCD. The NRC corrected typographical errors, made other editorial changes, and added units of measurements to the advanced supplemental SER. The NRC also revised the advanced supplemental SER after publication of the supplemental proposed rule to include conforming changes such as adding appendices that augment the appendices in the FSER.

## V. Rulemaking Procedure

*A. Exclusions From Issue Finality and Issue Resolution for Spent Fuel Pool Instrumentation*

As described in Section III of the **SUPPLEMENTARY INFORMATION** section of this document related to how the ESBWR design addresses Fukushima NTTF recommendations, the NRC is changing the ESBWR DCR language to exclude from finality the safety-related SFP level instruments: (1) Being designed to allow the connection of an independent power source, and (2) maintaining its design accuracy following a power interruption or change in power source without recalibration. There was no change to the ESBWR design, as described in the DCD, the NRC's EA supporting the ESBWR rulemaking (and in particular, the SAMDA analysis), or the ESBWR FSER. In addition, the final rule is more conservative than the proposed rule because it is more limiting both as to what is certified and to the scope of issue finality. The NRC is not aware of any entity other than the applicant, GEH, who would be adversely affected by this change. With respect to the exclusions, GEH voluntarily declined to submit additional information that would avoid the need for exclusions from issue finality and issue resolution on this matter. The NRC did not receive any public comments in the area of spent fuel pool instrumentation (which otherwise would suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for these

exclusions from issue finality and issue resolution.

*B. Incorporation by Reference of Public Documents*

The change to the ESBWR DCR language related to approval for incorporation by reference by the Office of the Federal Register of 20 publicly-available documents is described in Section III of the **SUPPLEMENTARY INFORMATION** section of this document. The supplemental proposed rule discussed the changes to the ESBWR DCR language but deferred the discussion of why a public comment opportunity was not provided to the final rule. The NRC did not offer a supplemental opportunity for public comment on this matter for the following reasons. First, the text of the DCD—when discussing each of the 20 publicly-available documents—makes clear that these are intended to be requirements. Thus, a member of the public could have discerned and commented on the failure of Tables 1.6–1 and 1.6–2 of the Revision 9 of the DCD to differentiate between documents intended to be requirements (given the information presented throughout DCD Revision 9) and documents which were intended only to be references (*i.e.,* ''for information only''). The public could also have commented on the discrepancy between the language of Revision 9 of the DCD (which regards these documents as being incorporated by reference into the DCD) and the failure of the proposed ESBWR design certification rule to list the publicly-available referenced documents as being approved by the Office of the Federal Register for incorporation by reference. Finally, the NRC did not receive any comments on the proposed rule with respect to Tables 1.6–1 and 1.6–2 in Revision 9 of the DCD, or the incorporation by reference language in Section III of proposed Appendix E to part 52 (which otherwise would suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted with respect to the status of the 20 documents as requirements and their incorporation by reference into the ESBWR design certification rule.

*C. Changes to Tier 2* Information*

The final rule includes three changes from the proposed rule regarding Tier 2* matters under Section VIII of the ESBWR rule language as described in Section III of the **SUPPLEMENTARY INFORMATION** section of this document. Because one of those changes was related to the steam dryer, and for the same reasons as the steam dryer analysis methodology being offered a supplemental opportunity for public comment, the related Tier 2* change was included in the supplemental proposed rule and no public comments were received on this topic. The other two Tier 2* changes—related to the specific subsections of ASME BPV Code and a correction to the type of valves used in the ESBWR design—were included for consistency with the ESBWR design as described in the DCD. First, paragraph VIII.B.6.c.(1) is changed from ''ASME Boiler and Pressure Vessel Code, Section III'' to ''ASME Boiler and Pressure Vessel Code, Section III, Subsections NE (Division 1) and CC (Division 2) for containment vessel design.'' The NRC determined that no changes were required to the ESBWR design or the DCD; rather, the change to the rule text is needed to make the rule consistent with Revisions 9 and 10 of the ESBWR DCD. Further, the change represents a restriction as compared to the proposed rule language. That is, the proposed rule would allow the larger scope of Tier 2* information with respect to ASME BPV Code, Section III to revert to Tier 2 after full power, whereas the change to the final rule does not allow containment vessel design information subject to Subsection NE., Division 1, and Subsection CC, Division 2, to revert to Tier 2 after the plant first achieves full power following the finding required by 10 CFR 52.103(g). Therefore, the NRC concludes that a supplemental opportunity for public comment on these changes to the rule is not warranted.

Second, paragraph VIII.B.6.c.(3) is changed from ''Motor-operated valves'' to ''Power-operated valves.'' The NRC determined that no changes were required to the ESBWR design or the DCD; rather, the change to the rule text is needed to make the rule consistent with Revisions 9 and 10 of the ESBWR DCD. Further, the change to the rule text is corrective in nature and does not represent a substantive change to the nature of Tier 2* matters. Therefore, the NRC concludes that a supplemental opportunity for public comment on these changes to the rule is not warranted.

*D. Other Changes to the ESBWR Rule Language and Difference From Other DCRs*

The ESBWR final rule language differs from the proposed rule language in several areas that are administrative or clarifying and do not involve any substantive change. Those differences, and the rationale for the differences, are as follows. Paragraph III.A, which describes the document being incorporated by reference and how to examine or obtain copies of that document, was revised to conform to other recently issued DCRs and to the Office of the Federal Register's guidance. Paragraphs III.D and V.A were revised to include the NUREG number for the FSER; the NUREG was not available when the NRC published the ESBWR proposed rule. Paragraphs IV.A.3, VI.E, and X.A.1 were administratively revised to remove acronyms for SUNSI and SGI but retain the terms that these acronyms represent for consistency with other DCRs. For paragraph VI.E, footnoted text was moved into the body of the regulation where these terms were noted. Paragraph V.B.1 was revised to clarify that, similar to the regulations that apply to the ESBWR design in Paragraph V.A, the regulations that the ESBWR design is exempt from are those codified as of the date the final rule is signed by the Secretary of the Commission. Because these changes are administrative in nature, the NRC concluded that a supplemental opportunity for public comment was not warranted for these matters.

ESBWR final rule language differs from the rule language of other DCRs in several areas that are not otherwise explained in the preceding paragraph. Those differences, and the rationale for the differences, are as follows. Paragraph II.B was administratively revised to include the term ''generic TS,'' similar to that of ''generic DCD'' in Paragraph II.A, as it is used in appendix E. Paragraph II.C was revised to clarify the actual content of a plant-specific DCD. Paragraph IV.A.2.a was revised to provide flexibility to COL applicants by updating the process by which a COL applicant can reference information in the generic DCD—either by including that information or incorporating it by reference; current DCRs are silent as to how to include this information. Paragraphs IV.A.2.d and VI.B.7 were revised to conform to other NRC regulations regarding site characteristics for a COL, postulated site parameters for a certified design, and the interface requirements. Finally, paragraph IX was reserved for future use because the substantive requirements in this paragraph (for other DCRs) has since been incorporated into 10 CFR part 52 in a 2007 rulemaking (72 FR 49352; August 28, 2007) and thus are no longer needed in the four existing DCR appendices. The NRC intends to remove these requirements from Section IX of the four existing DCR appendices in

future amendment(s) separate from this rulemaking. Because these are administrative in nature, the NRC concluded that a supplemental opportunity for public comment was not warranted for these matters.

*E. Exclusions From Issue Finality and Issue Resolution for Hurricane-Generated Winds and Missiles*

As described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document, the final rule contains exclusions from issue finality and issue resolution related to hurricane-generated winds and missiles. The ESBWR design, as described in the DCD, the NRC's EA supporting the ESBWR rulemaking (and in particular, the SAMDA analysis), and the ESBWR FSER did not change. In addition, the change to the final rule is more conservative than the proposed rule because it is more limiting as to what is certified and the scope of issue finality. The NRC is not aware of any entity other than the applicant, GEH, who would be adversely affected by this change. With respect to the exclusions, GEH voluntarily declined to submit additional information which would avoid the need for exclusions from issue finality and issue resolution on this matter. The NRC did not receive any public comments on hurricane winds or hurricane missiles (which otherwise would suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for these exclusions from issue finality and issue resolution.

*F. Loss of One or More Phases of Offsite Power*

The changes that GEH made to the DCD and the NRC staff conclusions in its supplemental FSER to clarify how the ESBWR design addresses the loss of one or more phases of offsite power in order to demonstrate compliance with GDC 17, ''Electric Power Systems,'' are described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document. These changes did not require a change to the rule text or to the EA supporting this rulemaking. The NRC did not receive any public comments on the proposed rule with respect to the adequacy of the offsite power system (which would otherwise suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter.

*G. Spent Fuel Assembly Integrity in Spent Fuel Racks*

The discussion in the supplemental FSER related to spent fuel assembly integrity in spent fuel racks is described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document. The NRC staff determined that the additional information provided by GEH did not require a change to the design of the fuel or the spent fuel racks as described in Revision 9 of the ESBWR DCD or new design commitments in the DCD. No changes were required to the ESBWR DCD, the rule text, or the EA supporting this rulemaking. The NRC did not receive any public comments on the proposed rule with respect to spent fuel pool assembly integrity (which otherwise would suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter, including the supplemental FSER.

*H. Turbine Building Offgas System Design Requirements*

The NRC staff's evaluation of the turbine building structure relative to the Turbine Building Offgas System design requirements, as documented in a supplemental FSER, is described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document. The staff's evaluation, which was not documented in the March 2011 FSER, was performed using information in Revision 9 of the ESBWR DCD that did not change in Revision 10 of the DCD. Further, there were no changes required to the ESBWR DCD, the rule text, or the EA supporting this rulemaking. The NRC did not receive any public comments on the proposed rule with respect to the Turbine Building Offgas System (which otherwise would suggest public interest in this matter). For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter.

*I. ASME BPV Code Statement in Chapter 1 of the ESBWR DCD*

The technical clarification to the DCD and supplemental FSER related to the ASME BPV Code statement in Chapter 1 of the ESBWR DCD is described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document. This clarification does not affect previous NRC safety findings in the FSER, change the ESBWR's compliance with Code requirements, or require changes to the rule text for this rulemaking. For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter.

*J. Clarification of ASME Component Design ITAACs*

The technical clarifications that GEH made to the DCD and the staff's conclusions in its supplemental FSER regarding the ASME component design ITAACs are described in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document. This clarification does not affect previous NRC safety findings in the FSER, nor does it require changes to the rule text for this rulemaking. For these reasons, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter.

*K. Changes to the Supplemental FSER After Publication of the Supplemental Proposed Rule*

The advanced supplemental SER was issued on April 17, 2014 (ADAMS Accession No. ML14043A134). After the supplemental proposed rule was issued, and to reflect the changes suggested during the March 5, 2014, ACRS subcommittee meeting, the NRC revised the advanced supplemental SER and prepared it as a supplement to the FSER. In this revision the NRC clarified the discussion of the ESBWR steam dryer analysis methodology regarding Methods 1, 2, and 3 in Section 3.9.5.3.3.5.2.3. In addition, the supplemental FSER includes a new section that provides the conclusion of the review by the ACRS of the ESBWR steam dryer analysis methodology. The NRC staff's regulatory basis for the acceptance of the ESBWR steam dryer analysis methodology remains the same in the supplemental FSER as provided in the advanced supplemental SER referenced in the supplemental proposed rule. For this reason, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for this matter. The supplemental FSER (ADAMS Accession No. ML14155A333) will be published as Supplement No. 1 to NUREG 1966. NUREG–1966 was published in April 2014 (ADAMS Accession No. ML14100A304).

*L. Corrections, Editorial, and Conforming Changes*

GEH made editorial changes in Revision 10 of the DCD. The NRC corrected typographical errors, made other editorial changes, and added units of measurements to the advanced supplemental SER. The NRC staff also revised the advanced supplemental SER after publication of the supplemental

proposed rule to include conforming changes such as adding appendices that augment the appendices in the FSER. Because these changes are administrative in nature, the NRC staff concluded that a supplemental opportunity for public comment was not warranted for these matters.

## VI. Planned Withdrawal of the ESBWR SDA

In its application (ADAMS Accession No. ML052450245), GEH requested the NRC provide its design approval for the ESBWR design. The SDA for the ESBWR design was issued in March 2011 (ADAMS Accession No. ML110540310) after the completion of the FSER. In a letter dated June 3, 2014 (ADAMS Accession No. ML14154A094), GEH requested that the NRC retire the SDA at the time of issuance of the final ESBWR DCR. In accordance with GEH's request, the NRC plans to issue a **Federal Register** notice announcing the withdrawal of the ESBWR SDA after the effective date of the final ESBWR design certification rule.

## VII. Section-by-Section Analysis

The following discussion sets forth the purpose and key aspects of each section and paragraph of the final ESBWR DCR. All section and paragraph references are to the provisions in appendix E to 10 CFR part 52 unless otherwise noted. The NRC has modeled the ESBWR DCR on the existing DCRs, with certain modifications where necessary to account for differences in the ESBWR design documentation, design features, and EA (including SAMDAs). As a result, the DCRs are standardized to the extent practical.

### *A. Introduction (Section I)*

The purpose of Section I of appendix E to 10 CFR part 52 (this appendix) is to identify the standard plant design that would be approved by this DCR and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant vendor, then the COL applicant must meet the requirements in 10 CFR 52.73. The COL applicant must demonstrate that the alternate supplier is qualified to provide the standard plant design information. Second, paragraph X.A.1 requires the design certification applicant to maintain the generic DCD throughout the time this appendix may be referenced. Thus, it is necessary to identify the entity to which the requirement in paragraph X.A.1 applies.

### *B. Definitions (Section II)*

During development of the first two DCRs, the NRC decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant and licensee that reference this appendix. This distinction is necessary in order to specify the relevant plant-specific requirements to applicants and licensees referencing the appendix. In order to facilitate the maintenance of the master DCDs, the NRC requires that each application for a standard design certification be updated to include an electronic copy of the final version of the DCD. The final version is required to incorporate all amendments to the DCD submitted since the original application, as well as any changes directed by the NRC as a result of its review of the original DCD or as a result of public comments. This final version is the master DCD incorporated by reference in the DCR. The master DCD would be revised as needed to include generic changes to the version of the DCD approved in this design certification rulemaking. These changes would occur as the result of generic rulemaking by the Commission, under the change criteria in Section VIII.

The NRC also requires each applicant and licensee referencing this appendix to submit and maintain a plant-specific DCD as part of the COL FSAR. This plant-specific DCD must either include or incorporate by reference the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in Section VIII. Thus, the plant-specific DCD functions like an updated FSAR because it would provide the most complete and accurate information on a plant's design-basis for that part of the plant within the scope of this appendix. Therefore, this appendix defines both a generic DCD and a plant-specific DCD.

Also, the NRC is treating the TS in Chapter 16 of the generic DCD as a special category of information and designating them as generic TS in order to facilitate the special treatment of this information under this appendix. A COL applicant must submit plant-specific TS that consist of the generic TS, which may be modified under paragraph VIII.C, and the remaining plant-specific information needed to complete the TS. The FSAR that is required by 10 CFR 52.79 will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific TS.

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. Therefore, appropriate definitions for these additional terms are included in this appendix. The nuclear industry representatives requested a two-tiered structure for the DCRs to achieve issue preclusion for a greater amount of information than was originally planned for the DCRs, while retaining flexibility for design implementation. The Commission approved the use of a two-tiered rule structure in its SRM, dated February 14, 1991, on SECY–90–377, ''Requirements for Design Certification under 10 CFR Part 52,'' dated November 8, 1990. This document and others are available in the Regulatory History of Design Certification (see Section VII of this document).

The Tier 1 portion of the design-related information contained in the DCD is *certified* by this appendix and, therefore, subject to the special backfit provisions in paragraph VIII.A. An applicant who references this appendix is required to include or incorporate by reference and comply with Tier 1, under paragraphs III.B and IV.A.1. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding ITAACs, significant interface requirements, and significant site parameters for the design (refer to Section C.I.1.8 of RG 1.206 for guidance on significant interface requirements and site parameters). The design descriptions, interface requirements, and site parameters in Tier 1 were derived from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in Section 14.3

of the FSER. Changes to or departures from the Tier 1 information must comply with Section VIII.A.

The Tier 1 design descriptions serve as requirements for the lifetime of a facility license referencing the design certification. The ITAACs verify that the as-built facility conforms to the approved design and applicable regulations. Under 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAACs are met before authorizing operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAACs do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility within the scope of the design certification must comply with the design descriptions in the plant-specific DCD unless changes are made under the change process in Section VIII. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design. Tier 1 interface requirements must be met by the site-specific design features of a facility that references this appendix. An application that references this appendix must demonstrate that the site characteristics at the proposed site fall within the site parameters (both Tier 1 and Tier 2) (refer to paragraph V.D of this document).

Tier 2 is the portion of the design-related information contained in the DCD that is *approved* by this appendix but not certified. Tier 2 information is subject to the backfit provisions in paragraph VIII.B. Tier 2 includes the information required by 10 CFR 52.47(a) and 52.47(c) (with the exception of generic TS and conceptual design information) and the supporting information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAACs have been met. As with Tier 1, paragraphs III.B and IV.A.1 require an applicant who references this appendix to include or incorporate by reference Tier 2 and to comply with Tier 2, except for the COL action items, including the availability controls in Appendix 19ACM of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the NRC, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved sufficient method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1 requirements. The appropriate criteria for departing from Tier 2 information are specified in paragraph VIII.B. Departures from Tier 2 information do not negate the requirement in paragraph III.B to incorporate by reference Tier 2 information.

A definition of ''combined license action items'' (COL information), which is part of the Tier 2 information, has been added to clarify that COL applicants who reference this appendix are required to address COL action items in their license application. However, the COL action items are not the only acceptable set of information. An applicant may depart from or omit COL action items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless they are restated in the FSAR. For additional discussion, see Section V.D of this document.

The availability controls, which are set forth in Appendix 19ACM of the generic DCD, were added to the information that is part of Tier 2 to clarify that the availability controls are not operational requirements for the purposes of paragraph VIII.C. Rather, the availability controls are associated with specific design features. The availability controls may be changed if the associated design feature is changed under paragraph VIII.B. For additional discussion, see Section V.C of this document.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as ''Tier 2*'' information and, as discussed in greater detail in the section-by-section analysis for Section H, a plant-specific departure from Tier 2* information requires prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in paragraph VIII.B.6. Some Tier 2* requirements concerning special preoperational tests are designated to be performed only for the first plant or first three plants referencing the ESBWR DCR. The Tier 2* designation for these selected tests will expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant.

The regulations at 10 CFR 50.59 set forth thresholds for permitting changes to a plant as described in the FSAR without NRC approval. Inasmuch as 10 CFR 50.59 is the primary change mechanism for operating nuclear plants, the NRC has determined that future plants referencing the ESBWR DCR should use thresholds as close to 10 CFR 50.59, as is practicable and appropriate for new reactors. Because of some differences in how the change control requirements are structured in the DCRs, certain definitions contained in 10 CFR 50.59 are not applicable to 10 CFR part 52 and are not being included in this rule. The NRC is including a definition for a ''departure from a method of evaluation'' (paragraph II.G), which is appropriate to include in this rulemaking so that the eight criteria in paragraph VIII.B.5.b will be implemented for new reactors as intended.

*C. Scope and Contents (Section III)*

The purpose of Section III is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph III.A is the required statement of the OFR for approval of the incorporation by reference of Tier 1, Tier 2, and the generic TS in Revision 10 of the ESBWR DCD, as well as the 20 documents listed in Table 1 of paragraph III.A. Paragraph III.B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the *Code of Federal Regulations.* This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic TS, have been combined into a single document called the generic DCD, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 1 CFR part 51. One of the requirements of the OFR for incorporation by reference is that the design certification applicant must make the documents incorporated by reference available upon request after the final rule becomes effective. Therefore, paragraph III.A identifies a GEH representative to be contacted in order to obtain a copy of the DCD and the 20 documents incorporated by reference into the ESBWR design certification rule.

Paragraphs III.A and III.B also identify the availability controls in Appendix 19ACM of the generic DCD as part of the Tier 2 information. During its review of the ESBWR design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of nonsafety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, GEH developed administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. GEH named these additional controls ''availability controls.'' The NRC included this characterization in Section III to ensure that these availability controls are binding on applicants and licensees that reference this appendix and will be enforceable by the NRC. The NRC's evaluation of the availability controls is provided in Chapter 22 of the FSER.

The generic DCD (master copy) and the 20 publicly-available documents listed in Table 1 of paragraph III.A are electronically accessible under the ADAMS Accession Nos. provided in paragraph III.A and at the OFR. Copies of these documents are also available at the NRC's PDR and from GEH as described in paragraph III.A. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD or its referenced documents in ADAMS. If the design certification applicant makes a generic change (rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The NRC is requiring that the design certification applicant maintain an up-to-date copy of the master DCD that includes any generic changes it has made under paragraph X.A.1 because it is likely that most applicants intending to reference the standard design would obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD under paragraph X.A.2.

In addition to requiring compliance with this appendix, paragraph III.B clarifies that the conceptual design information and GEH's evaluation of SAMDAs are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are contained in Tier 2 information. As provided by 10 CFR 52.47(a)(24), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant is not required to conform to the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8.2 of Tier 2 identifies the location of the conceptual design information. GEH's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The NRC's assessment of this information is discussed in Section IX of this document.

Paragraphs III.C and III.D set forth the way potential conflicts are to be resolved. Paragraph III.C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER (including Supplement No. 1) for the certified standard design.

Paragraph III.E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using actual site characteristics, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the plant, such as the administration building. Because this statement is not a definition, this provision has been located in Section III.

*D. Additional Requirements and Restrictions (Section IV)*

Section IV sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This paragraph distinguishes between information and/or documents which must actually be *included* in the application or the DCD, versus those which may be *incorporated by reference* (i.e., referenced in the application as if the information or documents were included in the application). Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated.

Paragraph IV.A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such an incorporation by reference into the application is that this appendix is legally binding on the applicant or licensee. Paragraph IV.A.2.a requires that a plant-specific DCD be included in the initial application to ensure that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to either include or incorporate by reference the generic DCD information. Further, this paragraph also requires the plant-specific DCD to use the same format as the generic DCD and reflect the applicant's proposed exemptions and departures from the generic DCD as of the time of submission of the application. The plant-specific DCD will be part of the plant's FSAR, along with information for the portions of the plant outside the scope of the referenced design. Paragraph IV.A.2.a also requires that the initial application include the reports on departures and exemptions as of the time of submission of the application.

Paragraph IV.A.2.b requires that an application referencing this appendix include the reports required by paragraph X.B for exemptions and departures proposed by the applicant as of the date of submission of its application. Paragraph IV.A.2.c requires submission of plant-specific TS for the plant that consists of the generic TS from Chapter 16 of the DCD, with any changes made under paragraph VIII.C, and the TS for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic TS, such as bracketed values (refer to guidance provided in Interim Staff Guidance (ISG) DC/COL–ISG–8, ''Necessary Content of Plant-Specific Technical Specifications,'' ADAMS Accession No. ML083310259).

Paragraph IV.A.2.d requires the applicant referencing this appendix to provide information demonstrating that the proposed site characteristics fall within the site parameters for this appendix and that the plant-specific interface requirements have been met as required by 10 CFR 52.79(d). If the proposed site has a characteristic that does not fall within one or more of the site parameters in the DCD, then the proposed site is unacceptable for this

design unless the applicant seeks an exemption under Section VIII and provides adequate justification for locating the certified design on the proposed site. Paragraph IV.A.2.e requires submission of information addressing COL action items, identified in the generic DCD as COL information in the application. The COL information identifies matters that need to be addressed by an applicant who references this appendix, as required by subpart C of 10 CFR part 52. An applicant may differ from or omit these items, provided that the difference or omission is identified and justified in its application. Based on the applicant's difference or omission, the NRC may impose additional licensing requirement(s) on the COL applicant as appropriate. Paragraph IV.A.2.f requires that the application include the information specified by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed or operational issues not addressed by a design certification, in whole or in part, by an applicant that references this appendix. Paragraph IV.A.2.g requires that the application include information demonstrating that hurricane loads on those SSCs described in Section 3.3.2 of the generic DCD are either bounded by the total tornado loads analyzed in Section 3.3.2 of the generic DCD or will meet applicable NRC requirements with consideration of hurricane loads in excess of the total tornado loads. Paragraph IV.A.2.g further requires that hurricane-generated missile loads on those SSCs described in Section 3.5.2 of the generic DCD are either bounded by tornado-generated missile loads analyzed in Section 3.5.1.4 of the generic DCD or will meet applicable NRC requirements with consideration of hurricane-generated missile loads in excess of the tornado-generated missile loads. Paragraph IV.A.2.h requires that the application include information demonstrating that SFP level instrumentation is designed to allow the connection of an independent power source and that the instrumentation will maintain its design accuracy following a power interruption or change in power source without recalibration. Paragraph IV.A.3 requires the applicant to physically include, not simply reference, the SUNSI (including proprietary information and security-related information) and SGI referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements.

Paragraph IV.A.4 indicates requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Paragraph IV.A.4 requires that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GEH Nuclear Energy is qualified to supply the ESBWR certified design unless GEH Nuclear Energy supplies the design for the applicant's use. This includes the non-public versions (or their equivalents) of the documents listed in Table 3 under section III.B of the **SUPPLEMENTARY INFORMATION** section of this document. In cases where a COL applicant is not using GEH Nuclear Energy to supply the ESBWR certified design, the required information would be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design.

Paragraph IV.B reserves to the Commission the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this DCR, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous DCRs were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was promulgated. The NRC's concern is with the way ITAACs were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate that the Commission retain some discretion regarding the way this appendix could be referenced in a 10 CFR part 50 licensing proceeding.

*E. Applicable Regulations (Section V)*

The purpose of Section V is to specify the regulations that were applicable and in effect at the time this design certification was approved (i.e., as of the date specified in paragraph V.A, which would be the date that this appendix is approved by the Commission and signed by the Secretary of the Commission). These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that are not applicable to this certified design.

In paragraph V.B, the NRC identifies the regulations that do not apply to the ESBWR design. The Commission has determined that the ESBWR design should be exempt from portions of 10 CFR 50.34 as described in the FSER (NUREG–1966) and/or summarized below:

*Paragraph (f)(2)(iv) of 10 CFR 50.34—Contents of Construction Permit and Operating License Applications: Technical Information.*

This paragraph requires an applicant to provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, capable of displaying a full range of important plant parameters and data trends on demand, and capable of indicating when process limits are being approached or exceeded. The ESBWR design integrates the safety parameter display system into the design of the nonsafety-related distribution control and information system, rather than uses a stand-alone console. The safety parameter display system is described in Section 7.1.5 of the DCD.

The NRC has also determined that the ESBWR design is approved to use the following alternative. Under 10 CFR 50.55a(a)(3), GEH requested NRC approval for the use of ASME Code Case N–782 as a proposed alternative to the rules of Section III, Subsection NCA–1140, regarding applied Code Editions and Addenda required by 10 CFR 50.55a(c), (d), and (e). ASME Code Case N–782 provides that the Code Edition and Addenda endorsed in a certified design or licensed by the regulatory authority may be used for systems and components constructed to ASME Code, Section III requirements. These alternative requirements are in lieu of the requirements that base the Edition and Addenda on the construction permit date. Reference to ASME Code Case N–782 will be included in component and system design specifications and design reports to permit certification of these specifications and reports to the Code Edition and Addenda cited in the DCD. The NRC's bases for approving the use of ASME Code Case N–782 as a proposed alternative to the requirements of ASME Section III Subsection NCA–1140 under 10 CFR 50.55a(a)(3) for ESBWR are described in Section 5.2.1.1.3 of the FSER.

*F. Issue Resolution (Section VI)*

The purpose of Section VI is to identify the scope of issues that are resolved by the NRC in this rulemaking and, therefore, are ''matters resolved'' within the meaning and intent of 10 CFR 52.63(a)(5). The section is divided into five parts: Paragraph A identifies

the NRC's safety findings in adopting this appendix, paragraph B identifies the scope and nature of issues which are resolved by this rulemaking, paragraph C identifies issues that are not resolved by this rulemaking, paragraph D identifies the backfit restrictions applicable to the Commission with respect to this appendix, and paragraph E identifies the availability of secondary references.

Paragraph VI.A describes the nature of the Commission's findings in general terms and makes the findings required by 10 CFR 52.54 for the Commission's approval of this DCR. Furthermore, paragraph VI.A explicitly states the Commission's determination that this design provides adequate protection of the public health and safety.

Paragraph VI.B sets forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph VI.B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph VI.B describes the categories of information for which there is issue resolution. Specifically, paragraph VI.B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1966 and Supplement No. 1), the Tier 1 and Tier 2 information (including the availability controls in Appendix 19ACM of the generic DCD), the 20 documents referenced in Table 1 of paragraph III.A, and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(5). These resolved issues include the information referenced in the DCD that are requirements (i.e., ''secondary references''), as well as all issues arising from SUNSI (including proprietary information and security-related information) and SGI that are intended to be requirements. However, paragraph VI.B.1 expressly excludes from issue resolution: The HFE procedure development and training program development identified in Sections 18.9 and 18.10 of the generic DCD; hurricane loads on those SSCs described in Section 3.3.2 of the generic DCD that are not bounded by the total tornado loads analyzed in Section 3.3.2 of the generic DCD; hurricane-generated missile loads on those SSCs described in Section 3.5.2 of the generic DCD that are not bounded by tornado-generated missile loads analyzed in Section 3.5.1.4 of the generic DCD; or that SFP level instrumentation is designed to allow the connection of an independent power source, and that the instrumentation will maintain its design accuracy following a power interruption or change in power source without recalibration.

Paragraph VI.B.2 provides for issue preclusion of SUNSI (including proprietary information and security-related information) and SGI, consisting of the fifty (50) non-publicly available documents listed in Tables 1.6–1 and 1.6–2 of Tier 2 of the ESBWR DCD, Revision 10.

Paragraphs VI.B.3, VI.B.4, VI.B.5, and VI.B.6 clarify that approved changes to and departures from the DCD, which are accomplished in compliance with the relevant procedures and criteria in Section VIII, continue to be matters resolved in connection with this rulemaking. Paragraphs VI.B.4, VI.B.5, and VI.B.6, which characterize the scope of issue resolution in three situations, use the phrase ''but only for that plant.'' Paragraph VI.B.4 describes how issues associated with a DCR are resolved when an exemption has been granted for a plant referencing the DCR. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the DCR obtains a license amendment for a departure from Tier 2 information. Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which will waive the requirement for NRC approval. In all three situations, after a matter (e.g., an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a DCR, the adequacy of that matter *for that plant* is resolved and will constitute part of the licensing basis for that plant. Therefore, that matter will not ordinarily be subject to challenge in any subsequent proceeding or action for that plant (e.g., an enforcement action) listed in the introductory portion of paragraph IV.B. By contrast, there will be no legally binding issue resolution on that subject matter *for any other plant,* or in a subsequent rulemaking amending the applicable DCR. However, the NRC's consideration of the safety, regulatory or policy issues necessary to the determination of the exemption or license amendment may, in appropriate circumstances, be relied upon as part of the basis for NRC action in other licensing proceedings or rulemaking.

Paragraph VI.B.7 provides that, for those plants located on sites whose site characteristics fall within the site parameters assumed in the GEH evaluation of SAMDAs, all issues with respect to SAMDAs arising under the NEPA, associated with the information in the EA for this design and the information regarding SAMDAs in NEDO–33306, Revision 4, ''ESBWR Severe Accident Mitigation Design Alternatives'' are also resolved within the meaning and intent of 10 CFR 52.63(a)(5). If a deviation from a site parameter is granted, the deviation applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site characteristics; however, if the deviation is approved, requests for litigation at the COL stage must meet the requirements of 10 CFR 2.309 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter deviation.

Paragraph VI.C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that only some operational requirements, including portions of the generic TS in Chapter 16 of the DCD, and no operational programs, such as operational quality assurance (QA), were completely or comprehensively reviewed by the NRC in this design certification rulemaking proceeding. Therefore, the special backfit and finality provisions of 10 CFR 52.63 apply only to those operational requirements that either the NRC completely reviewed and approved, or formed the basis for an NRC safety finding of the adequacy of the ESBWR, as documented in the NRC's FSER and Supplement No. 1 for the ESBWR. This is consistent with the currently approved design certifications in 10 CFR part 52, appendices A through D. Although information on operational matters is included in the DCDs of each of these currently approved designs, for the most part these design certifications do not provide approval for operational information, and none provide approval for operational ''programs'' (e.g., emergency preparedness programs, operational QA programs). Most operational information in the DCD simply serves as ''contextual information'' (i.e., information necessary to understand the design of certain SSCs and how they would be used in the overall context of the facility). The NRC did not use contextual information to support the NRC's safety conclusions and such information does not constitute the underlying safety bases for the adequacy of those SSCs. Thus, contextual operational information on any particular topic does not constitute one of the ''matters resolved'' under paragraph VI.B.

The NRC notes that operational requirements may be imposed on

licensees referencing this design certification through the inclusion of license conditions in the license, or inclusion of a description of the operational requirement in the plant-specific FSAR.[5] The NRC's choice of the regulatory vehicle for imposing the operational requirements will depend upon, among other things: (1) Whether the development and/or implementation of these requirements must occur prior to either the issuance of the COL or the Commission finding under 10 CFR 52.103(g), and (2) the nature of the change controls that are appropriate given the regulatory, safety, and security significance of each operational requirement.

Paragraph VI.C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification (e.g., start-up and power ascension testing) are not restricted by 10 CFR 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAACs cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAACs are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed during a COL review. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving in this rule the right to impose, at the time of COL issuance, license conditions addressing post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph VI.D reiterates the restrictions (contained in Section VIII) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to SSCs, design features, design criteria, and ITAACs (paragraph VI.D.3 addresses ITAACs) within the scope of the certified design.

[5] Certain activities, ordinarily conducted following fuel load and therefore considered ''operational requirements,'' but which may be relied upon to support a Commission finding under 10 CFR 52.103(g), may themselves be the subject of ITAAC to ensure their implementation prior to the 10 CFR 52.103(g) finding.

Paragraph VI.E provides that the NRC will specify at an appropriate time the procedures for interested persons to obtain access to SUNSI (including proprietary information and security-related information) and SGI information for the ESBWR DCR. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as: (1) The hearing required by 10 CFR 52.85 where the underlying application references this appendix; (2) any hearing provided under 10 CFR 52.103 where the underlying COL references this appendix; and (3) any other hearing relating to this appendix in which interested persons have the right to request an adjudicatory hearing.

For proceedings where the notice of hearing was published before the effective date of the final rule, the Commission's order governing access to SUNSI and SGI shall be used to govern access to such information within the scope of the rulemaking. For proceedings in which the notice of hearing or opportunity for hearing is published after the effective date of the final rule, paragraph VI.E applies and governs access to SUNSI and SGI. For these proceedings, as stated in paragraph VI.E, the NRC will specify the access procedures at an appropriate time.

For both a hearing required by 10 CFR 52.85 where the underlying application references this appendix, and in any hearing on ITAACs completion under 10 CFR 52.103, the NRC expects to follow its current practice of establishing the procedures by order at the time that the notice of hearing is published in the **Federal Register**. See, for example, Florida Power and Light Co., Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to SUNSI and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to SUNSI and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009).

*G. Duration of This Appendix (Section VII)*

The purpose of Section VII is, in part, to specify the period during which this design certification may be referenced by an applicant for a COL, under 10 CFR 52.55. This section also states that the design certification remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification will be effective until the application is withdrawn or the license issued on that application expires. Also, the design certification will be effective for the referencing licensee if the license is renewed. The NRC intends this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to, or plant-specific departures from, information in the plant-specific DCD must be made under the change processes in Section VIII for the life of the plant.

*H. Processes for Changes and Departures (Section VIII)*

The purpose of Section VIII is to set forth the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference DCRs. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and operational requirements. The language of Section VIII distinguishes between generic *changes to* the DCD versus plant-specific *departures from* the DCD. Generic *changes* must be accomplished by rulemaking because the intended subject of the change is this DCR itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(3), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change [''modification'' in the language of 10 CFR 52.63(a)(3)] ''technically irrelevant.'' By contrast, plant-specific *departures* could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a 10 CFR 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X requires an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, the following discussion refers to both generic changes and plant-specific departures as ''change processes.''

Section VIII refers to an exemption from one or more requirements of this appendix and the criteria for granting an exemption. The NRC cautions that when the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 52.7.

**Tier 1 Information**

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemakings that amend the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1) and 10 CFR 52.63(a)(2). No matter who proposes it, a generic change under 10 CFR 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve selected design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. The rulemakings must provide for notice and opportunity for public comment on the proposed change, as required by 10 CFR 52.63(a)(2). The Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

Departures from Tier 1 may occur in two ways: (1) The Commission may *order* a licensee to depart from Tier 1, as provided in paragraph VIII.A.3; or (2) an applicant or licensee may request an *exemption* from Tier 1, as provided in paragraph VIII.A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph VIII.A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance and that special circumstances are present. Paragraph VIII.A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.98(f), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

**Tier 2 Information**

The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, are set forth in paragraph VIII.B. The change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions are different.

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph VIII.B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). No matter who proposes it, a generic change under 10 CFR 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with NRC regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve selected design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information will also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 may occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph VIII.B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph VIII.B.4; (3) a licensee may make a departure without prior NRC approval under paragraph VIII.B.5; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph VIII.B.5 as provided in paragraph VIII.B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information under paragraph VIII.B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except when necessary either to bring the certification into compliance with the NRC's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph VIII.B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(4). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(4) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee may request an exemption from Tier 2 information as set forth in paragraph VIII.B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Paragraph VIII.B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to, or departure from, Tier 1 or Tier 2* information, TS, or does not require a license amendment under paragraphs VIII.B.5.b or VIII.B.5.c. The TS referred to in

VIII.B.5.a of this paragraph are the TS in Chapter 16 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific TS are controlling under paragraph VIII.B.5. The bases for the plant-specific TS will be controlled by the bases control program, which is specified in the plant-specific TS administrative controls section. The requirement for a license amendment in paragraph VIII.B.5.b will be similar to the requirement in 10 CFR 50.59 and apply to all information in Tier 2 except for the information that resolves the severe accident issues.

The NRC concludes that the resolution of ex-vessel severe accident design features should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377, ''Requirements for Design Certification Under 10 CFR Part 52,'' dated February 15, 1991, ADAMS Accession No. ML003707892). However, because of the increased uncertainty in ex-vessel severe accident issue resolutions, the NRC has adopted separate criteria in paragraph VIII.B.5.c for determining if a departure from information that resolves ex-vessel severe accident design features would require a license amendment. For purposes of applying the special criteria in paragraph VIII.B.5.c, ex-vessel severe accident resolutions are limited to design features where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel, and the containment is being challenged. These design features are identified in Sections 19.2.3, 19.3.2, 19.3.3, 19.3.4, and Appendices 19A and 19B of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for ex-vessel severe accident design features. However, the special procedure in paragraph VIII.B.5.c does not apply to design features that resolve so-called ''beyond design-basis accidents'' or other low-probability events. The important aspect of this special procedure is that it is limited to ex-vessel severe accident design features, as defined above. Some design features may have intended functions to meet ''design basis'' requirements and to resolve ''severe accidents.'' If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraphs VIII.B.5.b or VIII.B.5.c are selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under paragraph VIII.B.5, is required to prepare an evaluation that provides the bases for the determination that the proposed change does not require a license amendment or involve a change to Tier 1 or Tier 2* information, or a change to the TS, as explained above. In order to achieve the NRC's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review.

The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, DBAs, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information, which is intended to be treated as a requirement, is contained in the secondary references. The evaluation should consider Tables 14.3–1a through 14.3–1c and 19.2–3 of the generic DCD to ensure that the proposed change does not impact Tier 1 information. These tables contain cross-references from the safety analyses and probabilistic risk assessment (PRA) in Tier 2 to the important parameters that were included in Tier 1.

Paragraph VIII.B.5.d addresses information described in the DCD to address aircraft impacts, in accordance with 10 CFR 52.47(a)(28). Under 10 CFR 52.47(a)(28), applicants are required to include the information required by 10 CFR 50.150(b) in their DCD. Under 10 CFR 50.150(b), applications for standard design certifications are required to include:

1. A description of the design features and functional capabilities identified as a result of the AIA required by 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

An applicant or licensee who changes this information is required to consider the effect of the changed design feature or functional capability on the original AIA required by 10 CFR 50.150(a). The applicant or licensee is also required to describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1). Submittal of this updated information is governed by the reporting requirements in Section X.B.

In an adjudicatory proceeding (e.g., for issuance of a COL), a person who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information is permitted to petition to admit such a contention into the proceeding under paragraph VIII.B.5.f. This provision was included because an incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly founded contentions alleging such incorrectly implemented departures cannot be considered ''resolved'' by this rulemaking. As set forth in paragraph VIII.B.5.f, the petition must comply with the requirements of 10 CFR 2.309 and show that the departure does not comply with paragraph VIII.B.5. Other persons may file a response to the petition under 10 CFR 2.309. If, on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging nonconformance with paragraph VIII.B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph VIII.B.6 provides a process for departing from Tier 2* information. The creation of and restrictions on changing Tier 2* information resulted from the development of the Tier 1 information for the Advanced Boiling Water Reactor design certification (appendix A to 10 CFR part 52) and the System 80+ design certification (appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes that were not specified in Tier 1 as acceptable for meeting ITAACs were specified in Tier 2. The result of these departures is that certain significant information exists only in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2* information is identified in the

generic DCD with italicized text and brackets (see Table 1D–1 in Appendix 1D of the ESBWR DCD).

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full (100 percent) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2* information could expire after full power is first achieved (first full power) were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in paragraph VIII.B.6.c ceases to retain its Tier 2* designation after full power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in paragraph VIII.B.5. By contrast, the Tier 2* information identified in paragraph VIII.B.6.b retains its Tier 2* designation throughout the duration of the license, including any period of license renewal.

Certain preoperational tests in paragraph VIII.B.6.c are designated to be performed only for the first plant that references this appendix. GEH's basis for performing these ''first-plant-only'' preoperational tests is provided in Section 14.2.8 of the DCD. The NRC found GEH's basis for performing these tests and its justification for only performing the tests on the first plant acceptable. The NRC's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests will result in significant thermal transients being applied to critical plant components. The NRC concludes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems would be adequately disclosed after performing the designated tests on the first plant. The Tier 2* designation for these tests will expire after the first plant completes these tests, as indicated in paragraph VIII.B.6.c.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) will also be determined in the rulemaking and the appropriate process for future changes will apply. If a plant-specific departure is made from Tier 2* information, then the new designation will apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information will be subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure from Tier 2* information, it will be treated as a license amendment under 10 CFR 50.90 and the finality will be determined under paragraph VI.B.5. Any requests for departures from Tier 2* information that affects Tier 1 must also comply with the requirements in paragraph VIII.A.

**Operational Requirements**

The change process for TS and other operational requirements in the DCD is set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change processes in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for TS and other operational requirements (refer to paragraph V.F of this document), the Commission designated a special category of information, consisting of the TS and other operational requirements, with its own change process in proposed paragraph VIII.C. The key to using the change processes proposed in Section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the TS or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic (Chapter 16 of the DCD) and plant-specific TS to account for the different treatment and finality accorded TS before and after a license is issued.

The process in paragraph VIII.C.1 for making generic changes to the generic TS in Chapter 16 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic TS and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which the NRC reached a safety conclusion in the FSER on this matter. If it cannot be determined, in the absence of a specific statement, that the TS or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position, consistent with paragraph VI.B, was taken on this safety matter. Generic changes made under paragraph VIII.C.1 are applicable to all applicants or licensees (refer to paragraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Some generic TS and availability controls contain values in brackets [ ]. The brackets are placeholders indicating that the NRC's review is not complete and represent a requirement that the applicant for a COL referencing the ESBWR DCR must replace the values in brackets with final plant-specific values (refer to guidance provided in Interim Staff Guidance DC/COL–ISG–8, ''Necessary Content of Plant-Specific Technical Specifications''). The values in brackets are neither part of the DCR nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic TS or availability controls.

Plant-specific departures may occur by either a Commission order under paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the TS or operational requirement was completely reviewed and approved for these processes is the same as for paragraph VIII.C.1 above. If the TS or operational requirement is comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to the TS or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic TS were reviewed and approved by the NRC staff in support of the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific TS. The process for petitioning to intervene on a TS or operational requirement contained in paragraph VIII.C.5 is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present pursuant to 10 CFR 2.335.

Finally, the generic TS will have no further effect on the plant-specific TS after the issuance of a license that references this appendix. The bases for the generic TS will be controlled by the change process in paragraph VIII.C. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific TS.

**I. [RESERVED] (Section IX)**

This section is reserved for future use. As discussed in Section IV of the **SUPPLEMENTARY INFORMATION** section of this document, the matters discussed in this section of earlier design certification rules—inspections, tests, analyses, and acceptance criteria—are now addressed in the substantive provisions of 10 CFR part 52. Accordingly, there is no need to repeat these regulatory provisions in the ESBWR design certification rule.

*J. Records and Reporting (Section X)*

The purpose of Section X is to set forth the requirements that will apply to maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 requires that a generic DCD and the SUNSI (including proprietary information and security-related information) and SGI referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD concept was developed, in part, to meet the OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the SUNSI (including proprietary information and security-related information) and SGI could not be included in the generic DCD because they are not publicly available. Nonetheless, the SUNSI (including proprietary information and security-related information) and SGI was reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC considers the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is not in the generic DCD, this information, or its equivalent, is required to be provided by an applicant for a license referencing this DCR. Paragraph X.A.1 requires the design certification applicant to maintain the SUNSI (including proprietary information and security-related information) and SGI, which it developed and used to support its design certification application. This ensures that the referencing applicant has direct access to this information from the design certification applicant, if it has contracted with the applicant to provide the SUNSI (including proprietary information and security-related information) and SGI to support its license application. The NRC may also inspect this information if it was not submitted to the NRC (e.g., the AIA required by 10 CFR 50.150). Only the generic DCD and 20 publicly-available documents referenced in the DCD are identified and incorporated by reference into this rule. The generic DCD and the NRC-approved version of the SUNSI (including proprietary information and security-related information) and SGI must be maintained by the applicant (GEH) for the period of time that this appendix may be referenced.

Paragraphs X.A.2 and X.A.3 place recordkeeping requirements on the applicant or licensee who references this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII. The term ''plant-specific'' is used in paragraph X.A.2 and other sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix and the plant-specific DCD that the applicant is required to submit under paragraph IV.A. The requirement to maintain changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but also in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A.4.a requires the applicant to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This provision, which is consistent with 10 CFR 50.150(c)(3), will facilitate any NRC inspections of the assessment that the NRC decides to conduct. Similarly, paragraph X.A.4.b requires an applicant or licensee who references this appendix to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) will be met.

Paragraph X.A does not place recordkeeping requirements on site-specific information that is outside the scope of this rule. As discussed in paragraph V.D of this document, the FSAR required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase ''site-specific portion of the final safety analysis report'' in paragraph X.B.3.c refers to the information that is contained in the FSAR for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule because the plant-specific DCD is part of the FSAR for the facility.

Paragraph X.B.1 requires applicants or licensees that reference this rule to submit reports, which describe departures from the DCD and include a summary of the written evaluations. The requirement for the written evaluations is set forth in paragraph X.A.1. The frequency of the report submittals is set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations is similar to the requirement in 10 CFR 50.59(d)(2).

Paragraph X.B.2 requires applicants or licensees that reference this rule to submit updates to the DCD, which include both generic changes and plant-specific departures. The frequency for submitting updates is set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting the reports and updates will vary according to certain time periods during a facility's lifetime. If a potential applicant for a COL who references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph X.B.3.a will require that the updated DCD be submitted as part of the initial application for a license. Under paragraph X.B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than

once a year, this should not be an excessive burden on the applicant.

Paragraph X.B.3.b also requires semi-annual submission of the reports required by paragraph X.B.1 throughout the period of application review and construction. The NRC will use the information in the reports to help plan the NRC's inspection and oversight during this phase when the licensee is conducting detailed design, procurement of components and equipment, construction, and preoperational testing. In addition, the NRC will use the information in making its finding on ITAACs under 10 CFR 52.103(g), as well as any finding on interim operation under Section 189.a(1)(B)(iii) of the AEA. Once a facility begins operation (for a COL under 10 CFR part 52, after the Commission has made a finding under 10 CFR 52.103(g)), the frequency of reporting will be governed by the requirements in paragraph X.B.3.c.

## VIII. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the *Code of Federal Regulations,* and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with a particular State's administrative procedure laws, but does not confer regulatory authority on the State.

## IX. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS Accession No./ web link/ **Federal Register** citation |
|---|---|
| Proposed Rule Documents: | |
| SECY–11–0006, ''Proposed Rule—ESBWR Design Certification'' | ML102220172 |
| Staff Requirements Memorandum for SECY–11–0006, ''Proposed Rule—ESBWR Design Certification'' | ML110670047 |
| General Electric Company Application for Final Design Approval and Design Certification of ESBWR Standard Plant Design. | ML052450245 |
| ESBWR Design Control Document, Revision 9 | ML103440266 |
| ESBWR Final Safety Evaluation Report (NUREG–1966) | ML14100A304 |
| ESBWR FSER Final Chapters | ML103470210 |
| Final Design Approval for the Economic Simplified Boiling Water Reactor | ML110540310 |
| ESBWR Draft Environmental Assessment | ML102220247 |
| ESBWR Proposed Rule **Federal Register** Notice, 76 FR 16549, March 24, 2011 | ML110610353 |
| Public Comments on the March 2011 Proposed Rule: | |
| Comment (1) from Farouk D. Baxter on Environmental Impact Statement for Two AP1000 Units at Levy County Site | ML102350160 |
| Comment submission S1 from Paul C. Daugherty | ML110880057 |
| Comment submission S2 from Farouk D. Baxter | ML110880315 |
| Comment submission S3 from Patricia T. Birnie, Chair, General Electric Stockholders' Alliance | ML11158A088 |
| Comment submission S4 from anonymous | ML11187A303 |
| Comment submission P1, Emergency Petition To Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (initial). | ML111040472 |
| Comment submission P2, Emergency Petition To Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (amended). | ML111080855 |
| Comment submission P3, Declaration of Dr. Arjun Makhijani in Support of Emergency Petition To Suspend All Pending Reactor Licensing Decisions and Relating Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident. | ML111100618 |
| Comment submission P4, Comment of Jerald Head on Behalf of GE–Hitachi Nuclear Energy Opposing Petition To Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident. | ML11124A103 |
| Comment submission P5, Petitioners' Reply to Responses to Emergency Petition To Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident. | ML111260637 |
| Comment submission P6, Comments of Terry J. Lodge on PR 52, NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report From ESBWR, Fermi 3 Intervenors. | ML112430118 |
| Public Comments Compilation—Final Rule—ESBWR Design Certification (RIN 3150–AI85) | ML113130141 |
| Supplemental Safety Evaluation for the ESBWR Design Certification: | |
| Advanced Supplemental Safety Evaluation Report for the Economic Simplified Boiling-Water Reactor Standard Plant Design. | ML14043A134 |
| Supplemental Safety Evaluation Report for the Economic Simplified Boiling-Water Reactor Standard Plant Design | ML14155A333 |
| Supplemental Proposed Rule Documents: | |
| ESBWR Design Control Document, Rev. 10 | ML14104A929 |
| ESBWR Supplemental Proposed Rule **Federal Register** Notice, 79 FR 25715, May 6, 2014 | ML14043A508 |
| Final Rule Documents: | |
| SECY–14–0081, ''Final Rule—ESBWR Design Certification'' | ML111730346 |
| Staff Requirements Memorandum for SECY–14–0081, ''Final Rule—ESBWR Design Certification'' | ML14259A545 |
| ESBWR Final Environmental Assessment | ML111730382 |
| Other Documents Relevant to the ESBWR Rulemaking: | |
| NEDO–33306, Revision 4, ''ESBWR Severe Accident Mitigation Design Alternatives'' | ML102990433 |
| NEDO–33312, Rev. 5, ''ESBWR Steam Dryer Acoustic Load Definition'' | ML13344B157 |

| Document | ADAMS Accession No./ web link/ **Federal Register** citation |
|---|---|
| NEDO–33313, Rev. 5, ''ESBWR Steam Dryer Structural Evaluation'' | ML13344B158 |
| NEDO–33338, Revision 1, ''ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis'' | ML091380173 |
| NEDO–33408P, Revision 5, ''ESBWR Steam Dryer—Plant-Based Load Evaluation Methodology, PBLE01 Model Description''. | ML13344B159 |
| Commission Memorandum and Order (CLI–11–05), September 9, 2011 (available on the NRC Web site in Volume 74 at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0750/*). | ML112521106 |
| Commission Order, ''Scheduling Order of the Secretary Regarding Petitions To Suspend Adjudicatory, Licensing and Rulemaking Activities (PR 52 re ESBWR Design Certification)''. | ML111101277 |
| Order EA–12–049, ''Order Modifying Licenses With Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events''. | ML12054A735 |
| Order EA 12–051, ''Order Modifying Licenses With Regard to Reliable Spent Fuel Pool Instrumentation'' | ML12054A679 |
| Staff Requirements Memorandum for SECY–90–377, ''Requirements for Design Certification Under 10 CFR Part 52'' | ML003707892 |
| SECY–94–084, ''Policy and Technical Issues Associated With the Regulatory Treatment of Non-Safety Systems in Passive Plant Designs''. | ML003708068 |
| Staff Requirements Memorandum for SECY–96–077, ''Certification of Two Evolutionary Designs'' | ML003754873 |
| SECY–96–077, ''Certification of Two Evolutionary Designs'' | ML003708129 |
| Staff Requirements Memorandum for SECY–11–0093, ''Near-Team Report and Recommendations for Agency Actions Following the Events in Japan''. | ML112310021 |
| SECY–11–0093, ''Enclosure: The Near-Term Task Force Review of Insights From the Fukushima Dai-ichi Accident'' | ML111861807 |
| Staff Requirements Memorandum for SECY–11–0117, ''Proposed Charter for the Longer-Term Review of Lessons Learned From the March 11, 2011, Japanese Earthquake and Tsunami''. | ML112920034 |
| SECY–11–0117, ''Proposed Charter for the Longer-Term Review of Lessons Learned From the March 11, 2011, Japanese Earthquake and Tsunami''. | ML11231A723 |
| SECY–11–0124, ''Recommended Actions To Be Taken Without Delay From The Near-Term Task Force Report'' | ML11245A127 |
| SECY–11–0137, ''Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned'' | ML11269A204 |
| Staff Requirements Memorandum for SECY–12–0025, ''Proposed Orders and Requests for Information in Response to Lessons Learned From Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami''. | ML120690347 |
| SECY–12–0025, ''Proposed Orders and Requests for Information in Response to Lessons Learned From Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami''. | ML12039A103 |
| SECY–14–0046, ''Fifth 6-Month Status Update on Response to Lessons Learned From Japan's March 11, 2011, Great Tōhoku Earthquake and Subsequent Tsunami''. | ML14064A523 |
| Regulatory Guide 1.13, ''Spent Fuel Storage Facility Design Basis'' | ML070310035 |
| Regulatory Guide 1.20, ''Comprehensive Vibration Assessment Program for Reactor Internals During Preoperational and Initial Startup Testing''. | ML070260376 |
| Regulatory Guide 1.27, ''Ultimate Heat Sink for Nuclear Power Plants (for Comment)'' | ML003739996 |
| Regulatory Guide 1.76, ''Design-Basis Tornado and Tornado Missiles for Nuclear Power Plants'' | ML070360253 |
| Regulatory Guide 1.117, ''Tornado Design Classification'' | ML003739346 |
| Regulatory Guide 1.143, ''Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants''. | ML003740200 |
| Regulatory Guide 1.206, Section C.I.1, ''Standard Format and Content of Combined License Applications—Introduction and General Description of the Plant''. | ML070630005 |
| Regulatory Guide 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants'' | ML110940303 |
| NUREG–0700, Revision 2, ''Human-Systems Interface Design Review Guidelines'' (three volumes) | ML021700337<br>ML021700342<br>ML021700371 |
| NUREG–0711, Revision 2, ''Human Factors Engineering Program Review Model'' | ML040770540 |
| NUREG–0711, Revision 3, ''Human Factors Engineering Program Review Model'' | ML12324A013 |
| NUREG–0800, Section 3.8.4, Revision 2, ''Other Seismic Category I Structures,'' Appendix D, ''Guidance on Spent Fuel Pool Racks''. | ML070550054 |
| NUREG–0800, Section 3.9.2, Revision 3, ''Dynamic Testing and Analysis of Systems, Structures, and Components'' | ML070230008 |
| NUREG–0800, Section 3.9.5, Revision 3, ''Reactor Pressure Vessel Internals'' | ML070230009 |
| NUREG–0800, SRP Section 6.4, Revision 3, ''Control Room Habitability System'' | ML070550069 |
| NUREG–0800, SRP Section 9.1.2, Revision 4, ''New and Spent Fuel Storage'' | ML070550057 |
| NUREG–0800, SRP Section 13.4, Revision 3, ''Operational Programs'' | ML070470463 |
| NUREG–0800, SRP Section 13.5.2.1, Revision 2, ''Operating and Emergency Operating Procedures'' | ML070100635 |
| NUREG–0800, SRP Section 18, Revision 2, ''Human Factors Engineering'' | ML070670253 |
| NUREG–1242, ''NRC Review of Electric Power Research Institute's Advanced Light Water Reactor Utility Requirements Document, Evolutionary Plant Designs'' (five volumes). | ML100610048<br>ML100430013<br>ML063620331<br>ML070600372<br>ML070600373 |
| NRC Bulletin 2012–01: Design Vulnerability in Electric Power System | ML12074A115 |
| Interim Staff Guidance DC/COL–ISG–8, ''Necessary Content of Plant-Specific Technical Specifications'' | ML083310259 |
| JLD–ISG–2012–03 Revision 0, ''Compliance With Order EA–12–051, Reliable Spent Fuel Pool Instrumentation,'' | ML12221A339 |
| NEI 12–02, Revision 1, ''Industry Guidance for Compliance With NRC Order EA–12–051, To Modify Licenses With Regard to Reliable Spent Fuel Pool Instrumentation''. | ML122400399 |
| ''Clarifications Requested by NRC Staff on Economic Simplified Boiling Water Reactor Fuel Design'' | ML11269A093 |
| Audit Report, ''ESBWR Fuel Seismic Audit Summary'' | ML112860614 |

| Document | ADAMS Accession No./ web link/ **Federal Register** citation |
|---|---|
| Notice of Violation, ''ESBWR AIA Inspection Report Inspection, NRC Inspection Report No. 0520000/10/2010–201 and Notice of Violation''. | ML102740292 |
| Reply to Notice of Violation, NRC Inspection Report 052000010–10–201 | ML103010047 |
| GE–Hitachi Nuclear Energy Americas, LLC, Reply to Notice of Violation, NRC IR 052000010–10–201 | ML103400150 |
| ACRS Memorandum—Final Rule—ESBWR Design Certification (RIN 3150–AI85) | ML113120076 |
| ACRS Memorandum—ESBWR Design Certification Rulemaking and Supplemental Final Safety Evaluation Report | ML11340A043 |
| ACRS Memorandum—Supplemental Final Safety Evaluation Report on the General Electric-Hitachi Nuclear Energy (GEH) Application for Certification of the Economic Simplified Boiling Water Reactor (ESBWR) Design. | ML14107A263 |
| ACRS Memorandum—Final Rule—ESBWR Design Certification (RIN 3150–AI85) | ML14196A207 |
| Regulatory History of Design Certification [6] | ML003761550 |

## X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Act), Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is approving the ESBWR standard plant design for use in nuclear power plant licensing under 10 CFR part 50 or part 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees or applicants for SDAs, design certifications, or manufacturing licenses must comply. Design certifications are NRC approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the Act does not apply to this final rule.

## XI. Finding of No Significant Environmental Impact: Availability

The NRC has determined under NEPA, and the NRC's regulations in subpart A, ''National Environmental Policy Act; Regulations Implementing Section 102(2),'' of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' that this DCR is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The NRC's generic determination in this regard is reflected in 10 CFR 51.32(b)(1). The basis for the NRC's categorical exclusion in this regard, as discussed in the 2007 final rule amending 10 CFR parts 51 and 52 (August 28, 2007; 72 FR 49352–49566), is based upon the following considerations. A DCR does not authorize the siting, construction, or operation of a facility referencing any particular design; it only codifies the ESBWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing any particular DCR.

In addition, consistent with 10 CFR 51.30(d) and 10 CFR 51.32(b), the NRC has prepared a final EA (ADAMS Accession No. ML111730382) for the ESBWR design addressing various design alternatives to prevent and mitigate severe accidents. The EA is based, in part, upon the NRC's review of GEH's evaluation of various design alternatives to prevent and mitigate severe accidents in NEDO–33306, Revision 4, ''ESBWR Severe Accident Mitigation Design Alternatives.'' Based upon review of GEH's evaluation, the Commission concludes that: (1) GEH identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the ESBWR design; (2) none of the potential design alternatives are justified on the basis of cost-benefit considerations; and (3) it is unlikely that other design changes would be identified and justified during the term of the design certification on the basis of cost-benefit considerations because the estimated core damage frequencies for the ESBWR are very low on an absolute scale. These issues are considered resolved for the ESBWR design.

The NRC requested comments on the draft EA but the comments received did not include anything to suggest that: (i) A rule certifying the ESBWR standard design would be a major Federal action, or (ii) the SAMDA evaluation omitted a design alternative that should have been considered or incorrectly considered the costs and benefits of the alternatives it did consider. Therefore, no change to the EA was warranted. All environmental issues concerning SAMDAs associated with the information in the final EA and NEDO–33306 are considered resolved for facility applications referencing the ESBWR design if the site characteristics at the site proposed in the facility application fall within the site parameters specified in NEDO–33306.

The final EA, upon which the Commission's finding of no significant impact is based, and the ESBWR DCD are available for examination and copying at the NRC's PDR, One White Flint North, Room O–1 F21, 11555 Rockville Pike, Rockville, Maryland 20852.

## XII. Paperwork Reduction Act

This rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), control number 3150–0151. The burden to the public for these information collections is estimated to average 15 hours per response.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond

[6] The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and Electronic Reading Room. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## XIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are NRC approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the NRC concludes that preparation of a regulatory analysis is neither required nor appropriate.

## XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor prospective nuclear power plant licensees who reference this DCR, fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

## XV. Backfitting and Issue Finality

The NRC has determined that this final rule does not constitute a backfit as defined in the backfit rule (10 CFR 50.109) and that it is not inconsistent with any applicable issue finality provision in 10 CFR part 52.

This initial DCR does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) because there are no operating licenses under 10 CFR part 50 referencing this DCR.

This initial DCR is not inconsistent with any applicable issue finality provision in 10 CFR part 52 because it does not impose new or changed requirements on existing DCRs in appendices A through D to 10 CFR part 52, and no COLs or manufacturing licenses issued by the NRC at this time reference a final ESBWR DCR. Although there are several COL applications referencing the *application* for the ESBWR DCR, there is no issue finality protection accorded to such a COL applicant under either 10 CFR 52.63 or 10 CFR 52.83.

For these reasons, neither a backfit analysis nor a discussion addressing the issue finality provisions in 10 CFR part 52 was prepared for this rule.

## XVI. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

## XVII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

## XVIII. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking. The NRC has previously published relevant guidance in RG 1.206, ''Combined License Applications for Nuclear Power Plants (LWR Edition).'' This RG provides guidance for preparing an application for a COL under 10 CFR part 52, including guidance related to referencing a design certification in that application. Each DCR is similar in its content and structure. Therefore, the existing guidance in RG 1.206 is adequate to support this DCR.

## List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 52.

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

**Authority:** Atomic Energy Act secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2201, 2167, 2169, 2232, 2233, 2235, 2236, 2239, 2282); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 2. In § 52.11, paragraph (b) is revised to read as follows:

### § 52.11 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.7, 52.15, 52.16, 52.17, 52.29, 52.35, 52.39, 52.45, 52.46, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.80, 52.93, 52.99, 52.110, 52.135, 52.136, 52.137, 52.155, 52.156, 52.157, 52.158, 52.171, 52.177, and appendices A, B, C, D, E, and N of this part.

■ 3. A new Appendix E to 10 CFR part 52 is added to read as follows:

## Appendix E to Part 52—Design Certification Rule for the ESBWR Design

### I. Introduction

Appendix E constitutes the standard design certification for the Economic Simplified Boiling-Water Reactor (ESBWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the ESBWR design is GE-Hitachi Nuclear Energy.

### II. Definitions

A. *Generic design control document (generic DCD)* means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications (generic TS)* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means that portion of the combined license (COL) final safety analysis report (FSAR) that sets forth both the generic DCD information and any plant-specific changes to generic DCD information.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAACs);

4. Significant site parameters; and

5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in paragraph III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by §§ 52.47(a) and 52.47(c), with the exception of generic TS and conceptual design information;

2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAACs have been met;

3. COL action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR; and

4. The availability controls in Appendix 19ACM of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in paragraph VIII.B.6 of this appendix. This designation expires for some Tier 2* information under paragraph VIII.B.6 of this appendix.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

**III. Scope and Contents**

A. Incorporation by reference approval. The documents in Table 1 are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the generic DCD from Jerald G. Head, Senior Vice President, Regulatory Affairs, GE-Hitachi Nuclear Energy, 3901 Castle Hayne Road, MC A–18, Wilmington, NC 28401, telephone: 1–910–819–5692. You can view the generic DCD online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* In ADAMS, search under the ADAMS Accession No. listed in Table 1. If you do not have access to ADAMS or if you have problems accessing documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 1–301–415–3747, or by email at *PDR.Resource@nrc.gov.* These documents can also be viewed at the Federal rulemaking Web site, *http://www.regulations.gov,* by searching for documents filed under Docket ID NRC–2010–0135. Copies of these documents are available for examination and copying at the NRC's PDR located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone: 301–415–5610, email: *Library.Resource@nrc.gov.* All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibrlocations.html.*

TABLE 1—DOCUMENTS APPROVED FOR INCORPORATION BY REFERENCE

| Document No. | Document title | ADAMS Accession No. |
|---|---|---|
| GE Hitachi: | | |
| 26A6642AB Rev. 10 | ESBWR Design Control Document, Revision 10, Tier 1, dated April 2014 | ML14104A929 (package) |
| 26A6642AB Rev. 10 | ESBWR Design Control Document, Revision 10, Tier 2, dated April 2014 | ML14104A929 (package) |
| Bechtel Power Corporation: | | |
| BC–TOP–3–A | "Tornado and Extreme Wind Design Criteria for Nuclear Power Plants," Topical Report, Revision 3, August 1974. | ML14093A218 |
| BC–TOP–9A | "Design of Structures for Missile Impact," Topical Report, Revision 2, September 1974. | ML14093A217 |
| General Electric: | | |
| GEZ–4982A | General Electric Large Steam Turbine Generator Quality Control Program, The STG Global Supply Chain Quality Management System (MFGGLO–GEZ–0010) Revision 1.2, February 7, 2006. | ML14093A215 |
| GE Nuclear Energy: | | |
| NEDO–11209–04A | "GE Nuclear Energy Quality Assurance Program Description," Class 1, Revision 8, March 31, 1989. | ML14093A209 |
| NEDO–31960–A | "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," Class I, November 1995. | ML14093A212 |
| NEDO–31960–A—Supplement 1 | "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," Class I, November 1995. | ML14093A211 |
| NEDO–32465–A | GE Nuclear Energy and BWR Owners' Group, "Reactor Stability Detect and Suppress Solutions Licensing Basis Methodology for Reload Applications," Class I, August 1996. | ML14093A210 |
| GE-Hitachi Nuclear Energy: | | |
| NEDO–33181 | "NP–2010 COL Demonstration Project Quality Assurance Plan," Revision 6, August 2009. | ML14248A297 |
| NEDO–33219 | "ESBWR Human Factors Engineering Functional Requirements Analysis Implementation Plan," Revision 4, Class I, February 2010. | ML100350104 |
| NEDO–33260 | "Quality Assurance Requirements for Suppliers of Equipment and Services to the GEH ESBWR Project," Revision 5, Class I, April 2008. | ML14248A648 |
| NEDO–33262 | "ESBWR Human Factors Engineering Operating Experience Review Implementation Plan," Revision 3, Class I, January 2010. | ML100340030 |
| NEDO–33266 | "ESBWR Human Factors Engineering Staffing and Qualifications Implementation Plan," Revision 3, Class I, January 2010. | ML100350167 |

TABLE 1—DOCUMENTS APPROVED FOR INCORPORATION BY REFERENCE—Continued

| Document No. | Document title | ADAMS Accession No. |
|---|---|---|
| NEDO–33267 | ''ESBWR Human Factors Engineering Human Reliability Analysis Implementation Plan,'' Revision 4, Class I, January 2010. | ML100330609 |
| NEDO–33277 | ''ESBWR Human Factors Engineering Human Performance Monitoring Implementation Plan,'' Revision 4, Class I, January 2010. | ML100270770 |
| NEDO–33278 | ''ESBWR Human Factors Engineering Design Implementation Plan,'' Revision 4, Class I, January 2010. | ML100270468 |
| NEDO–33289 | ''ESBWR Reliability Assurance Program,'' Revision 2, Class II, September 2008. | ML14248A662 |
| NEDO–33337 | ''ESBWR Initial Core Transient Analyses,'' Revision 1, Class I, April 2009 | ML091130628 |
| NEDO–33338 | ''ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis,'' Revision 1, Class I, May 2009. | ML091380173 |
| NEDO–33373–A | ''Dynamic, Load-Drop, and Thermal-Hydraulic Analyses for ESBWR Fuel Racks,'' Revision 5, Class I, October 2010. | ML102990226 (part 1)<br>ML102990228 (part 2) |
| NEDO–33411 | ''Risk Significance of Structures, Systems and Components for the Design Phase of the ESBWR,'' Revision 2, Class I, February 2010. | ML100610417 |

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the availability controls in Appendix 19ACM of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in NEDO–33306, Revision 4, ''ESBWR Severe Accident Mitigation Design Alternatives,'' are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the ESBWR design or NUREG–1966, ''Final Safety Evaluation Report Related to Certification of the ESBWR Standard Design,'' (FSER) and Supplement No. 1 to NUREG–1966, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

**IV. Additional Requirements and Restrictions**

A. An applicant for a COL who references this appendix shall, in addition to complying with the requirements of §§ 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the ESBWR design, either by including or incorporating by reference the generic DCD information, and as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating that the site characteristics fall within the site parameters and that the interface requirements have been met;

e. Information that addresses the COL action items;

f. Information required by § 52.47(a) that is not within the scope of this appendix;

g. Information demonstrating that hurricane loads on those structures, systems, and components described in Section 3.3.2 of the generic DCD are either bounded by the total tornado loads analyzed in Section 3.3.2 of the generic DCD or will meet applicable NRC requirements with consideration of hurricane loads in excess of the total tornado loads; and hurricane-generated missile loads on those structures, systems, and components described in Section 3.5.2 of the generic DCD are either bounded by tornado-generated missile loads analyzed in Section 3.5.1.4 of the generic DCD or will meet applicable NRC requirements with consideration of hurricane-generated missile loads in excess of the tornado-generated missile loads; and

h. Information demonstrating that the spent fuel pool level instrumentation is designed to allow the connection of an independent power source, and that the instrumentation will maintain its design accuracy following a power interruption or change in power source without requiring recalibration.

3. Include, in the plant-specific DCD, the sensitive, unclassified, non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the ESBWR generic DCD.

4. Include, as part of its application, a demonstration that an entity other than GE-Hitachi Nuclear Energy is qualified to supply the ESBWR design unless GE-Hitachi Nuclear Energy supplies the design for the applicant's use.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

**V. Applicable Regulations**

A. Except as indicated in paragraph B of this section, the regulations that apply to the ESBWR design are in 10 CFR parts 20, 50, 73, and 100, codified as of October 6, 2014, that are applicable and technically relevant, as described in the FSER (NUREG–1966) and Supplement No. 1.

B. The ESBWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Contents of Applications: Technical Information—codified as of October 6, 2014.

**VI. Issue Resolution**

A. The Commission has determined that the structures, systems, components, and design features of the ESBWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the ESBWR design.

B. The Commission considers the following matters resolved within the meaning of § 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under § 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues associated with the information in the FSER and Supplement No. 1; Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the availability controls in Appendix 19ACM of the DCD), the 20 documents referenced in Table 1 of paragraph III.A, and the rulemaking record for certification of the ESBWR design, with the exception of: generic TS and other operational requirements such as human factors engineering procedure development and training program development in Sections 18.9 and 18.10 of the generic DCD; hurricane loads on those structures, systems, and components described in Section 3.3.2 of the generic DCD that are not bounded by the total tornado loads analyzed in Section 3.3.2 of the generic DCD; hurricane-generated missile loads on those structures, systems, and

components described in Section 3.5.2 of the generic DCD that are not bounded by tornado-generated missile loads analyzed in Section 3.5.1.4 of the generic DCD; and spent fuel pool level instrumentation design in regard to the connection of an independent power source, and how the instrumentation will maintain its design accuracy following a power interruption or change in power source without recalibration;

2. All nuclear safety and safeguards issues associated with the referenced information in the 50 non-public documents in Tables 1.6–1 and 1.6–2 of Tier 2 of the DCD which contain sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information and which, in context, are intended as requirements in the generic DCD for the ESBWR design, with the exception of human factors engineering procedure development and training program development in Chapters 18.9 and 18.10 of the generic DCD;

3. All generic changes to the DCD under and in compliance with the change processes in paragraphs VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in paragraphs VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's Environmental Assessment for the ESBWR design (ADAMS Accession No. ML111730382) and NEDO–33306, Revision 4, ''ESBWR Severe Accident Mitigation Design Alternatives,'' (ADAMS Accession No. ML102990433) for plants referencing this appendix whose site characteristics fall within those site parameters specified in NEDO–33306.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of § 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who seeks to review portions of the design certification or references containing safeguards information or sensitive unclassified non-safeguards information (including proprietary information, such as trade secrets and commercial or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR part 9), and security-related information), for the purpose of participating in the hearing required by § 52.85, the hearing provided under § 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

**VII. Duration of This Appendix**

This appendix may be referenced for a period of 15 years from November 14, 2014, except as provided for in §§ 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

**VIII. Processes for Changes and Departures**

*A. Tier 1 information*

1. Generic changes to Tier 1 information are governed by the requirements in § 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in § 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in §§ 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

*B. Tier 2 information*

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under 10 CFR 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the TS, or requires a license amendment under paragraph B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by § 52.47(a)(28) to address aircraft impacts, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design-basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident

such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. A proposed departure from Tier 2 information required by § 52.47(a)(28) to address aircraft impacts shall consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by 10 CFR 50.150(a). The applicant or licensee shall describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the aircraft impact assessment requirements in 10 CFR 50.150(a)(1).

e. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

f. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

g. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under § 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a § 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and § 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel mechanical and thermal-mechanical design evaluation reports, including fuel burnup limits.

(2) Control rod mechanical and nuclear design reports.

(3) Fuel nuclear design report.

(4) Critical power correlation.

(5) Fuel licensing acceptance criteria.

(6) Control rod licensing acceptance criteria.

(7) Mechanical and structural design of spent fuel storage racks.

(8) Steam dryer pressure load analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by § 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler and Pressure Vessel Code, Section III, Subsections NE (Division 1) and CC (Division 2) for containment vessel design.

(2) American Concrete Institute 349 and American National Standards Institute/American Institute of Steel Construction—N690.

(3) Power-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Instrument setpoint methodology.

(7) Safety-Related Distribution Control and Information System performance specification and architecture.

(8) Safety System Logic and Control hardware and software.

(9) Human factors engineering design and implementation.

(10) First of a kind testing for reactor stability (first plant only).

(11) Reactor precritical heatup with reactor water cleanup/shutdown cooling (first plant only).

(12) Isolation condenser system heatup and steady state operation (first plant only).

(13) Power maneuvering in the feedwater temperature operating domain (first plant only).

(14) Load maneuvering capability (first plant only).

(15) Defense-in-depth stability solution evaluation test (first plant only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for the issuance, amendment, or renewal of a license, or for operation under § 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

## IX. [Reserved]

## X. Records and Reporting

### *A. Records*

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section

VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations that provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

4.a. The applicant for the ESBWR design shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

*B. Reporting*

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in § 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD that reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 of this appendix must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its finding required by § 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by § 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 6th day of October, 2014.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2014–24362 Filed 10–14–14; 8:45 am]

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