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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 80 Tuesday,

No. 8 January 13, 2015

Pages 1583–1846

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2012–BT–STD–0020]

RIN 1904–AC77

Energy Conservation Program: Energy Conservation Standards for Commercial Clothes Washers

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

ACTION: Publication of determination.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes that the U.S. Department of Justice (DOJ) make a determination on the impact, if any, on the lessening of competition likely to result from a U.S. Department of Energy's (DOE) proposed rule for energy conservation standards and that DOE publish the determination in the **Federal Register**. DOE published its final rule for energy conservation standards for commercial clothes washers on December 15, 2014, and is publishing the determination that DOJ made on the proposed rule.

DATES: January 13, 2015.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 15, 2014, DOE issued a final rule that adopted revised energy conservation standards for commercial clothes washers (CCWs) (''December 2014 Final Rule''). 79 FR 74491. DOE adopted the December 2014 Final Rule after considering comments received on the March 4, 2014 notice of proposed rulemaking and public meeting (''March 2014 NOPR''). 79 FR 12301. The Energy Conservation and Policy Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA''), Pub. L. 94–163, requires that the Attorney General make a determination and analysis of the impact, if any, of any lessening of competition likely to result from a proposed standard, within 60 days of publication. (42 U.S.C. 6295(o)(2)(B)(ii)) EPCA also requires that DOE publish the determination and analysis in the **Federal Register**. *Id.*

DOE received the determination in response to the March 2014 NOPR from the Attorney General and the U.S. Department of Justice on August 16, 2014. In that determination, the Department of Justice concluded that the energy conservation standards for commercial clothes washers established in the subject rulemaking proceeding are unlikely to have a significant adverse impact on competition. Accordingly, DOE is publishing the determination.

Issued in Washington, DC, on December 16, 2014.

Kathleen B. Hogan,

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

U.S. DEPARTMENT OF JUSTICE
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August 16, 2014

Eric J. Pygi
Deputy General Counsel
Department of Energy
Washington, D.C. 20585

Re: Commercial Clothes Washers Energy Conservation Standards

Dear Deputy General Counsel Pygi:

I am responding to your June 11, 2014 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for commercial clothes washers. Your request was submitted under Section 325(0)(2)(B)(i)(V) of the Energy Policy and Consen(ation Act, as amended (ECPA), 42 U.S.C. 6295(0)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CPR § O.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (79 FR 12302, March 4, 2014) (NOPR). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. Based on this review, our conclusion is that the proposed energy conservation standards for commercial clothes washers are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

Enclosure

[FR Doc. 2014–30115 Filed 1–12–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 5 and 119

[Docket No. FAA–2009–0671; Amendment Nos. 5–1 and 119–17]

RIN 2120–AJ86

Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders

Correction

In rule document 2015–00143 appearing on pages 1307–1328 in the issue of January 8, 2015, make the following correction:

§ 5.1 [Corrected]

On page 1326, in § 5.1, in the second column, in the second line from the top, ''January 8, 2018'' should read ''March 9, 2018''.

[FR Doc. C1–2015–00143 Filed 1–12–15; 8:45 am]

BILLING CODE 1505–01–D

GULF COAST ECOSYSTEM RESTORATION COUNCIL

40 CFR Part 1800

[Docket Number: 110142014–1111–02]

RIN 3600–AA00

RESTORE Act Spill Impact Component Planning Allocation

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Final rule.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) is issuing a final rule authorizing the Gulf Coast State members of the Council, or their administrative agents, and the Gulf Consortium of Florida counties to apply for grants to fund planning activities to develop individual State Expenditure Plans (SEP) using amounts up to the statutory minimum that each Gulf Coast State must receive under the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: This final rule becomes effective on January 13, 2015.

ADDRESSES: The Council posted all comments to the interim rule on its Web site, *http://www.restorethegulf.gov/,* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received are part of the public record and subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Jeffrey Roberson at 202–482–1315.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act, Public Law 112–141 (July 6, 2012), codified at 33 U.S.C. 1321(t) and note, makes funds available for the restoration and protection of the Gulf Coast Region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). The Trust Fund will contain 80 percent of the administrative and civil penalties paid by the responsible parties after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. These funds will be invested and made available through five components of the RESTORE Act. On August 15, 2014, the Department of Treasury (Treasury) issued regulations (79 FR 48039) applicable to all five components, and which generally describe the responsibilities of the Federal and State entities that administer RESTORE Act programs and carry out restoration activities in the Gulf Coast Region.

Two of the five components, the Comprehensive Plan and Spill Impact Components, are administered by the Council, an independent federal entity created by the RESTORE Act. Under the Spill Impact Component (33 U.S.C. 1321(t)(3)), the subject of this final rule, 30 percent of funds in the Trust Fund will be disbursed to the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) or their administrative agents based on an allocation formula established by the Council by regulation based on criteria in the RESTORE Act. The RESTORE Act establishes a statutory minimum under which each of the five Gulf Coast States is guaranteed five percent of the funds made available under this component. In order for funds to be disbursed to a Gulf Coast State, the RESTORE Act requires each Gulf Coast State to develop a SEP and submit it to the Council for approval. The RESTORE Act specifies the particular entity within each Gulf Coast State that will prepare the individual SEPs: In Alabama, the Alabama Gulf Coast Recovery Council; in Florida, a consortium of local political subdivisions that includes a minimum of one representative of each affected county (officially named the ''Gulf Consortium'' as organized under Florida law); in Louisiana, the Coastal Protection and Restoration Authority of Louisiana; in Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and in Texas, the Office of the Governor or an appointee of the Office of the Governor. 33 U.S.C. 1321(t)(3)(B)(iii).

On August 22, 2014, the Council issued an interim final rule to permit the five eligible entities responsible for drafting SEPs to have access to amounts up to the statutory minimum to help draft a SEP that meets all statutory requirements.[1] 79 FR 49690. The Council opened this interim final rule up for public comment for 30 days. The Council received substantive comments from three separate commenters.

After considering public comments, the Council now issues the regulations as a final rule. The rule will take effect on January 13, 2015. The Council will separately make available a guidance document that details the content and process requirements of both the planning SEP that is required to get access to the planning grants authorized under this rule and the full SEP that is required to get access to the entire amount of funds made available to each Gulf Coast State under the Spill Impact Component of the RESTORE Act. The Council is also currently developing another set of regulations to more fully implement the Spill Impact Component of the RESTORE Act. These regulations will be published in the **Federal Register** at a later date and will establish how funds made available from the Trust Fund will be allocated between the five Gulf Coast States based on the allocation formula.

II. Public Comments and Summary of Final Rule

Each of the five Gulf Coast States, Alabama, Florida, Louisiana, Mississippi, and Texas, are statutorily guaranteed a minimum of five percent of amounts made available from the Trust Fund under the Spill Impact Component.[2] 33 U.S.C.

[1] SEPs must meet the statutory requirements of the RESTORE Act, including: (1) All projects, programs and activities included in the SEP are eligible activities as defined by the RESTORE Act; (2) all projects, programs and activities included in the SEP contribute to the overall economic and ecological recovery of the Gulf Coast; (3) the SEP takes the Council's Comprehensive Plan into consideration and is consistent with the goals and objectives of the Comprehensive Plan; and (4) no more than 25 percent of the allotted funds are used for infrastructure projects unless the SEP contains certain certifications from the Gulf Coast State submitting the SEP.

[2] A Gulf Coast State may receive more than the statutory minimum depending on the calculation of each Gulf Coast State's share under an allocation formula established by the Council by regulation based on criteria specified in the Act. 33 U.S.C. 1321(t)(3)(A)(ii). The Council is developing a regulation to be published in the **Federal Register** at a later date establishing this allocation formula.

1321(t)(3)(A)(iii). The Council originally issued this regulation as an interim final rule in order to facilitate expeditious development of full SEPs by the five entities required by the RESTORE Act to draft the SEPs and thus speed delivery of projects, programs and activities authorized under the Spill Impact Component to help restore and protect the Gulf Coast Region. The Council is now finalizing the rule without substantive change. Instead, minor clarifications have been made to the rule and preamble text to make the intent clearer.

Under this final rule, an amount of funds less than or equal to the statutory minimum allocation (five percent of funds available under the Spill Impact Component) are available to the five eligible entities for development of a planning SEP that funds planning activities only, an eligible activity under the Spill Impact Component. 33 U.S.C. 1321(t)(1)(B)(i)(VIII); 33 U.S.C. 1321(t)(3)(B)(i)(I). Eligible entities include the States of Mississippi and Texas, the Coastal Protection and Restoration Authority of Louisiana, the Alabama Gulf Coast Recovery Council, and the Gulf Consortium of Florida counties.

The preamble to the interim final rule discussed in broad terms the grant submission process. Commenters requested clarification on that process because they felt the interim final rule was unclear on whether an SEP was required for the planning grant authorized by this Rule in addition to a grant application. Commenters also requested that if an SEP is required, that the Council remove that requirement. The Council did not make any changes to the text of the final rule because this issue is not implicated in the text itself. Rather, the Council is clarifying in the preamble that the process for receiving grant funds under the final rule involves two steps. First, the Council's interpretation of the sections of the RESTORE Act that authorize funds under the Spill Impact Component require an SEP prior to any distribution of funds. 33 U.S.C. 1321(t)(3)(B). As such, the Council has no discretion to do away with this requirement. However, the Council feels it is within its discretion to permit a much simpler SEP than would be required in order to receive a full distribution of funds under the Spill Impact Component once the allocation formula is complete. While the Treasury regulations (31 CFR 34.203(a)) state that that eligible entities may apply to the Council for a grant for planning purposes, the Council does not believe these regulations authorize to the Council to distribute such funds without an approved SEP, nor would it be appropriate for the Treasury regulations to do so, since it would be outside the scope of the Act to distribute funds without an SEP. The Council intends to release guidance materials separately from this final rule that will clarify the content requirements associated with a ''planning SEP'' under this final rule, and differentiating those requirements from those of a ''full SEP'' that would be required to get a full share of funds pursuant to the Council's allocation formula regulation that is in the process of being drafted. Second, an eligible entity that has submitted a planning SEP and had it approved by the Council would have to complete a standard grant application.

Commenters also pointed out that in Florida, the process for submitting an SEP to the Council involves the administrative step of submitting the SEP to the Executive Office of the Governor of Florida. The Act requires that all SEPs be submitted to the Council by the Gulf Coast State. 33 U.S.C. 1321(t)(3)(B)(i).

The final rule describes the eligible uses for the amounts made available under the final rule as including planning activities related solely to the development of a full SEP, including conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects. Commenters pointed out that this definition of planning activities is narrower in scope than the definition provided by Treasury in its regulations (31 CFR 34.2) and asked that the Council modify its definition to match the Treasury definition. This narrower construction was intentional. The purpose of this rule is to permit an eligible entity access to a limited pool of funds in order to draft a full SEP. As such, the definition of planning assistance used in the Treasury regulations is too broad in scope, and would permit engineering and environmental studies related to specific projects or procurement of grant processing systems, activities that the Council does not intend to fund under this final rule. Those sorts of activities will be eligible uses once the full amount of funds is available under the Spill Impact Component pursuant to the forthcoming allocation formula. At this time, however, those sorts of activities are beyond the narrowly tailored purpose of this final rule, which is to fund the drafting of a full SEP only.

Similarly, the final rule does not permit any pre-award costs incurred prior to the date of publication of the interim final rule on August 22, 2014, and provides that any pre-award costs incurred after that publication will be evaluated pursuant to 2 CFR part 200. Commenters requested that the Council remove this time limitation on when pre-award costs were incurred. The final rule retains this time limitation because of the narrow purpose of the rule, to fund the drafting of a full SEP. Under 2 CFR 200.458, pre-award costs must be directly linked to a particular grant and until the announcement of the interim final rule on August 22, 2014, eligible entities did not know that the Council would award grants for the purpose of drafting a full SEP. As such, the Council does not feel it is unreasonably constraining pre-award costs by imposing a limitation that it will consider pre-award costs only if they were awarded after August 22, 2014. Further, to the extent that an eligible entity incurred costs prior to August 22, 2014, that the entity thinks would qualify as legitimate pre-award costs under 2 CFR 200.458, the entity is free to request funding for such costs under the awards issued when a full SEP is submitted in order to access the full allocation under the Spill Impact Component.

Commenters also advocated for changing the Rule to provide for a clear path for funding the Gulf Consortium of Florida. Given the narrow purpose of this Rule, to fund the drafting of a full SEP, the Council feels that this request goes beyond the scope of this Rule. Whether Spill Impact Component funds are available for this purpose is best addressed in the entity's application for pre-award costs associated with the full SEP required to access the full allocation under the Spill Impact Component or under the Council's broader forthcoming regulation establishing the allocation formula. The Council will keep this comment in mind as it drafts that future regulation.

Finally, commenters requested that all forthcoming guidance and rulemakings from the Council be promulgated in a manner that will allow for comments prior to them being finalized, consistent with the Administrative Procedure Act, 5 U.S.C. 553. As is its custom, the Council intends to comply with the requirements of the Administrative Procedure Act.

Minor clarifying edits were made to sections 1800.1 and 1800.20 to remove confusing, superfluous references to the fiscal year. The minimum allocation amount available to each Gulf Coast State will be at least equal to 5% of the total amount available in the Trust Fund for the Spill Impact Component over the life of the Trust Fund.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Council hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities, for the following reasons.

This final rule only affects those Gulf Coast States that are eligible recipients of these funds, and States are not considered ''small entities'' under the Regulatory Flexibility Act. For two Gulf Coast States, Alabama and Florida, the Act mandates that entities not officially part of the Executive Office of the State's government develop the SEPs. The Alabama Gulf Coast Recovery Council, in the context of the Act, serves as an administrative agent of the State of Alabama, so the effects of this rule are still directed solely at the State. For the State of Florida, while the Gulf Consortium of counties is tasked with developing the SEP, it is a consortium of 23 counties with a total population of greater than 50,000. As such, neither entity is considered ''small entities'' under the Regulatory Flexibility Act.

Additionally, while this final rule describes procedures concerning the allocation and expenditure of amounts from the Trust Fund under the Spill Impact Component, most of these requirements come from the RESTORE Act itself or other Federal law. The RESTORE Act determines the statutory minimum percentage of funds available to the Gulf Coast States under the Spill Impact Component.

Because no small entities will be impacted by this final rule, no initial regulatory flexibility analysis is required, and none has been prepared.

B. Paperwork Reduction Act

The collections of information contained in this final rule would at most require submissions of grant paperwork from five entities (four of the Gulf Coast States, or their administrative agents, and the Gulf Consortium) below the threshold requirement for application of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). As such, any request for information under this final rule is not considered a ''collection of information'' subject to the Paperwork Reduction Act of 1995.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent federal entity that is composed of, in part, six federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to this final rule.

List of Subjects in 40 CFR Part 1800

Coastal zone, Fisheries, Grant programs, Grants administration, Gulf Coast Restoration Trust Fund, Gulf RESTORE Program, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

Dated: December 8, 2014.

Justin R. Ehrenwerth,

Executive Director, Gulf Coast Ecosystem Restoration Council.

For the reasons set forth in the preamble, the Gulf Coast Ecosystem Restoration Council amends 40 CFR chapter VIII, by revising part 1800 to read as follows:

PART 1800—SPILL IMPACT COMPONENT

Subpart A—Definitions

Sec.
1800.1 Definitions.

Subpart B—Minimum Allocation Available for Planning Purposes

Sec.
1800.10 Purpose.
1800.20 Minimum allocation available for planning purposes.

Authority: 33 U.S.C. 1321(t).

Subpart A—Definitions

§ 1800.1 Definitions.

As used in this part:

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Consortium means the consortium of Florida counties formed to develop the Florida State Expenditure Plan pursuant to 33 U.S.C. 1321(t)(3)(B)(iii)(II).

Minimum allocation means the amount made available to each Gulf Coast State which totals at least five percent of the total allocation made available under the Spill Impact Component.

RESTORE Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Spill Impact Component means the component of the Gulf RESTORE program authorized by section 311(t)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1321(t)(3)), as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan for expenditure of amounts disbursed under the Spill Impact Component that each Gulf Coast State must submit to the Council for approval.

Subpart B—Minimum Allocation Available for Planning Purposes

§ 1800.10 Purpose.

This subpart establishes that up to the statutory minimum allocation (five percent) is available under the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (Pub. L. 112–141, 126 Stat. 405, 588–607) for planning purposes associated with development of a State Expenditure Plan.

§ 1800.20 Minimum allocation available for planning purposes.

A Gulf Coast State or its administrative agent, or the Gulf Consortium, may apply to the Council for a grant to use the minimum allocation available under the Spill Impact Component of the RESTORE Act for planning purposes. These planning purposes are limited to development of a State Expenditure Plan, and includes conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects. It also does not include any pre-award costs incurred prior to August 22, 2014.

[FR Doc. 2014–30675 Filed 1–12–15; 8:45 am]

BILLING CODE 3510–EA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51 and 63

[GC Docket No. 10–44; FCC 14–183]

Amendment of the Commission's Rules of Practice and Procedure; Electronic Filing of Domestic Section 214 Applications and Notices of Network Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends procedural rules to require electronic filing through the Commission's Electronic Comment Filing System (ECFS) for three common types of wireline proceedings: applications for authorization of domestic transfers of control; applications for authorization to discontinue, reduce, or impair a service; and notices of network changes. The rules establish three electronic inboxes within ECFS to handle the initial filing of the above-identified applications and notices, which have previously been filed only on paper. Accepted applications and notices will receive a distinct ECFS docket number. The Commission expects to continue to expand capabilities for online filing and intends to work toward the goal of providing such capabilities for every type of filing that the public might submit.

DATES: Effective February 12, 2015.

FOR FURTHER INFORMATION CONTACT: Jodie May, Wireline Competition Bureau, Federal Communications Commission, *Jodie.May@fcc.gov,* (202) 418–0913; Rodney McDonald, Wireline Competition Bureau, Federal Communications Commission, *Rodney.McDonald@fcc.gov,* (202) 418–7513.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 14–183, GC Docket No. 10–44, adopted on November 19, 2014 and released on November 26, 2014. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

Summary

The *Order* revises several sections of 47 CFR parts 1, 51, and 63. The rule changes will facilitate and enhance public participation in Commission domestic 214 and network change notification proceedings, thereby making the Commission's decision-making process more efficient, modern, and transparent.

Regulatory Flexibility Act

The actions taken in the *Order* do not require notice and comment, and therefore fall outside the Regulatory Flexibility Act of 1980, 5 U.S.C. 601(2); 603(a), as amended. We nonetheless anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, the rules relate to our internal procedures and do not impose new substantive responsibilities on regulated entities. There is no reason to believe that operation of the revised rules will impose significant costs on parties to Commission proceedings. To the contrary, we take today's actions with the expectation that, overall, they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

Paperwork Reduction Act

Although the rule sections affected by this proceeding have information collections associated with them, the Office of Management and Budget has determined that, under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*), these changes are not substantive in nature and will not result in any new or modified information collections.

Congressional Review Act

The Commission will send a copy of the *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).

Ordering Clause

Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 214, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214, 251, that the rules set forth *are adopted,* effective February 12, 2015.

It is further ordered, pursuant to sections 4(i), 4(j), 214, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214, 251, and § 1.3 of the Commission's rules, 47 CFR 1.3, that, effective upon release of the *Order,* §§ 1.49, 51.329, 63.52, 63.53, 63.63, 63.71, 47 CFR 1.49, 51.329, 63.52, 63.53, 63.63, 63.71, are WAIVED to the extent necessary to permit online electronic filing in accordance with the processes discussed in this Order. This waiver is effective upon release of the *Order* and until the effective date of the rule changes ordered in the previous paragraph.

List of Subjects in 47 CFR parts 1, 51 and 63

Administrative practice and procedure; Communications common carriers; Interconnection; Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 51 and 63 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Section 1.49 is amended by revising paragraphs (f)(1)(iv) and (v), adding paragraphs (f)(1)(vi) through (viii), revising paragraph (f)(2) introductory text, and paragraphs (f)(2)(iii) and (iv), adding paragraph (f)(2)(v); redesignating paragraph (f)(3) as paragraph (f)(4), adding a new paragraph (f)(3), and revising the newly redesignated paragraph (f)(4) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(f) * * *

(1) * * *

(iv) Proceedings involving Over-the-Air Reception Devices;

(v) Common carrier certifications under § 54.314 of this chapter;

(vi) Domestic Section 214 transfer-of-control applications pursuant to §§ 63.52 and 63.53 of this chapter;

(vii) Domestic Section 214 discontinuance applications pursuant to §§ 63.63 and/or 63.71 of this chapter; and

(viii) Notices of network change and associated certifications pursuant to § 51.325 *et seq.* of this chapter.

(2) Unless required under paragraph (f)(1) of this section, in the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

* * * * *

(iii) Petition for rulemaking proceedings (except broadcast allotment proceedings);

(iv) Petition for forbearance proceedings; and

(v) Filings responsive to domestic section 214 transfers under § 63.03 of this chapter, section 214 discontinuances under § 63.71 of this chapter, and notices of network change under § 51.325 *et seq.* of this chapter.

(3) To further greater reliance on electronic filing wherever possible, the Bureaus and Offices, in coordination with the Managing Director, may provide to the public capabilities for electronic filing of additional types of pleadings notwithstanding any provisions of this chapter that may otherwise be construed as requiring such filings to be submitted on paper.

(4) For purposes of compliance with any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more than 250 words per page.

PART 51—INTERCONNECTION

■ 3. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 4. Section 51.329 is amended by revising paragraph (c)(2) to read as follows:

§ 51.329 Notice of network changes: Methods for providing notice.

* * * * *

(c) * * *

(2) The incumbent LEC's public notice and any associated certifications shall be filed through the Commission's Electronic Comment Filing System (ECFS), using the ''Submit a Non-Docketed Filing'' module. All subsequent filings responsive to a notice may be filed using the Commission's ECFS under the docket number set forth in the Commission's public notice for the proceeding. Subsequent filings responsive to a notice also may be filed by sending one paper copy of the filing to ''Secretary, Federal Communications Commission, Washington, DC 20554'' and one paper copy of the filing to ''Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554.'' For notices filed using the Commission's ECFS, the date on which the filing is received by that system will be considered the official filing date. For notices filed via paper copy, the date on which the filing is received by the Secretary or the FCC Mailroom is considered the official filing date. All subsequent filings responsive to a notice shall refer to the ECFS docket number assigned to the notice.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 5. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 6. Section 63.52 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.52 Copies required; fees and filing periods for domestic authorizations.

(a) Applications filed under section 214 of the Communications Act for domestic authority must be filed electronically with the Commission through the Electronic Comment Filing System (ECFS). Each domestic transfer of control application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

* * * * *

(c) Any interested party may file a petition to deny an application within the 30-day or other time period specified in paragraph (b) of this section. The petitioner shall serve a copy of such petition on the applicant via electronic mail or paper copy no later than the date of filing thereof with the Commission. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience and necessity. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny, and the petitioners may file a reply to such opposition (see § 1.45 of this chapter), and allegations of facts or denials thereof shall similarly be supported by affidavit. These responsive pleadings shall be served on the applicant or petitioners, as appropriate, and other parties to the proceeding.

■ 7. Section 63.53 is amended by revising paragraph (b) to read as follows:

§ 63.53 Form.

* * * * *

(b) Applications for domestic service under section 214 of the Communications Act must be filed electronically with the Commission. For applications filed electronically and subject to a processing fee it is not necessary to send the original or any copies with the fee payment. Unless specified otherwise all applications and other filings described in this section must be filed electronically through the ''Submit a Non-Docketed Filing'' module of the Commission's Electronic Comment Filing System. For information on electronic filing requirements, see the ECFS homepage at *http://apps.fcc.gov/ecfs/.* See also § 63.52.

* * * * *

■ 8. Section 63.63 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.63 Emergency discontinuance, reduction or impairment of service.

(a) Application for authority for emergency discontinuance, reduction, or impairment of service shall be made by electronically filing an informal request through the ''Submit a Non-Docketed Filing'' module of the Commission's Electronic Comment Filing System. Such requests shall be made as soon as practicable but not later than 15 days in the case of public coast stations, or 65 days in all other cases, after the occurrence of the conditions which have occasioned the discontinuance, reduction, or impairment. The request shall make reference to this section and show the following:

* * * * *

■ 9. Section 63.71 is amended by revising paragraph (a)(5)(i) and (ii), redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding new paragraph (c) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

(a) * * *

(5) * * *

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive

service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(c) Discontinuance applications and all related attachments to the application filed under this section shall be filed through the ''Submit a Non-Docketed Filing'' module of the Commission's Electronic Comment Filing System.

* * * * *

[FR Doc. 2015–00335 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 502

[GSAM Change 62; GSAR Case 2013–G503; Docket No. 2014–0018; Sequence No. 1]

RIN 3090–AJ52

General Services Administration Acquisition Regulation (GSAR), Definitions in GSAR Part 502

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to move the definitions of words and terms from the regulatory text to the non-regulatory General Services Acquisition Manual (GSAM).

DATES: *Effective:* January 13, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. James Tsujimoto, Procurement Analyst, at 202–208–3585, or email at *james.tsujimoto@gsa.gov* for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2013–G503.

SUPPLEMENTARY INFORMATION:

I. Discussion of Changes

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to move the definitions from the regulatory GSAR to the non-regulatory General Services Acquisition Manual (GSAM). The definitions listed in GSAR section 502.101 pertain to internal operations only and not the general public. Thus, the definitions belong in the non-regulatory GSAM.

II. Public Comments Not Required

41 U.S.C. 1707, Publication of proposed regulations, applies to the publication of the General Services Administration Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the definitions affect internal operations only. The change is solely within the discretion of the agency and has no impact on the public.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives; and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant GSAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This final rule does not contain any information collection that requires additional approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Part 502

Government procurement.

Dated: January 7, 2015.

Jeffrey A. Koses,

Senior Procurement Executive, Director, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR part 502 as set forth below:

PART 502 [REMOVED AND RESERVED]

■ 1. Accordingly, under the authority of 40 U.S.C. 486(c), amend 48 CFR Chapter 5 by removing and reserving part 502.

[FR Doc. 2015–00316 Filed 1–12–15; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register

Vol. 80, No. 8

Tuesday, January 13, 2015

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 440

[Docket No.: FAA–2014–1012; Notice No. 14–10]

RIN 2120–AK44

Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the reciprocal waivers of claims regulations so that customers would waive claims against all the customers involved in a launch or reentry, including those signing a different set of reciprocal waivers. Also, customers of any customer contracting directly with a licensee or permittee would not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA. The FAA also proposes to add an appendix to provide permittees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer. The proposed rule would incorporate the reciprocal waiver of claims requirements in the regulatory text, ensure that customers would waive claims against all other customers involved in a launch or reentry, including those signing different reciprocal waivers, reduce the need for licensees and permittees to request a partial waiver of the reciprocal waiver of claims requirements and for the FAA to process those requests, and provide a reciprocal waiver template for permittees with no customers, reducing the need for the FAA to assist such a permittee in drafting its cross waivers.

DATES: Send comments on or before March 16, 2015.

ADDRESSES: Send comments identified by docket number FAA–2014–1012 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Shirley McBride, Regulations Program Lead, Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470; email *Shirley.McBride@faa.gov.*

For legal questions concerning this proposed rule, contact Sabrina Jawed, Attorney, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8839; email *Sabrina.Jawed@faa.gov.*

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

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended at 51 U.S.C. 50901–50923 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. Section 50901(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

The statute under which the Secretary of Transportation regulates commercial space transportation, 51 U.S.C. subtitle V, chapter 509, sections 50901–50923 (chapter 509), requires that, for each commercial space launch or reentry, the Department of Transportation (DOT) and, through delegation, the Federal Aviation Administration (FAA) enter into a reciprocal waiver of claims agreement with ''the licensee or transferee, contractors, subcontractors, crew, space flight participants, and customers of the licensee or transferee, and contractors and subcontractors of the customers. . . .'' 51 U.S.C. 50914(b)(2). This requirement also applies to permittees under 51 U.S.C. 50906(i). This rule changes Title 14, Code of Federal Regulations (14 CFR) 440.3, 440.17 and appendices B and C

to address new scenarios involving hosted payloads.

I. Background

The FAA first promulgated regulations regarding reciprocal waivers of claims agreements in 1998 [1] at 14 CFR part 440, and included appendix B as an example of an Agreement of Waiver of Claims and Assumption of Responsibility for Licensed Activities. In 2000 and 2006, respectively, the FAA amended its regulations to include these same requirements for licensed reentries [2] and permitted launches.[3] The 2006 final rule also added appendix C as an example of an Agreement for Waiver of Claims and Assumption of Responsibility for Permitted Activities. In the original requirements, the FAA referenced the reciprocal waiver of claims as a ''three-party agreement'' (*i.e.,* between the licensee or permittee, its customer, and the FAA). The term ''three-party'' created confusion and caused some customers of commercial space launches to believe that only three parties were necessary to complete a waiver, even if there were multiple customers associated with a single launch. In other words, according to some, one customer could sign the reciprocal waiver with the licensee or permittee and the U.S. Government and by so doing waive not only its own claims but also the claims of all other customers to the launch. Appendices B and C defined ''Customer'' as ''the above-named customer on behalf of the Customer and any person described in § 440.3 of the Regulations.'' Again, some customers construed this language to mean one customer could sign on behalf of all other customers.

In 2011, the FAA amended § 440.17 and the appendices to part 440 to clarify that each individual customer must enter into the reciprocal waiver of claims, and a customer does not sign on behalf of other customers. In doing so, the FAA removed the term ''three-party'' from § 440.17(c) and from paragraph 5(d) of the appendices to dispel the notions that only three parties had to sign the reciprocal waivers and that one customer could sign on behalf of the remaining customers in a multi-customer launch.[4]

In 2012, the FAA became aware of a new scenario where the U.S. Government is a customer of a licensee, and the Government provides its customers' payloads to the licensee. This scenario makes compliance with part 440 challenging for the licensee because the licensee is not contracting directly with all its customers, and there are a large number of total customers. Since 2012, the FAA has licensed additional launches that raised similar issues, and it expects to continue to see increasingly complex scenarios. The FAA briefly describes the first of these launches below to provide a better understanding of the issues it would address with this proposed rule.

On October 7, 2012, SpaceX launched a Falcon 9 rocket carrying its Dragon spacecraft as part of NASA's first contracted cargo delivery flight to the International Space Station (ISS). In addition to providing supplies to the ISS, Dragon carried a number of student experiments as part of NASA's Student Spaceflight Experiments Program (SSEP). NASA described SSEP as a national science, technology, engineering, and mathematics education initiative.[5] NanoRacks, LLC (''NanoRacks''), contracted with NASA and arranged to carry the student experiments on a locker insert to put into an experimental locker onboard the ISS. Under the FAA's definitions, NanoRacks and each student who placed a payload onboard the NanoRacks insert qualified as a ''customer''. Section 440.3 defines a customer, in relevant part, as any person with rights in the payload or any part of the payload, or any person who has placed property onboard the payload for launch, reentry, or payload services.[6] Accordingly, because NanoRacks and the students were persons who had rights in their respective payloads, the locker insert and the experiments, due to their ownership of those objects, and because they placed property onboard the Dragon, they were customers. Therefore, § 440.17 required their signatures as customers on the reciprocal waivers of claims along with the licensee (SpaceX), and the FAA.

SpaceX had a contract with NASA, but was not in a contractual relationship with NanoRacks or any of the students placing experiments onboard Dragon. On September 20, 2012, SpaceX submitted a petition to the FAA requesting a partial waiver of § 440.17, which requires a licensee to enter into a reciprocal waiver of claims with each of its customers.[7] To be in compliance with § 440.17, SpaceX would have first had to determine who its customers were, and then obtain each of their signatures. To avoid this burdensome process, SpaceX instead requested a partial waiver from the FAA of § 440.17.

Thereafter, both SpaceX and Orbital Sciences, Corp. have requested partial waivers for missions in which NASA was a customer.[8] Since October 2012, the FAA has published three partial waivers to part 440 requirements in the **Federal Register**, and has issued three letters of waiver. Issuing a waiver is costly and time-consuming to the FAA, while requesting a waiver is costly and time-consuming for industry.

II. Overview of Proposed Rule

This NRPM proposes to revise part 440 in the following ways: (1) Amend § 440.17 to state the reciprocal waiver of claims requirements; (2) amend § 440.17 and appendices B and C so that customers of any customer contracting directly with a licensee or permittee would not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA; (3) amend appendices B and C of part 440 so that customers would waive claims, as required by statute, against all the customers involved in the launch or reentry, including those signing a different set of reciprocal waivers; (4) amend § 440.3 to add a definition of ''first-tier customer'' and ''part 440 customer''; and (5) add an appendix to provide licensees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer.

These changes would result in cost savings to the licensee, government and customers and minimal cost to any customer in a direct contractual relationship with the licensee or

[1] *See Financial Responsibility Requirements for Licensed Launch Activities,* Final Rule, 63 FR 45592 (Aug. 26, 1998).

[2] *See Financial Responsibility Requirements for Licensed Reentry Activities,* Final Rule, 65 FR 56670 (Sept. 19, 2000).

[3] *See Human Space Flight Requirements for Crew and Space Flight Participants,* Final Rule, 71 FR 75616 (Dec. 5, 2006).

[4] *See Clarification of Reciprocal Waivers of Claims for Multiple-Customer Commercial Space Launch and Reentry,* Technical Amendment, 76 FR 8629 (Feb. 15, 2011).

[5] Space Station—Here we Come! NASA Press Release: *http://www.nasa.gov/audience/foreducators/station-here-we-come.html* (last visited February 2, 2014).

[6] *A person is an individual or an entity organized or existing under the laws of a State or country.* 51 U.S.C. 50901(12), 14 CFR 401.5. The students and NanoRacks were persons because the students are individuals and NanoRacks is an entity, a limited liability corporation.

[7] Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers, Notice of Waiver, 77 FR 63221 (Oct. 16, 2012).

[8] *Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation,* Notice of Waiver, 78 FR 70392 (Nov. 25, 2013); *Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation,* Notice of Waiver, 78 FR 57215 (Sept. 17, 2013). The FAA has also granted waivers that it did not publish in the **Federal Register** because they did not present any novel issues.

permittee if it has customers to the launch.

III. Discussion of the Proposal

A. Amend § 440.17 To State the Reciprocal Waiver of Claims Requirements

The FAA proposes to amend § 440.17 to describe the requirements for the reciprocal waiver of claims agreement. Currently, those requirements are detailed in part 440 appendices, but are not all reflected in § 440.17. This proposed change would locate the cross-waiver requirements in the regulatory text rather than just the appendices. Section 440.17(c) would describe the requirements for each party to the reciprocal waiver of claims, to the extent provided in appendices B and C, to (i) waive and release claims for its property damage and its employees' bodily injury or property damage; (ii) assume responsibility for its property damage and its employees' bodily injury or property damage; (iii) extend its assumption of responsibility and waiver and release of claims to its contractors and subcontractors, and customers in the case of a first-tier customer; [9] and (iv) hold harmless and indemnify each other party from bodily injury or property damage sustained by its employees. Sections 440.17(d) and (e) would require each party to the reciprocal waiver of claims, to the extent described in appendices D and E, to (i) waive and release claims for bodily injury or property damage; (ii) assume responsibility for bodily injury or property damage; and (iii) hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees against claims for property damage or bodily injury.

Section 440.17 does not currently detail the reciprocal waiver of claims requirements in full. Rather, the section currently uses appendices, as incorporated through sub-sections, to detail the scope of the reciprocal waiver of claims. At the same time, subsection (c) currently qualifies the use of appendices with the additional clause ''or in a form that satisfies the requirements.'' The FAA believes that this qualification could lead to uncertain expectations for launch participants because the appendices are more comprehensive than what § 440.17 contains. Section 440.17 only includes general references to requirements such as assumption of responsibility, hold harmless, and indemnification clauses.

To address this deficiency, the FAA proposes that § 440.17 list the specific requirements that should be included in the reciprocal waiver of claims agreement. This proposed change would serve to locate the requirements in one place within the regulation for clarity and ease of use.

B. Amend § 440.17 and Appendices B and C so That Only First-Tier Customers Sign the Statutorily Mandated Waiver of Claims, and Amend § 440.3 To Define ''First-Tier Customer'' and ''Part 440 Customer''

This rulemaking would amend the part 440 requirement describing which entities are required to sign the statutorily-mandated waiver of claims. Specifically, this rulemaking would no longer require a first-tier customer's customer to sign reciprocal waivers with the licensee and the Government, and would require that a first-tier customer obtain its customers' agreement but indemnify the other parties for any failure to properly apply the requirements of the waiver to its customers. The FAA proposes defining first-tier customer as a customer as defined in § 440.3 who has a contractual relationship with the licensee or permittee to obtain launch or reentry services. In other words, a first-tier customer would be one who met the FAA's regulatory definition of a customer, and was in a contractual relationship with the licensee. The FAA proposes defining part 440 customer as a customer defined by § 440.3 of the Regulations, other than a first-tier customer. The FAA would add these definitions because they are a concise way to differentiate between a customer who is a direct contractual relationship with the licensee or permittee, and a customer who is not. The FAA would also revise the wording in the definition of contractors and subcontractors throughout the appendices, for greater specificity.

The FAA will discuss the proposed requirements in the following order: (1) First-tier customers would flow down the reciprocal waiver requirements to their customers; and (2) first-tier customers would indemnify other parties against claims brought by their customers.

The FAA would revise § 440.17(c) to require each first-tier customer to apply the requirements of § 440.17 to each of its customers, and would amend appendices B and C to reflect this requirement. Currently, part 440 requires all customers, as defined by § 440.3, to sign reciprocal waivers with the licensee and the U.S. Government, even those not contracting directly with a licensee or permittee. This rulemaking would relieve licensees or permittees of having to obtain signatures of their part 440 customers, *i.e.,* any customer who is not contracting directly with the licensee or permittee. The FAA proposes to use its current practice of requiring that launch participants extend reciprocal waiver requirements to their contractors and subcontractors as a model. A first-tier customer currently extends the reciprocal waiver provisions to its contractors and subcontractors. The FAA proposes similarly requiring a first-tier customer to extend the reciprocal waiver provisions to its customers, assuming its customers are not also first-tier customers. Consistent with current practice, the agency leaves implementation of these provisions to the licensee or permittee and does not intend to monitor compliance with the requirement to extend the reciprocal waiver provisions.[10] The indemnification, discussed later in this section, provides its own incentives.

The result of requiring first-tier customers to extend the FAA reciprocal waiver requirements to their own customers, would be that the licensee or permittee would only be responsible for signing reciprocal waivers with customers with whom it is in a direct contractual relationship. The FAA notes that the Commercial Space Launch Act specifies that the reciprocal waivers of claims requirement applies only to customers involved in launch or reentry services. 51 U.S.C. 50914(b). Thus, part 440 customers are limited to customers involved in launch or reentry services. As the FAA has stated previously, ''[t]he term ''customer'' does not include the ultimate beneficiary of the payload services, as opposed to launch services, because doing so could theoretically include any person who uses a television or makes a long-distance telephone call, and goes beyond the intended scope of the Act.'' [11]

The FAA offers three examples to illustrate the effects of this proposed change. First, this proposed change would not affect launches in which a licensee or permittee contracted directly with all its customers. For example, if Licensee Launcher was launching a payload owned by ToyCo, then Licensee Launcher, ToyCo and the FAA would sign the part 440 reciprocal waivers. This straightforward scenario is what the FAA contemplated when it originally drafted part 440.

In the second example, involving a hosted payload situation, if Licensee

[9] This requirement would be new to both the regulatory text and the appendices and is discussed in detail in Section B of this preamble.

[10] *See* 63 FR at 45607.

[11] *See* 61 FR at 39012.

Launcher was launching a payload provided by LockerCo that included property owned by WatchCo and CologneCo, under the current rules, Licensee Launcher, LockerCo, WatchCo, and CologneCo would be required to sign the reciprocal waivers with the FAA. In this scenario, Licensee Launcher contracted with LockerCo for the launch, and LockerCo contracted with WatchCo and CologneCo. Even though Licensee Launcher had no contractual relationship with any of the customers other than LockerCo, he is still required to obtain signatures for all the customers of the launch to comply with part 440. This proposed rule would allow Licensee Launcher to sign a reciprocal waiver with only LockerCo and the FAA. LockerCo would then be required to flow down the reciprocal waiver requirements to its customers: WatchCo and CologneCo. LockerCo would be free to choose the method by which it extended these requirements down, so long as the end effect was that LockerCo's customers waived all claims they would have waived had they signed the original waiver with Licensee Launcher and the FAA.

The third example involves a hosted payload with a U.S. Government customer. If Licensee Launcher were launching a payload provided by NASA that included cubesats owned by South University, North University, and Jane Doe, under the current rules Licensee Launcher, South University, North University, Jane Doe, and the FAA would be required to sign reciprocal waivers. In this scenario, Licensee Launcher contracted with NASA for the launch, and NASA contracted with South University, North University, and Jane Doe. Besides NASA, Licensee Launcher had no contractual relationship with any of the customers. However, as in the examples above, Licensee Launcher is currently required to obtain signatures from all the customers of the launch to comply with part 440. This proposed rule would allow Licensee Launcher to sign a reciprocal waiver with only the FAA. The FAA would sign on behalf of the U.S. Government,[12] which would include NASA, even though NASA is also a customer. Under part 440, NASA, as a Government customer, currently already accepts responsibility for property damage to its payload.[13] Under the proposed amendments, NASA would be required to extend the reciprocal waiver requirements to its customers: South University, North University, and Jane Doe. NASA would be free to choose the method by which it extended these requirements down, as long as the end effect was that NASA's customers waived all claims they would have waived had they signed the original waiver with Licensee Launcher and the FAA.

The proposal to require a first-tier customer to extend the reciprocal waiver requirements does not conflict with previous positions the FAA has taken on this issue. In its 2011 Technical Amendment, the FAA stated that ''a plain language reading of the [Commercial Space Launch Act] makes it clear that Congress intended the government to enter into a reciprocal waiver of claims with all customers.'' This proposal is consistent with what the FAA has stated before, even though the FAA would only require customers contracting directly with the licensee or permittee to sign with the Government and the licensee or permittee. The intent of the statute would be preserved because first-tier customers would extend the part 440 requirements to any customers they had that met the definition of customer in § 440.3. Thus, customers who did not sign with the Government and the licensee, but who still met the FAA's definition of customer, would waive claims against all the relevant parties, namely the Government, the licensee or permittee, all other part 440 customers, and the relevant parties' contractors. In this way, the protections Congress intended the statute to afford would be preserved even though the result would be that all customers would no longer have to sign directly with the Government and the licensee or permittee. As the FAA contemplated, in cases with more than one customer's payload on the manifest for a single launch, executing separate but appropriately modified agreements to ensure that all parties are protected would satisfy the statute's mandate. [14] All customers would still have to enter into a waiver of claims agreement; however, the licensee or permittee would no longer be responsible for obtaining a part 440 customer's signature on its reciprocal waiver with the FAA.

The FAA also modeled its proposal regarding indemnification on the current practice for contractors and subcontractors. In the context of a party requiring its contractors and subcontractors to agree to abide by the requirements of part 440, the FAA has stated previously that indemnification provides a strong incentive for parties to correctly extend reciprocal waiver requirements. This incentive provides a remedy for parties who sustain loss due to another party's failure to extend the reciprocal waiver requirements.[15] The FAA would apply the same reasoning to customers of a first-tier customer. Each customer would be required to indemnify the Government, the licensee or permittee, and any other customer not its own, against claims brought by its contractors, subcontractors, and customers that are not also in a direct contractual relationship with the licensee or permittee.

This proposal similarly does not conflict with the 2011 Technical Amendment, where the FAA stated that in no case was any one customer required to indemnify against claims brought by another customer, or to extend the reciprocal waiver of claims to other customers. At that time, the FAA was not contemplating a scenario in which a customer's customer would have a payload on the launch manifest, but would not be in a direct contractual relationship with the licensee or permittee. Instead, in 2011 the FAA meant only to clarify that unrelated customers could not waive claims on behalf of each other. The FAA envisioned a scenario in which the licensee or permittee itself contracted with various customers. In such a scenario, each customer would sign the reciprocal waiver of claims and could not sign for any other customer, or indemnify other signatories to the waiver of claims against a non-signing customers' claims.

Although the FAA removed language stating that a customer must provide indemnification on behalf of another customer,[16] the intent was to clarify that a customer could not sign on behalf of another customer and indemnify a signatory to the reciprocal waiver against that customer's claim in a scenario where the signing customer was not in a relationship with the non-signing customer. The effect of allowing a customer to sign on behalf of a different customer it has no relationship with and indemnify against that customer's claims is the non-signing customer effectively receives the benefits of the reciprocal waiver of claims without the obligations.

[12] The FAA, through delegation from the Department of Transportation, is required by 51 U.S.C. 50914(b)(2) to make reciprocal waiver of claims for the Government.

[13] *Financial Responsibility Requirements for Licensed Launch Activities,* Final Rule, 63 FR 45592, 45601 (Aug. 26, 1998).

[14] *See Financial Responsibility Requirement for Licensed Launch Activities Proposed Rule,* 61 FR at 39012.

[15] *Financial Responsibility Requirements for Licensed Launch Activities,* Notice of Proposed Rulemaking, 61 FR 38992, 39012 (July 25, 1996).

[16] *See* 76 FR 8629 at 8630.

In contrast, this proposal would require not only that a customer in a contractual relationship with the licensee or permittee extend the cross waiver requirements to its customers, but also that it indemnify the other parties against claims brought by its own customers. In this scenario, all customers would be aware of the claims they were waiving, and, if a customer failed to extend the reciprocal waiver requirements, it would be required to indemnify. Therefore, it would be in a customer's best interests to correctly extend the reciprocal waiver requirements so that its customers would not bring claims against the other parties. To accomplish this, the FAA would recommend using the forms provided in part 440 appendices B and C.

C. Amend Appendices B and C of Part 440 so That Customers of Any Customer Contracting Directly With a Licensee or Permittee Would Not Have To Sign a Waiver Directly With the Licensee or Permittee, Other Customers, or the FAA

The FAA proposes requiring that customers waive claims against all other customers involved in a launch or reentry. This change would obviate launch participants re-signing reciprocal waivers if a new customer was added close to the launch date.

The FAA proposes amending the waivers of claims agreements in appendices B and C so that customers waive claims, as required by the statute, against all the customers involved in the launch or reentry, including those signing a different set of reciprocal waivers. In the 2011 Technical Amendment, the FAA inadvertently removed from the definition of ''customer'' in appendices B and C the phrase ''and any person described in § 440.3 of the Regulations.'' By removing this phrase, it became unclear that the customer signing the waiver with the licensee or permittee and the FAA was waiving any claims it had against all other customers.

Correcting this omission is important in order to ease the administrative burden on the FAA, customers, licensees, and permittees in instances where a new customer is added to a launch only a short time before the scheduled launch date. As the rule currently stands, all of the parties involved would need to re-sign the original waiver of claims because the protection only extends to those customers who have signed the specific waiver. This could be an onerous process were there to be many entities as customers for a single launch. The proposed amendment would clarify that a signing customer waived any claims against all other customers currently or to be involved in a launch, and would allow a customer who was added at the last minute to sign a new and separate waiver of claims with the FAA and the licensee or permittee, while still waiving claims against any other customers who have signed a separate waiver of claims. This correction should not be construed to allow a customer to sign an indemnification agreement on behalf of another customer. Each customer in a contractual relationship with the licensee or permittee would still sign a waiver of claims on its own behalf.

Although it may look contradictory to include the clause ''and any other customer as defined by 14 CFR 440.3'' in the reciprocal waiver with one customer found in appendices B and C, the clause is necessary to meet the intent of allowing a last-minute customer to sign a new and separate waiver of claims with the FAA and the licensee or permittee, while also waiving claims against any customers on a launch who have signed a previous waiver of claims. Reciprocal waiver of claims with one customer found in appendices B and C would be used when one customer signed, and reciprocal waiver of claims with multiple customers found in appendices B and C would be used when multiple customers signed the same reciprocal waiver.

For example, Licensee Launcher is conducting a launch, and has one customer (WatchCo). WatchCo signs the ''Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With One Customer,'' located in appendix B to part 440, with the FAA and Licensee Launcher. Two months later, Licensee Launcher acquires customer CologneCo. CologneCo is not a customer of WatchCo. Licensee Launcher now has two customers for its launch. Under the proposed rule, CologneCo would sign reciprocal waivers with Licensee Launcher and the FAA, but it would not need to sign with WatchCo because WatchCo waived and released claims it may have against any other customers as defined by § 440.3 and their contractors and subcontractors.

Thus, a licensee with multiple customers for a launch or reentry may sign one cross-waiver with multiple customers, or may sign multiple cross-waivers with each individual customer. Under the proposed rule, the outcome would be the same.

D. Add an Appendix for Waiver of Claims and Assumption of Responsibility for Permitted Activities With No Customer

Finally, this rulemaking would add a waiver of claims to appendix C that accounts for scenarios in which a permitted activity does not involve any customer. Permitted activities are launches or reentries of a reusable suborbital rocket for the purpose of research and development, demonstrating compliance with requirements in order to obtain a license, or crew training, and often do not involve a customer. Permittees may not receive compensation for carrying any property or human being. 51 U.S.C. 50906(h). Accordingly, although the FAA contemplated nonpaying customers, permittees may regularly conduct launches without any customer.

Currently, when a permittee plans to conduct permitted activities without any customer, the FAA and permittee modify the existing waivers of claims forms in appendix C in order to create a two-party agreement between the U.S. Government and the permittee. The FAA permits No. EP 07–003 issued to Armadillo Aerospace, L.P. in 2007, No. EP 12–007 issued to Scaled Composites in 2012, and No. EP 12–008 issued to SpaceX in 2012 all involved such a modified waiver of claims. This process led to additional coordination between the FAA and the permittees, and the permittees typically sought confirmation from the FAA that the modified waiver of claims agreement complied with part 440. With the addition of a separate waiver of claims template in appendix C for permitted activities with no customer, the FAA would be able to provide a uniform and compliant waiver of claims that would make the permitting process more efficient.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign

commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

These changes would result in cost savings to the licensee, government and customers and minimal cost to the first-tier customer if it has customers to the launch.

Cost savings are presented in the table below, which are discussed in more detail in the paragraphs that follow.

Cost Savings from the Proposed Rule			
	Average	7% Present Value Cost Savings	3% Present Value Cost Savings
Government Cost Savings	$138,443	$97,234	$118,094
Licensee Cost Savings			
No Longer Requesting Waivers	$136,282	$95,716	$116,251
No Longer Obtaining Sub-tier Signatures	$17,035	$11,965	$14,531
Cost Savings from Allowing Signatures on Different Set of Cross-Waivers	$365	$256	$311
Total Estimated Cost Savings	$292,124	$205,170	$249,188

Minor Rounding Occurs in Summation

The proposal might result in minimal costs to first-tier customers who would be responsible for implementing cross-waivers with their customers.

Who is potentially affected by this rule?

Launch Licensees and Permittees
Federal Government
Customers of the Launch Licensees and Permittees

Assumptions:

The following assumptions apply to the analysis.

- Ten year time horizon
- 2013 dollars
- Without the rule FAA would issue 4 partial waivers to the reciprocal cross waiver requirement per year
- Without the rule the licensee would have to obtain some signatures from sub-tier customers on launches unless waivers have been issued.

Benefits of This Rule

The proposal would result in cost savings because licensees would no longer have to obtain signatures of sub-tier customers on the cross-waiver. Cost savings may result because licensees would not have to incur expenses to obtain sub-tier signatures or licensees would not seek waivers from the FAA to the requirement that sub-tier customers sign the cross-waiver. The estimated cost savings to the licensee and the Federal Government that would result were indicated in the table above.

Also, the FAA estimated a small cost savings due to the proposal to allow a customer added at the last minute to sign a new and separate waiver of claims agreement.

Finally, the FAA expects minimal cost savings with the proposed addition of a template for permitted activities with no customer.

Costs of This Rule

The responsibility to obtain signatures of customers who are not in a direct contractual relationship (*i.e.* sub-tier customers) with the licensee would shift under the proposal, from the licensee to the appropriate first-tier customer. The FAA expects the costs the first-tier customer would incur under the rule to implement the cross-waiver would be minimal because the first-tier customer could modify the templates provided in Appendices B and C to part 440 and add it to the contract that it has with its customers. In addition, customers are currently required to extend the FAA cross-waiver obligations to their respective contractors and subcontractors. The FAA thinks that this would be a one-time cost that could be accomplished in a short period of time by the company's in-house lawyers.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-

profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of entities because the rule would result in cost savings and some minimal costs as described below.

Cost savings are expected because the licensee would no longer have to request waivers or obtain sub-tier signatures, nor have to obtain signatures if a party is added to the launch at the last minute. However, there might be minimal costs to first-tier customers. The responsibility to obtain signatures of customers who are not in a direct contractual relationship (*i.e.,* sub-tier customers) with the licensee would shift under the proposal, from the licensee to the appropriate first-tier customer. This would be a new requirement on the first-tier customer.

Under the proposal, the first-tier customer would be responsible, as described above, to implement the cross-waiver with their customers. These costs would be minimal because the first-tier customer could modify the templates provided in Appendices B and C to part 440 and add it to the contract that it has with its customers. The FAA thinks that this would be a one-time cost that could be accomplished in a short period of time by the company's in-house lawyers at an estimated cost of $185.

It is not clear whether this minimal cost would impact a substantial number of small entities. To date, the only entities that the FAA is aware of currently that fly hosted payloads are NASA and the Air Force. We do not know whether in the future there might be small entities which would have to implement a cross-waiver with their customers, but even if there were a substantial number of small entities, the proposal would not have a significant impact on these entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 12866

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

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

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

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

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by

submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

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

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

List of Subjects in 14 CFR Part 440

Indemnity payments, Insurance, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter III of title 14, Code of Federal Regulations as follows:

PART 440—FINANCIAL RESPONSIBILITY

■ 1. The authority citation for part 440 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Amend § 440.3 to add the definition of *first-tier customer* and *part 440 customer* in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

First-tier customer means a customer as defined in this section, and who has a contractual relationship with a license or permit holder to obtain launch or reentry services.

* * * * *

Part 440 customer means a customer as defined in this section, other than a first-tier customer.

* * * * *

■ 3. Revise § 440.17 to read as follows:

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each license or permit, the licensee or permittee must comply with the reciprocal waiver of claims requirements of this section.

(b) The licensee or permittee must implement a reciprocal waiver of claims with each of its contractors and subcontractors, each first-tier customer and each of the first-tier customer's contractors and subcontractors, under which each party waives and releases claims against all the other parties to the waiver and against any other customer, and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from a licensed or permitted activity, regardless of fault.

(c) For each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors is involved or where property insurance is required under section 440.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee or permittee, and each first-tier customer must enter into a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in Appendix B of this part for licensed activity, in Appendix C of this part for permitted activity, or in a form that otherwise provides all the same obligations and benefits. The reciprocal waiver of claims must provide that:

(1) Each party, including the United States but only to the extent provided in legislation:

(i) Waives and releases claims it may have against each other party, any customer, and against their respective contractors and subcontractors, for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault;

(ii) Assumes responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault. Licensee and first-tier customer shall each hold harmless and indemnify each other, the United States, any other customer, and the contractors and subcontractors of each for bodily injury or property damage sustained by its own employees, resulting from Licensed Activities, regardless of fault; and

(iii) Extends the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, to its contractors and subcontractors and, for first-tier customer its customers, by requiring them to waive and release all claims they may have against:

(A) For the contractors and subcontractors of the licensee or permittee, all claims against any customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible, for property damage they sustain and to be responsible, hold harmless and indemnify any customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(B) For the contractors and subcontractors of first-tier customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible, for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(C) For the contractors and subcontractors of the United States, all

claims against the licensee or permittee, any customer, and each of their respective contractors and subcontractors, and to agree to be responsible, for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e) of this part; and

(2) For the following parties—

(i) The licensee or permittee must hold harmless and indemnify each first-tier customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that any of licensee's or permittee's contractors and subcontractors may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities. The requirement of (c)(2)(i) of this section to hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, does not apply when:

(A) Claims result from willful misconduct of the United States or its agents;

(B) Claims for property damage sustained by the United States or its contractors and subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of this part;

(C) Claims by a third party for bodily injury or property damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of this part, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and section 440.19 of this part; or

(D) Licensee or permittee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of this part.

(ii) Each first-tier customer must hold harmless and indemnify the licensee or permitee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that any of first-tier customer's contractors, subcontractors, or customers may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities.

(iii) The Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies, but only to the extent provided in legislation, must hold harmless and indemnify the licensee or permitee, each first-tier customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that contractors and subcontractors of the United States may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e) of this part.

(d) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in Appendix E, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each space flight participant:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury, including death, or property damage sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury, including death, or property damage, sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury, including death, or property damage, sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault;

(iv) Hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury, including death, sustained by space flight participant, resulting from licensed or permitted activities; and

(v) Hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for bodily injury, including death, or property damage, sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault, except to the extent that claims result from willful misconduct of the United States or its agents.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against space flight participant for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of this part;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or

demonstration of financial responsibility required under section 440.9(e) of this part;

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against space flight participant, and to agree to be responsible, for any property damage they sustain and for any bodily injury, including death, or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against space flight participant, and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(e) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix D, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each crew member:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury, including death, or property damage sustained by crew member, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury, including death, or property damage, sustained by crew member, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury, including death, or property damage, sustained by crew member, resulting from licensed or permitted activities, regardless of fault;

(iv) Hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury, including death, sustained by crew member, resulting from licensed or permitted activities; and

(v) Hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for bodily injury, including death, or property damage, sustained by crew member, resulting from licensed or permitted activities, regardless of fault, except to the extent that claims result from willful misconduct of the United States or its agents.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the crew member for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of this part;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of this part;

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against crew member and to agree to be responsible, for any property damage they sustain and for any bodily injury, including death, or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against crew member and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

■ 4. Revise Appendix B to part 440 to read as follows:

Appendix B to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Licensed Activities

Part 1—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch

Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With One Customer

This agreement is entered into this ____ day of ____, by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

License means License No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee,

Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and section 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any part 440 customer, the Contractors and Subcontractors of any part 440 customer, and in the case of Licensee, Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: _____

Its: _____

Customer

By: _____

Its: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With More Than One Customer

This agreement is entered into this __ day of _____, by and among [Licensee] (the ''Licensee''); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as ''Customer''); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

License means License No. __ issued on __ ____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and

for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and section 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any part 440 customer, the Contractors and Subcontractors of any part 440 customer, and in the case of Licensee, each Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: _____

Its: _____

Customer 1

By: _____

Its: _____

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

Part 2—Waiver of Claims and Assumption of Responsibility for Licensed Reentry

Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With One Customer

This Agreement is entered into this __ day of _____, by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer''), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to the reentry of the [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above named Customer.

License means License No. __ issued on __ ____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§ 440.9(c) and (e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the

assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§ 440.9(c) and (e) of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any part 440 customer, the Contractors and Subcontractors of any part 440 customer, and in the case of Licensee, Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In Witness Whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: _____

Its: _____

Customer

By: _____

Its: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With More Than One Customer

This agreement is entered into this __day of ___, by and among [Licensee] (the ''Licensee''); [List of Customers] (with [List of Customers] hereinafter referred to in their individual capacity as ''Customer''); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to the reentry of [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities described in § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 customer means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

License means License No. __issued on ___, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer,

the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and part 440 customers, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and section 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the

Contractors and Subcontractors of any of the Parties, any part 440 customers, the Contractors and Subcontractors of any part 440 customer, and in the case of Licensee, each Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: _____

Its: _____

Customer 1

By: _____

Its: _____

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

■ 5. Revise Appendix C to part 440 to read as follows:

Appendix C to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Permitted Activities

Part 1—Waiver of Claims and Assumption of Responsibility for Permitted Activities With No Customer

This agreement is entered into this __d day of _____, by and between [Permittee] (the ''Permittee'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Permit means Permit No. __ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against the United States, and against its Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against Permittee and against its Contractors and Subcontractors, for Property Damage it sustains resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

3. Assumption of Responsibility

(a) Permittee shall be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee shall hold harmless and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against the United States, and against the Contractors and Subcontractors of the United States, and to agree to be responsible for Property Damage they sustain and to be responsible, hold harmless, and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, and against the Contractors and Subcontractors of Permittee, and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

5. Indemnification

Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee or the United States of any claim by an employee of the Permittee or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility, or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Permittee and its Contractors and Subcontractors, the directors, officers, agents, and employees of

any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

[Permittee]
By: _____
Its: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government
By: _____
Its: _____

Associate Administrator for Commercial Space Transportation

Part 2—Waiver of Claims and Assumption of Responsibility for Permitted Activities With One Customer

This agreement is entered into this __d day of _____, by and among [Permittee] (the ''Permittee''), [Customer] (the ''Customer'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 customer means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

Permit means Permit No. __ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Permittee, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Permittee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee and Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, part 440 customers, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Permittee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

(b) Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the

extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee, Customer or the United States of any claim by an employee of the Permittee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any part 440 customer, the Contractors and Subcontractors of any part 440 customer, and in the case of Permittee, Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: _____

Its: _____

Customer

By: _____

Its: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

Part 3—Waiver of Claims and Assumption of Responsibility for Permitted Activities With More Than One Customer

This agreement is entered into this __ day of _____, by and among [Permittee] (the ''Permittee''); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as ''Customer''); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations''). This agreement applies to [describe permitted activity].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

Permit means Permit No. __ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Permittee, the United States, any part 440 customer, and each of their Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Permittee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee and each Customer shall each hold harmless and indemnify each other, the United States, any part 440 customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any part 440 customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, part 440 customers, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, part 440 customers, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against

Permittee, each Customer, any part 440 customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Permittee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

(b) Each Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee, any Customer or the United States of any claim by an employee of the Permittee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any part 440 customer, the Contractors and Subcontractors of any part 440 customer, and in the case of Permittee, each Customer, any part 440 customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: _____

Its: _____

Customer 1

By: _____

Its: _____

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Issued under authority provided by 49. U.S.C. 106(f) and 44701(a) in Washington, DC, on January 2, 2015.

Shana Dale,

Deputy Associate Administrator, Commercial Space Transportation.

[FR Doc. 2015–00252 Filed 1–12–15; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0861, FRL–9921–49–Region 9]

Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze Federal Implementation Plan; Reconsideration

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise provisions of the Arizona Regional Haze (RH) Federal Implementation Plan (FIP) applicable to the Nelson Lime Plant. In response to a request for reconsideration from the plant's owner, Lhoist North America of Arizona, Inc. (LNA), we propose to replace the control technology demonstration requirements for nitrogen oxides (NO_X) applicable to Kilns 1 and 2 at the Nelson Lime Plant with a series of revised recordkeeping and reporting requirements. Lastly, we are proposing a correction in the regulatory language of the final rule where a table listing the pollution emission limits for NO_X and sulfur dioxide (SO_2) at each kiln was misprinted. We are seeking comment on each of these proposed actions.

DATES: Written comments must be submitted on or before February 27, 2015. Requests for a public hearing must be received on or before January 28, 2015.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for further instructions on where and how to learn more about this proposal, request a public hearing, or submit comments.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

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

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I. General Information
II. Background
III. FIP Revision for Nelson Lime Plant
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I. General Information

A. Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- The words *Arizona* and *State* mean the State of Arizona.
- The initials *BART* mean or refer to Best Available Retrofit Technology.
- The initials *CAA* mean or refer to the Clean Air Act.
- The term *Class I area* refers to a mandatory Class I Federal area.[1]
- The initials *CBI* mean or refer to Confidential Business Information.
- The initials *CEMS* mean or refer to continuous emission monitoring system or systems.
- The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
- The initials *FIP* mean or refer to Federal Implementation Plan.
- The initials *LNA* mean or refer to LNA North America of Arizona, Inc.
- The initials *MMBtu* mean or refer to million British thermal units.
- The initials NO_X mean or refer to nitrogen oxides.
- The initials *RH* mean or refer to regional haze.
- The initials *RHR* mean or refer to EPA's Regional Haze Rule.
- The initials *SIP* mean or refer to State Implementation Plan.
- The initials *SNCR* mean or refer to selective non-catalytic reduction.
- The initials SO_2 mean or refer to sulfur dioxide.

B. Docket

The proposed action relies on documents, information, and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2014–0861. Although listed in the index, some information is not publicly available (*e.g.,* Confidential Business Information (CBI)). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:00 PDT, excluding Federal holidays.

C. Instructions for Submitting Comments to EPA

Written comments must be submitted on or before February 27, 2015. Submit your comments, identified by Docket ID No. EPA–R09–OAR–2014–0861, by one of the following methods:

- *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: webb.thomas@epa.gov.*
- *Fax:* 415–947–3579 (Attention: Thomas Webb).
- *Mail, Hand Delivery or Courier:* Thomas Webb, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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

D. Submitting Confidential Business Information

Do not submit CBI to EPA through *http://www.regulations.gov* or by email. Clearly mark the part or all of the information that you claim as 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 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, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

E. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date, and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline.

F. Public Hearings

If anyone contacts EPA by January 28, 2015 requesting to speak at a public hearing, EPA will schedule a public hearing and announce the hearing in the **Federal Register**. Contact Thomas Webb at (415) 947–4139 or at *webb.thomas@epa.gov* to request a hearing or to determine if a hearing will be held.

II. Background

A. Summary of Statutory and Regulatory Requirements

Congress created a program for protecting visibility in the nation's national parks and wilderness areas in section 169A of the 1977 Amendments to the CAA. This section of the CAA

[1] Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.''

establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution.'' [2] It also directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their State Implementation Plans (SIPs) to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate best available retrofit technology (BART) controls. These sources are referred to as ''BART-eligible'' sources.[3] In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze, which is visibility impairment produced by a multitude of sources and activities located across a broad geographic area.[4] We promulgated the Regional Haze Rule (RHR) in 1999, which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [5] by reducing emissions that cause or contribute to regional haze.[6] Under the Regional Haze Rule (RHR), states are directed to conduct BART determinations for BART-eligible sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.[7]

B. History of FIP BART Determination

The Arizona Department of Environmental Quality (ADEQ) submitted a Regional Haze SIP to EPA on February 28, 2011. EPA promulgated two final rules approving in part and disapproving in part the Arizona RH SIP. The first final rule addressed the State's BART determinations for three power plants (Apache, Cholla, and Coronado).[8] The second final rule, which addressed the remaining elements of the Arizona RH SIP, included our disapproval of the State's determination that the Nelson Lime Plant was not subject to BART.[9]

In a third final rule, EPA found that the Nelson Lime Plant was subject to BART and made a BART determination for the plant, as part of the Arizona RH FIP.[10] EPA set BART emission limits for NO_X at the Nelson Lime Plant of 3.80 lb/ton of limestone product for Kiln 1 and 2.61 lb/ton of limestone product for Kiln 2 based on a 12-month rolling average; and a combined limit for Kilns 1 and 2 of 3.27 tons of NO_X/day on a 30-day rolling average. These limits are consistent with the use of SNCR control technology and represent a 50 percent reduction from baseline emission rates. The FIP also included monitoring, recordkeeping, and reporting requirements, and established a compliance deadline for the final NO_X emission limits of September 3, 2017, which is three years from the publication date of the final rule. Finally, we received certain comments alleging that an SNCR control efficiency of 50 percent was unsupported, and that SNCR was capable of achieving control efficiency as high as 80 percent. In responses to these comments in our final rule, we noted that the commenters were unable to provide information indicating that an SNCR control efficiency better than 50 percent was achievable at a lime kiln. As a result, our final rule established NO_X emission limits consistent with an SNCR control efficiency of 50 percent. However, in response to these comments, as well as the lack of data regarding the performance of SNCR on lime kilns, the final rule included a series of control technology demonstration requirements for Kiln 1 and Kiln 2 to ensure the optimization of the SNCR systems installed at the Nelson Lime Plant.

C. Petition for Reconsideration and Stay

LNA submitted a petition to EPA on October 31, 2014, seeking administrative reconsideration and a partial stay of the final rule under CAA section 307(d)(7)(B).[11] Specifically, LNA requested that EPA eliminate the control technology demonstration requirements for the Nelson Lime Plant. In an attachment to the petition, LNA provided additional data regarding SNCR performance at lime kilns located at another LNA facility, the O'Neal Lime Plant in Calera, Alabama. In the petition, LNA also requested a stay if EPA did not take action prior to December 31, 2014. LNA requested a stay on the grounds that the control technology demonstration requirements would not provide sufficient time to meet the SO_2 and NO_X BART emission limits. LNA asserted that the time needed to implement the demonstration requirements, in particular the requirement to collect six months of uncontrolled NO_X emission data, would delay the critical path schedule for SNCR installation beyond the compliance date. EPA sent a letter to LNA on November 20, 2014, granting reconsideration of the optimization protocol requirements pursuant to CAA section 307(d)(7)(B).[12] Today's notice of proposed rulemaking constitutes EPA's proposed action on the reconsideration.

III. FIP Revision for Nelson Lime Plant

A. Summary of FIP Revision

This proposed rule consists of several components: removal of the control technology demonstration requirements, revised recordkeeping and reporting requirements, and an error correction to a table in our September 3, 2014, final rule. This proposed rule does not change any of the emission limits, compliance deadlines, or the compliance determination methods established in the final rule.

B. EPA's Evaluation of Eliminating Control Technology Demonstration Requirements

EPA is proposing to remove the control technology demonstration requirements from the final rule based on information provided in LNA's petition for reconsideration. In particular, in a letter dated October 2, 2014, and enclosed with the petition, LNA provided new data concerning operation of SNCR at another of its facilities, the O'Neal Lime Plant. The O'Neal Lime Plant originally consisted of Kiln 1, but was later expanded through the construction of Kiln 2. In order for the construction of Kiln 2 not to trigger major new source review for NO_X emissions, LNA elected to install SNCR on both Kilns 1 and 2 to maintain NO_X emissions below thresholds for major new source review. LNA provided information comparing the physical design of the two kilns at the O'Neal Lime Plant with the two kilns at the Nelson Lime Plant. LNA indicated that although the two O'Neal kilns are not identical to the Nelson kilns, O'Neal Kiln 1 is more similar in design to the Nelson kilns than O'Neal Kiln 2. We consider this comparison reasonable. Of

[2] 42 U.S.C. 7491(a)(1).

[3] 40 CFR 51.301.

[4] See CAA section 169B, 42 U.S.C. 7492.

[5] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas, and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[6] See generally 40 CFR 51.308.

[7] 40 CFR 51.308(e).

[8] 77 FR 72512 (December 5, 2012).

[9] 78 FR 46142 (July 30, 2013).

[10] 79 FR 52420 (September 3, 2014).

[11] Letter from Eric Hiser, Jorden Bischoff & Hiser, to Regina McCarthy, EPA (October 31, 2014).

[12] Letter from Jared Blumenfeld, EPA to Eric Hiser, Jorden Bischoff & Hiser (November 20, 2014).

the two O'Neal kilns, Kiln 1 is closer in age, physical dimensions, lime production rate, and fuel efficiency to the Nelson kilns than Kiln 2.

The remainder of the October 2, 2014, letter summarizes NO_X emission data from specific days of operation at O'Neal Kiln 1 to evaluate the SNCR control efficiency of the kiln. Evaluating the control efficiency involves comparing uncontrolled emission rates with controlled emission rates from Kiln 1. However, uncontrolled NO_X emission data for the O'Neal plant are limited, because the facility did not operate with a continuous emission monitoring system (CEMS) for NO_X prior to installing SNCR.[13] As a result, uncontrolled NO_X emission data are limited to those periods of time following SNCR installation during which the SNCR system did not operate. LNA provided emission data from six days during which the SNCR did not operate to represent uncontrolled NO_X emission rates. NO_X emission data from those periods corresponding to hours of SNCR operation were also included as a representation of controlled NO_X emission rates. Based on this analysis, the SNCR control efficiency of O'Neal Kiln 1 varied from 42 to 61 percent.

This range of control efficiency represents SNCR performance over relatively short-term periods of less than 24 hours. For example, the highest observed control efficiency (61 percent) corresponds to a period ending on December 1, 2011, and consists of a comparison of six hours of uncontrolled emissions with eight hours of controlled emissions. As noted in the final rule in regard to control efficiencies for dry sorbent injection, we do not consider the upper range of short-term control efficiencies necessarily to be sustainable over longer periods, such as on an annual average basis.[14] Therefore, while the emission data provided by LNA indicate that a 61 percent SNCR control efficiency was achievable over short term periods (lasting several hours), we do not necessarily consider 61 percent control efficiency to be achievable over longer averaging periods, such as an annual average or 30-day average. For cement kilns, a source category similar to lime kilns, the highest short-term emission rates can be as much as 25–50 percent greater than the highest annual average or 30-day average emission rates.[15] As a result, given the short-term nature of the emission data indicating a maximum 61 percent SNCR control efficiency, we consider the use of a 50 percent control efficiency on a longer annual average basis to be reasonable for the Nelson kilns.

Accordingly, we propose to find that the data from the O'Neal kilns are sufficient to establish that an SNCR control efficiency of 50 percent is appropriate for the Nelson kilns for purposes of BART. While we still consider it necessary to ensure that the SNCR system be optimized, we do not consider it necessary for LNA to adhere to the relatively detailed and prescribed procedures contained in the control technology demonstration requirements. Therefore, we are proposing to remove the control technology demonstration requirements included in the final rule, and, as described below, are proposing requirements that will require LNA to report similar information in a less prescribed manner.

C. Revised Recordkeeping and Reporting Requirements

We are proposing several additional reporting and recordkeeping requirements, including a summary of SNCR design and a summary of SNCR debugging and process improvement activities, to replace the control technology demonstration requirements in the FIP for Nelson Lime Plant. As described in III.B above, we consider it necessary to include provisions for SNCR optimization. Given the NO_X emission data provided by LNA from the O'Neal Plant indicating that 50 percent SNCR control efficiency has been achieved at a lime kiln, we do not consider it necessary for optimization measures to be as prescriptive and detailed as established in our September 4, 2014, final rule. Specifically, we propose to require LNA to submit a summary of the SNCR design prior to commencing construction of the ammonia injection system at Kilns 1 and 2, including information regarding reagent type, locations selected for reagent injection, reagent injection rate, equipment arrangement, and kiln characteristics. We also propose to require LNA to submit a summary of SNCR debugging and process improvement activities, including a description of each process adjustment performed on the SNCR system, a discussion of whether the adjustment affected the NO_X emission rate, a description of the range over which the adjustment was examined, and a discussion of how the adjustment will be reflected or accounted for in kiln operating practices.

D. Error Correction

We are proposing a minor correction to a table printed in our September 3, 2014, final rule at 79 FR 52480. The table, which is codified at 40 CFR 52.145(i)(3)(i) and lists NO_X and SO_2 limits for the Nelson Plant Kilns, appears with incorrect column labels due to a misprint in the **Federal Register**. The table appears with the correct labels in the proposed regulatory text that follows this proposed rule.

E. Non-interference With Applicable Requirements

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.[16] Today's proposed revisions would not affect any applicable requirements of the CAA because they would not alter the amount or timing of emission reductions from the Nelson Lime Plant. In particular, the proposed replacement of the control technology demonstration requirements with a series of recordkeeping and reporting requirements would not alter any of the applicable emission limitations, compliance determination methodologies, or compliance deadlines. Therefore, we propose to find that these revisions would comply with CAA section 110(l).

IV. EPA's Proposed Action

For the reasons described above, EPA proposes to revise the Arizona Regional Haze FIP to eliminate the control technology demonstration requirements at the Nelson Lime Plant and replace them with additional recordkeeping and reporting requirements. This revision would constitute our action on LNA's Petition for Reconsideration of the FIP.

[13] This is common with older lime and cement plants, and is similar to the situation at the Nelson plant, which does not currently operate NO_X CEMS.

[14] 79 FR 52439.

[15] For comparison, we have examined the maximum 24-hr average, 30-day average, and annual average emissions for Kiln 4 at the Phoenix Cement Plant (see spreadsheet ''Phoenix Cement Kiln 4 NO_X Emissions 2005–10 (public).xlsx.'' The Phoenix Cement Kiln 4 data illustrate the substantial variability in emission rates from a cement kiln when examining emissions on short-term versus longer-term averaging periods. Given the similarity between lime kilns and cement kilns, we expect similar variability in the short-term versus longer-term emission rates from lime kilns.

[16] CAA Section 110(l), 42 U.S.C. 7410(l).

V. Statutory and Executive Order Reviews

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

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This proposed rule applies to only one facility and is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, 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. Pursuant to 13 CFR 121.201, footnote 1, a firm is small if it is in NAICS 327410 (lime manufacturing) and the concern and its affiliates have no more than 500 employees. LNA is affiliated with the LNA Group, which has more than 5,500 employees.[17] Therefore, LNA is not a small business.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not impose regulatory requirements on any government entity.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt 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 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs

[17] *http://www.LNA.com/facts-and-figures-LNA-group-2013.*

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 has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of environmental protection for any affected populations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility. Incorporation by Reference.

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

Dated: December 29, 2014.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Amend § 52.145 by:

■ a. Revising paragraph (i); and

■ b. Removing Appendix B to § 52.145—Lime Kiln Control Technology Demonstration Requirements.

The revision reads as follows:

§ 52.145 Visibility protection.

* * * * *

(i) *Source-specific federal implementation plan for regional haze at Nelson Lime Plant—*

(1) *Applicability.* This paragraph (i) applies to the owner/operator of the lime kilns designated as Kiln 1 and Kiln 2 at the Nelson Lime Plant located in Yavapai County, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (i)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (i):

Ammonia injection shall include any of the following: Anhydrous ammonia, aqueous ammonia, or urea injection.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X emissions, SO_2 emissions, diluent, and stack gas volumetric flow rate.

Kiln means either of the kilns identified in paragraph (i)(1) of this section.

Kiln 1 means lime kiln 1, as identified in paragraph (i)(1) of this section.

Kiln 2 means lime kiln 2, as identified in paragraph (i)(1) of this section.

Kiln operating day means a 24-hour period between 12 midnight and the following midnight during which there is operation of Kiln 1, Kiln 2, or both kilns at any time.

Kiln operation means any period when any raw materials are fed into the Kiln or any period when any combustion is occurring or fuel is being fired in the Kiln.

Lime product means the product of the lime-kiln calcination process, including calcitic lime, dolomitic lime, and dead-burned dolomite.

NO_X means oxides of nitrogen.

Owner/operator means any person who owns or who operates, controls, or supervises a kiln identified in paragraph (i)(1) of this section.

SO_2 means sulfur dioxide.

(3) *Emission limitations.* (i) The owner/operator of the kilns identified in paragraph (i)(1) of this section shall not emit or cause to be emitted pollutants in excess of the following limitations in pounds of pollutant per ton of lime product (lb/ton), from any kiln. Each emission limit shall be based on a 12-month rolling basis.

POLLUTANT EMISSION LIMIT

Kiln ID	NO_X	SO_2
Kiln 1	3.80	9.32
Kiln 2	2.61	9.73

(ii) The owner/operator of the kilns identified in paragraph (i)(1) of this section shall not emit or cause to be emitted pollutants in excess of 3.27 tons of NO_X per day and 10.10 tons of SO_2 per day, combined from both kilns, based on a rolling 30-kiln-operating-day basis.

(4) *Compliance dates.* (i) The owner/operator of each kiln shall comply with the NO_X emission limitations and other NO_X-related requirements of this paragraph (i) no later than September 4, 2017.

(ii) The owner/operator of each kiln shall comply with the SO_2 emission limitations and other SO_2-related requirements of this paragraph (i) no later than March 3, 2016.

(5) [Reserved]

(6) *Compliance determination*—(i) *Continuous emission monitoring system.* At all times after the compliance dates specified in paragraph (i)(4) of this section, the owner/operator of kilns 1 and 2 shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.13 and 40 CFR part 60, appendices B and F, to accurately measure diluent, stack gas volumetric flow rate, and concentration by volume of NO_X and SO_2 emissions into the atmosphere from kilns 1 and 2. The CEMS shall be used by the owner/operator to determine compliance with the emission limitations in paragraph (i)(3) of this section, in combination with data on actual lime production. The owner/operator must operate the monitoring system and collect data at all required intervals at all times that an affected kiln is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Ammonia consumption monitoring.* Upon and after the completion of installation of ammonia injection on a kiln, the owner or operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption for that kiln.

(iii) *Compliance determination for lb per ton NO_X limit.* Compliance with the NO_X emission limits described in paragraph (i)(3)(i) of this section shall be determined based on a rolling 12-month basis. The 12-month rolling NO_X emission rate for each kiln shall be calculated within 30 days following the end of each calendar month in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted for the month just completed and the eleven (11) months preceding the month just completed to calculate the total pounds of NO_X emitted over the most recent twelve (12) month period for that kiln; Step two, sum the total lime product, in tons, produced during the month just completed and the eleven (11) months preceding the month just completed to calculate the total lime product

produced over the most recent twelve (12) month period for that kiln; Step three, divide the total amount of NO_X calculated from Step one by the total lime product calculated from Step two to calculate the 12-month rolling NO_X emission rate for that kiln. Each 12-month rolling NO_X emission rate shall include all emissions and all lime product that occur during all periods within the 12-month period, including emissions from startup, shutdown, and malfunction.

(iv) *Compliance determination for lb per ton SO_2 limit.* Compliance with the SO_2 emission limits described in paragraph (i)(3)(i) of this section shall be determined based on a rolling 12-month basis. The 12-month rolling SO_2 emission rate for each kiln shall be calculated within 30 days following the end of each calendar month in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 emitted for the month just completed and the eleven (11) months preceding the month just completed to calculate the total pounds of SO_2 emitted over the most recent twelve (12) month period for that kiln; Step two, sum the total lime product, in tons, produced during the month just completed and the eleven (11) months preceding the month just completed to calculate the total lime product produced over the most recent twelve (12) month period for that kiln; Step three, divide the total amount of SO_2 calculated from Step one by the total lime product calculated from Step two to calculate the 12-month rolling SO_2 emission rate for that kiln. Each 12-month rolling SO_2 emission rate shall include all emissions and all lime product that occur during all periods within the 12-month period, including emissions from startup, shutdown, and malfunction.

(v) *Compliance determination for ton per day NO_X limit.* Compliance with the NO_X emission limit described in paragraph (i)(3)(ii) of this section shall be determined based on a rolling 30-kiln-operating-day basis. The rolling 30-kiln operating day NO_X emission rate for the kilns shall be calculated for each kiln operating day in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted from both kilns for the current kiln operating day and the preceding twenty-nine (29) kiln-operating-day period for both kilns; Step two, divide the total pounds of NO_X calculated from Step one by two thousand (2,000) to calculate the total tons of NO_X; Step three, divide the total tons of NO_X calculated from Step two by thirty (30) to calculate the rolling 30-kiln operating day NO_X emission rate for both kilns. Each rolling 30-kiln operating day NO_X emission rate shall include all emissions that occur from both kilns during all periods within any kiln operating day, including emissions from startup, shutdown, and malfunction.

(vi) *Compliance determination for ton per day SO_2* limit. Compliance with the SO_2 emission limit described in paragraph (i)(3)(ii) of this section shall be determined based on a rolling 30-kiln-operating-day basis. The rolling 30-kiln operating day SO_2 emission rate for the kilns shall be calculated for each kiln operating day in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 emitted from both kilns for the current kiln operating day and the preceding twenty-nine (29) kiln operating days, to calculate the total pounds of SO_2 emitted over the most recent thirty (30) kiln operating day period for both kilns; Step two, divide the total pounds of SO_2 calculated from Step one by two thousand (2,000) to calculate the total tons of SO_2; Step three, divide the total tons of SO_2 calculated from Step two by thirty (30) to calculate the rolling 30-kiln operating day SO_2 emission rate for both kilns. Each rolling 30-kiln operating day SO_2 emission rate shall include all emissions that occur from both kilns during all periods within any kiln operating day, including emissions from startup, shutdown, and malfunction.

(7) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All records of lime production.

(iii) Monthly rolling 12-month emission rates of NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(iii) and (iv) of this section.

(iv) Daily rolling 30-kiln operating day emission rates of NO_X and SO_2 calculated in accordance with paragraphs (i)(6)(v) and (vi) of this section.

(v) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records specified by 40 CFR part 60, appendix F, Procedure 1, as well as the following:

(A) The occurrence and duration of any startup, shutdown, or malfunction, performance testing, evaluations, calibrations, checks, adjustments maintenance, duration of any periods during which a CEMS or COMS is inoperative, and corresponding emission measurements.

(B) Date, place, and time of measurement or monitoring equipment maintenance activity;

(C) Operating conditions at the time of measurement or monitoring equipment maintenance activity;

(D) Date, place, name of company or entity that performed the measurement or monitoring equipment maintenance activity and the methods used; and

(E) Results of the measurement or monitoring equipment maintenance.

(vi) Records of ammonia consumption, as recorded by the instrumentation required in paragraph (i)(6)(ii) of this section.

(vii) Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS, and lime production measurement devices.

(viii) All other records specified by 40 CFR part 60, appendix F, Procedure 1.

(8) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division, U.S. Environmental Protection Agency, Region 9, electronically via email to *aeo_r9@epa.gov.* Any data that are required under this section shall be submitted in Excel format. Reports required under paragraphs (i)(8)(iii) through (i)(8)(v) of this section shall be submitted within 30 days after the applicable compliance date(s) in paragraph (i)(4) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) Prior to commencing construction of the ammonia injection system, the owner/operator shall submit to EPA a summary report of the design of the SNCR system. Elements of this summary report shall include: Reagent type, description of the locations selected for reagent injection, reagent injection rate (expressed as a molar ratio of reagent to NO_X), equipment list, equipment arrangement, and a summary of kiln characteristics that were relied upon as the design basis for the SNCR system.

(ii) By October 3, 2017, the owner/operator shall submit to EPA a summary of any process improvement or debugging activities that were performed on the SNCR system.

Elements of this summary report shall include: A description of each process adjustment performed on the SNCR system, a discussion of whether the adjustment affected NO_X emission rate (including CEMS data that may have been recorded while the adjustment was in progress), a description of the range (if applicable) over which the adjustment was examined, and a discussion of how the adjustment will be reflected or accounted for in kiln operating practices. In addition, to the extent that the owner/operator evaluates the impact of varying reagent injection rate on NO_X emissions, the owner/operator shall include the following information: The range of reagent injection rates evaluated (expressed as a molar ratio of reagent to average NO_X concentration), reagent injection rate, average NO_X concentration, lime production rate, kiln flue gas temperature, and the presence of any detached plumes from the kiln exhaust.

(iii) The owner/operator shall submit a report that lists the daily rolling 30-kiln operating day emission rates for NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(iii) and (iv) of this section.

(iv) The owner/operator shall submit a report that lists the monthly rolling 12-month emission rates for NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(v) and (vi) of this section.

(v) The owner/operator shall submit excess emissions reports for NO_X and SO_2 limits. Excess emissions means emissions that exceed any of the emissions limits specified in paragraph (i)(3) of this section. The reports shall include the magnitude, date(s), and duration of each period of excessemissions; specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the kiln; the nature and cause of any malfunction (if known); and the corrective action taken or preventative measures adopted.

(vi) The owner/operator shall submit a summary of CEMS operation, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(vii) The owner/operator shall submit results of all CEMS performance tests required by 40 CFR part 60, Appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(viiii) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(9) *Notifications.* All notifications required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

(i) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (i)(3) of this section.

(ii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iii) The owner/operator shall submit notification of initial startup of any such equipment.

(10) *Equipment operations.* (i) At all times, including periods of startup, shutdown, and malfunction, the owner/operator shall, to the extent practicable, maintain and operate the kilns, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the kilns.

(ii) After completion of installation of ammonia injection on a kiln, the owner/operator shall inject sufficient ammonia to achieve compliance with the NO_X emission limits from paragraph (i)(3) of this section for that kiln while preventing excessive ammonia emissions.

(11) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the kiln would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed can be used to establish whether or not the owner/operator has violated or is in violation of any standard or applicable emission limit in the plan.

[FR Doc. 2015–00328 Filed 1–12–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–257; RM–11743; DA 14–1868]

Radio Broadcasting Services; Wright City, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Charles Crawford, proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by allotting Channel 295A at Wright City, Oklahoma, as the community's first local service. A staff engineering analysis indicates that Channel 295A can be allotted to Wright City consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction located 14 kilometers (8.6 miles) east of the community. The reference coordinates are 34–04–44 NL and 94–51–15 WL.

DATES: Comments must be filed on or before February 9, 2015, and reply comments on or before February 24, 2015.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 14–257, adopted December 18, 2014, and released December 19, 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 proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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 proposes to amend 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 Oklahoma, is amended by adding Wright City, Channel 295A.

[FR Doc. 2015–00341 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 0911231415–4999–04]

RIN 0648–XT12

Advanced Notice of Proposed Rulemaking and Request for Information for the Issuance of Protective Regulations Under Section 4(d) of the Endangered Species Act for the Conservation of Threatened Corals

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

ACTION: Advanced notice of proposed rulemaking; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are considering proposing protective regulations to provide for the conservation of the 20 coral species recently listed as threatened under the Endangered Species Act (ESA). Fifteen of the listed species occur in the Indo-Pacific and five occur in the Caribbean. This advanced notice of proposed rulemaking (ANPR) is intended to alert other agencies and the public of our planning efforts and request public input that will assist in identifying actions and activities that may impact the status of these corals, as well as information on the existence and efficacy of on-going conservation activities. This information will help inform our evaluation of what, if any, protective regulations are necessary and advisable for the conservation of these species.

DATES: Responses to this request for information must be received by March 16, 2015.

ADDRESSES: You may submit comments, information, or data on this document, identified by NOAA–NMFS–2014–0158, by any of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0158.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.

• Mail:

○ To submit written comments regarding the species listed in Table 1 below, contact the Pacific Islands Region: Lance Smith, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, NOAA Inouye Regional Center, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

○ To submit written comments regarding the species listed in Table 2 below, contact the Southeast Region: Stephania Bolden, Protected Resources Division, National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, 808–725–5131; Kimberly Maison, NMFS, Pacific Islands Regional Office, 808–725–5143; Stephania Bolden, NMFS, Southeast Regional Office, 727–824–5312; or Marta Nammack, NMFS Office of Protected Resources, 301–427–8469.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2014, we published a final rule listing 20 species of coral as threatened under the ESA (79 FR 53851). The 15 Indo-Pacific species include *Acropora globiceps*, *Acropora jacquelineae*, *Acropora lokani*, *Acropora pharaonis*, *Acropora retusa*, *Acropora rudis*, *Acropora speciosa*, *Acropora tenella*, *Anacropora spinosa*, *Isopora crateriformis*, *Euphyllia paradivisa*, *Montipora australiensis*, *Porites napopora*, *Pavona diffluens*, and *Seriatopora aculeata*. The five Caribbean species include *Dendrogyra cylindrus*, *Orbicella annularis*, *Orbicella faveolata*, *Orbicella franksi*, and *Mycetophyllia ferox*. The final listing rule describes the background of the listing actions for these 20 corals and provides a summary of our conclusions regarding the statuses of the listed corals. For additional background and a summary of natural history and threats to the species, the reader is referred to the Status Review Report, Supplemental Information Report, and Final Listing Rule (all three are available at *http://www.fpir.noaa.gov/PRD/prd_coral.html*). At the time of listing we did not propose any protective regulations pursuant to section 4(d) of the ESA.

ESA section 9(a)(1) prohibitions are automatically applied to species listed as endangered but not to species listed as threatened. Section 4(d) of the ESA provides that, whenever a species is listed as threatened, the Secretary of Commerce (Secretary) shall issue such regulations as she deems necessary and advisable to provide for the conservation of the species. Such regulations may include any or all of the prohibitions in ESA section 9(a)(1) that apply automatically to species listed as

endangered. Those section 9(a)(1) prohibitions make it unlawful, with limited specified exceptions, for any person subject to the jurisdiction of the United States to: ''(A) Import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.'' Section 11 of the ESA provides for civil and criminal penalties for violations of section 9 or regulations issued under the ESA.

Whether section 9(a)(1) prohibitions or other regulations are necessary and advisable to provide for the conservation of species depends in large part upon the biological status of the species, the potential impacts of various activities on the species, and on factors such as the existence and efficacy of other conservation activities.

Statuses of the 20 Recently-Listed Corals

We determined in the final listing rule that the 20 coral species are not currently in danger of extinction but are likely to become so within the foreseeable future. In the final listing rule we identified nine threats to the corals that posed either a current or future extinction risk (79 FR 53851; September 10, 2014) and further classified the threats by importance. Primary threats identified include ocean warming, disease, and ocean acidification. Threats of medium to low importance include trophic effects of fishing, sedimentation, nutrient enrichment, sea-level rise, predation, and collection and trade. See Tables 1 and 2 below for U.S. distributions of these 20 threatened coral species. For more details on the individual status reviews, threat susceptibilities, and listing determinations for each species, please see the final listing rule (79 FR 53851; September 10, 2014). We also determined *Acropora palmata* and *Acropora cervicornis* continue to warrant listing as threatened species; the ESA 4(d) rule (73 FR 64264; October 29, 2009) for those two species previously listed in 2006 remains effective.

Developing Protective Regulations

We are now considering whether there are protective regulations that are necessary and advisable for the conservation of these 20 recently listed corals. We have flexibility under section 4(d) to tailor protective regulations based on the contributions of other existing conservation measures. The 4(d) regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a)(1) of the ESA prohibits with respect to endangered species. For those prohibitions we do apply, we may also provide exceptions for certain circumstances in which extending the take prohibitions is not necessary and advisable. For example, we can exempt from regulations activities that may take listed corals but ultimately provide an overall conservation benefit.

Seven of the 15 threatened Indo-Pacific coral species have been confirmed to occur within U.S. Pacific jurisdictional areas including Guam, the Commonwealth of the Northern Mariana Islands, the Pacific Remote Island areas, and American Samoa (See Table 1). This information may change as more surveys are conducted and better information becomes available. The remaining eight threatened Indo-Pacific coral species have not yet been reported or confirmed within U.S. jurisdiction and are currently considered to occur naturally as foreign species, entirely outside of U.S. jurisdiction; however, they may be observed within U.S. jurisdictions in future surveys, and several are commonly imported into the United States for the marine aquarium trade. All five threatened Caribbean corals occur within U.S. jurisdiction (See Table 2). One of the section 9(a)(1) prohibitions that may be applied pursuant to section 4(d) is the prohibition on the take of species on the high seas. We are therefore requesting information for all 20 newly listed threatened species, wherever they may occur, to help inform our determination of which take prohibitions may be necessary and advisable for their conservation.

TABLE 1—U.S. DISTRIBUTION OF 15 THREATENED INDO-PACIFIC CORAL SPECIES

	Guam	Commonwealth of Northern Mariana Islands	Pacific Remote Island Areas	American Samoa
Acropora globiceps	X	X	X	X
Acropora jacquelineae				X
Acropora lokani				
Acropora pharaonis				
Acropora retusa	X	X	X	X
Acropora rudis				
Acropora speciosa			X	X
Acropora tenella				
Anacropora spinosa				
Euphyllia paradivisa				X
Isopora crateriformis				X
Montipora australiensis				
Pavona diffluens				
Porites napopora				
Seriatopora aculeata	X	X		

TABLE 2—U.S. DISTRIBUTION OF FIVE NEWLY-LISTED CARIBBEAN CORALS

	Florida—Atlantic	Puerto Rico	U.S. Virgin Islands	Gulf of Mexico
Mycetophyllia ferox	X	X	X	
Dendrogyra cylindrus	X	X	X	
Orbicella annularis	X	X	X	X
Orbicella faveolata	X	X	X	X
Orbicella franksi	X	X	X	X

Request for Information

We are soliciting information from other agencies and the public that will help us determine what, if any, protective regulations are necessary and advisable for the conservation of these 20 newly listed coral species. This includes information that will help us understand and analyze impacts of various activities, the existence and efficacy of ongoing conservation activities, and prohibitions that are both necessary and advisable to reduce threats and amenable to management for the conservation of these 20 species. Specifically, we are soliciting information including the following: (1) Current or planned activities within the range of these species and their possible impact on these species; (2) impacts within the species' ranges that fall within any of the nine major threat categories: Ocean warming, disease, ocean acidification, sea-level rise, nutrient enrichment, sedimentation, predation, trophic effects of fishing, and collection and trade; (3) information on which of the section 9(a)(1) prohibitions on take are necessary and advisable for the conservation of these species, with associated justification; (4) specific activities that should be prohibited for the conservation of the 20 coral species, with associated justification; (5) specific activities that should be excepted from any prohibitions that may be applied because they either provide a conservation benefit or do not detract from the conservation of these species, with associated justification; (6) existing permitting programs that may already provide for the conservation of listed corals through their activity evaluation and permitting process, with associated justification; and (7) the economic costs and benefits likely to result from protective regulations (see **DATES** and **ADDRESSES**).

We will fully consider all relevant information received in our determination of what protective regulations are necessary and advisable for the conservation of the species.

References Cited

A complete list of references is available at *http://www.fpir.noaa.gov/PRD/prd_coral.html and* upon request (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 2, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–00366 Filed 1–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–BC56

Endangered and Threatened Species; Proposed Designation of Critical Habitat for the Arctic Ringed Seal; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: We, NMFS, announce the specific dates and locations for four public hearings in Alaska, one each in Nome, Anchorage, Kotzebue, and Barrow, on our proposed rule to designate critical habitat for the threatened Arctic subspecies (*Phoca hispida hispida*) of the ringed seal (*Phoca hispida*) under the Endangered Species Act (ESA), which published in the **Federal Register** on December 9, 2014. We also announce that a hearing will be held in Bethel, AK.

DATES: Written comments on the proposed rule must be received by March 9, 2015. For specific dates of the public hearings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Five public hearings will be held in Alaska, one each in Nome, Anchorage, Kotzebue, Barrow, and Bethel: For specific locations of these hearings, see **SUPPLMENTARY INFORMATION.**

You may submit written comments on the proposed rule, identified by NOAA–NMFS–2013–0114, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0114*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of the proposed rule, list of references and supporting documents, and the draft economic report (*i.e.,* Regulatory Impact Review (RIR)/4(b)(2) Preparatory Assessment/Initial Regulatory Flexibility Act (IRFA) report) prepared for this action are available from *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0114* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–2373; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta

Nammack, NMFS Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2014, we published a proposed rule to designate critical habitat for the threatened Arctic ringed seal under the ESA (79 FR 73010). At that time, we opened a public comment period on the proposed rule through March 9, 2015, and announced that four public hearings will be held on the proposed rule in Alaska, one each in Anchorage, Barrow, Kotzebue, and Nome. In this notice, we announce the specific dates and locations for these four public hearings (see Public Hearing Schedule). We also announce that a fifth public hearing will be held in Bethel, AK.

Public Hearings

During each public hearing, a brief opening presentation on the proposed rule will be provided before accepting public testimony. Written comments may be submitted at the hearing or via the Federal e-Rulemaking Portal (see **ADDRESSES**) until the scheduled close of the comment period on March 9, 2015. In the event that attendance at the public hearings is large, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Public Hearing Schedule

The specific date and location for the hearing in Bethel, AK, will be announced in a subsequent **Federal Register** notice. The dates and locations for the other four hearings are as follows:

1. Nome: January 28, 2015, from 4 p.m. to 7 p.m. at Old St. Joe's, 407 Bering Street, Nome, AK.
2. Anchorage: February 2, 2015, 4 p.m. to 7 p.m. at the Z. J. Loussac Public Library, Wilda Marston Theatre, 3600 Denali Street, Anchorage, AK.
3. Kotzebue: February 17, 2015, 4 p.m. to 7 p.m., at the Northwest Arctic Borough Assembly Chambers, 163 Lagoon Street, Kotzebue, AK.
4. Barrow: February 23, 2015, 7 p.m. to 10 p.m., at the Iñupiat Heritage Center, 5421 North Star Street, Barrow, AK.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other accommodations should be directed to Tamara Olson (see **ADDRESSES**) as soon as possible, but no later than 7 business days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 7, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–00368 Filed 1–12–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 8
Tuesday, January 13, 2015

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

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.
Title: 2015 Census Test.
OMB Control Number: 0607–xxxx.
Form Number(s):

Questionnaire

DD–1
DD–1A(E/S)

Instruction Card

DD–33A
DD–33
DD–33(U)

Advance Letter for BYOD

DD–5(L)(2015b)

Questionnaire Cover Letters

DD–16(L)(1)
DD–16(L)(1)(E/S)
DD–16(L)(2)
DD–17(L)(1)
DD–17(L)(1)(E/S)
DD–17(L)(3)

Postcards

DD–9(REG)
DD–9(U)
DD–9
DD–9(E/S)
DD–9(2A)
DD–9(2A)(E/S)
DD–9(2D)

Envelopes

BC–1325
DD–6A(IN)
DD–6A(IN)(E/S)
DD–6A(1)(IN)
DD–6A(1)(IN)(E/S)
DD–8A
DD–8A(E/S)

Field Items

DD–26A Notice of Visit
DD–26B Notice of Visit
DD–26B(C) Notice of Visit—English/Chinese
DD–26B(K) Notice of Visit—English/Korean
DD–26B(V) Notice of Visit—English/Vietnamese
DD–31 Confidentiality Notice
DD–3309 Language ID flashcard
NRFU Instrument Spec
Internet Instrument Spec
EFU Instrument Spec
EFU Letter/Flyer
Wording for Emails and Text Messages

Type of Request: New Collection.
Number of Respondents: 470,000.
Average Hours per Response: 0.2.
Burden Hours: 98,086.

ESTIMATED BURDEN HOURS FOR 2015 CENSUS TEST SAVANNAH SITE

[Savannah, GA and adjacent areas in South Carolina]

	Estimated number of respondents	Estimated time per response	Estimated total annual burden hours
Savannah Sample = 90,000 households plus respondents from awareness campaign			
Self-Response Enumeration	305,000	12 minutes	61,000
Subset of Savannah Sample (Not counted toward total respondents but included in burden hours)			
"Notify Me"	100,000	3 minutes	5,000
Focus Groups Selection	144	3 minutes	8
Focus Groups	80	2 hours	160
Totals			
Total Respondents	305,000	Total Burden Hours	66,168

ESTIMATED BURDEN HOURS FOR 2015 CENSUS TEST MARICOPA SITE

[Maricopa County, AZ]

	Estimated number of respondents	Estimated time per response	Estimated total annual burden hours
Maricopa County Sample = 160,000 households			
Self Response	90,000	12 minutes	18,000
Non Response Follow-up (NRFU)	70,000	10 minutes	11,667
Subset of Maricopa Sample (Not counted toward total respondents but included in burden hours)			

ESTIMATED BURDEN HOURS FOR 2015 CENSUS TEST MARICOPA SITE—Continued

[Maricopa County, AZ]

	Estimated number of respondents	Estimated time per response	Estimated total annual burden hours
Evaluation Follow-up	5,000	15 minutes	1,250
Focus Groups Selection	144	3 minutes	8
Focus Groups	80	2 hours	160
Additional Bring Your Own Device Sample (Maricopa County) = 5,000 households			
BYOD Follow-up	5,000	10 minutes	833
Totals			
Total Respondents	165,000	Total Burden Hours	31,918

Needs and Uses: During the years preceding the 2020 Census, the Census Bureau will pursue its commitment to reduce the cost of conducting the next decennial census while still providing the highest data quality possible. A primary decennial census cost driver is the collection of data in person from addresses for which the Census Bureau received no reply via initially offered response options. We refer to these as nonresponse cases, and to the in-person visits to them as Nonresponse Follow-up, or NRFU. Increasing the number of people who take advantage of self-response options (such as completing Internet alternatives, or responding via telephone, or a paper questionnaire and mailing it back to the Census Bureau can contribute to a less costly census. The Census Bureau is committed to using the Internet as a primary response option in the 2020 Census, so we need to study ways to offer and promote the Internet as a self-response option for the 2020 Census.

In addition to increasing and optimizing self-response through the Internet, the Census Bureau plans to incorporate the use of new technologies, such as advertising via social media, encouraging the use of the Internet as the primary response mode and allowing respondents to submit a paper or electronic questionnaire without a unique identification code. We are focusing on studying these outreach and self-response approaches in a 2015 Census Test in the Savannah, GA area.

Another 2015 Census Test will be in the Maricopa County, AZ area, and will study alternative methods that are designed to increase efficiency and reduce costs while conducting NRFU operations. The test objectives in this site also include studying the use of administrative records to reduce field visits and costs.

2015 Census Test—Savannah Site

[Optimizing Self-Response (OSR) Testing]

The 2015 Census Test in selected counties in and surrounding Savannah, GA, and adjacent counties in South Carolina, will allow the Census Bureau to study a variety of new methods and advanced technologies that are under consideration for the 2020 Census. The Census Bureau will conduct this test in the Savannah Media Market, which includes 20 counties, 17 in Georgia and 3 in South Carolina. This media market has diversity in demographics, address types, and Internet penetration and usage. We primarily selected this market because we consider it fairly self-contained, which will limit bleed-over of advertising efforts into neighboring media markets, while conducting a full outreach and advertising effort for all households in the test area. Additionally, it is cost effective for the Census Bureau to advertise in this medium-sized market area.

To improve Internet self-response, the Census Bureau plans to continue testing multiple contact and notification strategies that we studied in the 2014 Census Test. For example, we will implement an Internet-push strategy, which proved to be an effective strategy in the 2014 Census Test. We will also include a ''Notify Me'' campaign, which allows respondents to register their email address or cell phone number through a Web site and to provide their mode preference for future contacts, by email or text message. In the 2014 Census Test, the participation rate for ''Notify Me'' was very low, so we are investigating methods for improving the understanding of and participation in this opportunity for early engagement. As mentioned above, this test will include a communications component to increase awareness and encourage Internet participation by potential respondents, including the ''Notify Me'' component of the test. Traditional advertising and outreach efforts used for the decennial census will be supplemented with targeted digital marketing for groups that we know to be hard-to-count from past censuses and surveys. We will use our planning database to identify hard-to-count groups at the block or tract level, and place advertisements with targeted messaging on digital sites frequented by these groups. In addition to the Internet, respondents will have an opportunity to respond via paper questionnaires or telephone interviews. Because the focus of this test is optimizing self-response, we will not conduct a NRFU operation in this test site.

The 2015 Census Test in the Savannah site also will continue Census Bureau efforts to make it easier for respondents to respond by allowing them to do so without providing a pre-assigned User Identification (ID) number associated with their address. This ''non-ID'' option was successfully implemented in the 2014 Census Test, but the response rates were lower for the non-ID panels in that test. However, the response rates for non-ID cases were determined not only by the respondent participation, but also on our ability to match the respondent-provided address information to the sample address from the Master Address File (MAF). In the Savannah site, building on the work from the 2014 Census Test, we will test our ability to improve the non-ID process by conducting real-time processing of responses lacking a pre-assigned User ID. In the 2014 Census Test, this was done via back-end processing; not while respondents were on-line. In the 2015 Census Test, for respondents who do not have an ID or do not use a pre-assigned User ID to complete their census form online, we will attempt to search for their address in the MAF to determine if it matches

an existing MAF record. If the initial attempt to match the respondent-provided address is unsuccessful, but we are able to determine that further respondent input might be able to assist us, the Internet response instrument will prompt the respondent for additional information. In all instances where a MAF match is not found, we will attempt to assign the respondent address to a census block, and then the respondent will be asked to confirm or correct that location via an integrated map interface with the Census questionnaire. This real-time processing methodology should increase our matching rates, thereby helping us to realize higher self-response rates for the non-ID universe. In addition, if we are able to match a respondent's provided address information to our MAF in real time, it will permit us to remove the address from the NRFU universe immediately, thereby reducing the field workload and cost.

The Test in the Savannah site is comprised of four phases: Communication, ''Notify Me,'' Self-response, and Focus groups.

Communication—In the 2015 Census Test in the Savannah area, communication strategies will include broadcast and cable/satellite television, radio ads, print ads, influencer phone calls to remind households to participate, earned media, and social media. Additionally this test will also explore the use of digital (an online ad for the general population) and targeted digital (an online ad placed and catered to harder-to-count audiences) advertising. The first phase of advertising will run through the duration of ''Notify Me,'' and messaging will educate residents about the test and the option to pre register. The second phase of advertising runs through the duration of OSR data collection and will include additional test information while motivating self-response with call to action messaging.

''*Notify Me''*—Similar to the what we studied in the 2014 Census Test, this early engagement provides an opportunity to make people aware of the Test and to provide them the opportunity to voluntarily select their preferred mode for future invitations and reminders (*i.e.,* how to ''Notify Me'' when it is time to complete the Census form—email or text message). The communications campaign in the Savannah site will seek to educate the public on the benefits of the ''Notify Me'' opportunity and to encourage them to participate.

Self-response—For the 2015 Census Test in the Savannah site, we will implement our current standard ''Internet Push'' contact strategy, which involves a letter inviting people to respond via the Internet with up to two postcard reminders, and ultimately a paper questionnaire. The Census Bureau will directly contact up to 90,000 housing units to notify them of the survey. A subsample of these notifications will provide a User ID for the respondent to use for their Internet response, and the remaining sample will not provide an ID, so we can test processing these non-ID cases. Additionally, respondents that have not been directly contacted but have become aware of the Test (and the Internet site) via some of the planned outreach and advertising, can also self-respond via the Internet without the need for a User ID. These two sets of non-ID respondents will allow us to study real-time non-ID processing, as described above. Additionally, we will test a mechanism (using an independent source) for validating all non-ID respondents in order to identify duplicate or potentially fraudulent responses. This validation testing will not involve additional contact with respondents, so that there will be no further respondent burden.

For people responding via the Internet or on paper, we will offer telephone questionnaire assistance. On-line respondents will be able to do this directly through the Internet instrument, or by phoning the telephone questionnaire assistance number. People who prefer not to respond via a paper form or on the Internet also can call this number and complete the questionnaire for their household with a telephone agent.

Focus Groups—To evaluate the ''Notify Me'' strategy being tested in the 2015 Census Test Savannah site, the Census Bureau will conduct four focus groups, comprised of various categories of respondents and non-respondents. These focus groups are intended to gather information about respondent perspectives regarding this notification; whether they thought that the ''Notify Me'' component was the actual participation or response to the Census Test; and whether they had a preference to wait for Census Day without registering a contact preference.

In these focus groups, participants will be asked about their experiences with the 2015 Census Test, including: Their reactions and thoughts about being contacted by the Census Bureau by email and text messages, the perceived legitimacy of these contacts; their opinions on the use of administrative records by the Census Bureau; and the use of targeted Internet advertisements. Participants will also be asked about their general concerns with government collection and protection of confidential data. We will try to ascertain and discuss the outreach, promotion, media/mode or method that informed the respondent about the ''Notify Me'' option and/or the Census Test. We also will ask if the ability to respond without having to provide a pre-assigned User ID made the respondent more likely to participate. At the end of the focus groups, we may be asking participants for whom we have acquired additional data from a commercial third party to verify whether this information is accurate.

The Census Bureau Phone Center will recruit for these focus groups using existing phone number information we have for a sample of addresses in the 2015 Census Test. Phone Center staff will use screener questions that include the following requirements: (1) Focus group participants are required to have personally responded to the 2015 Census Test, (2) to be employed outside the Federal Government, and (3) to speak English.

The focus groups will be conducted in person, and all interviews will be tape-recorded to facilitate later analyses of the results. Participants will be asked to sign consent forms and give permission to be recorded. All participants will be informed that their response is voluntary and that the information they provide is confidential. Respondents will receive a $75 stipend after the group concludes.

2015 Census Test—Maricopa County Site

(Nonresponse Follow-up (NRFU) Operation Testing)

The 2015 Census Test to be conducted in portions of Maricopa County, AZ will test alternative methods for conducting NRFU operations that are designed to increase efficiency and reduce costs. Rapid changes in technology over the past decade now provide the Census Bureau with an opportunity to use automation to conduct NRFU field operations during the 2020 Census. The Census Bureau is researching and testing the best contact strategies and methods for field data collection, case assignment management, and field staff administrative functions. In addition, the research in utilizing administrative records, including government and third party sources, seeks to test and determine the best methodologies for using administrative records in support of NRFU, adaptive design, and enumeration.

Self-response—For the 2015 Census Test in the Maricopa site, we also will

implement our current standard ''Internet Push'' contact strategy, which involves a letter inviting people to respond via the Internet; up to two postcard reminders; and ultimately, a paper questionnaire. Because the test area is not a self-contained media market, and because not all households in the test area will be requested to respond, we will not be conducting the same types of outreach and promotion efforts being used in the Savannah site. The estimated sample size for the Maricopa site will be 165,000 housing units, and we estimate 70,000 of these will be fall into the NRFU operation.

Nonresponse Follow-up (NRFU)—As part of the 2015 Census Test in Maricopa, data will be collected on automated enumeration devices (or smart phones). We will use an automated questionnaire similar to the one used in the 2014 Census Test NRFU operations. This data collection will be conducted using government-owned, commercially provided mobile devices. As in the 2014 Census Test, the ''notice of visit'' letters left at the door when a respondent is not home will contain information on how a respondent can self-respond via the Internet or by calling the Census Bureau's telephone questionnaire assistance line. For the 2015 Census Test, the notice of visit will be translated into four non-English languages which is a change from previous years where the notice was only provided in English and Spanish. The intent is to reduce the number of in-person enumerator return visits by encouraging respondents to complete their questionnaire online or by telephone.

We also will be studying rules for determining which non-responding units will be visited, and how to collect information from households that do not self-respond. For instance, the Census Bureau will vary the approach to visiting households that have administrative records to determine the housing unit status (*i.e.,* whether it is vacant or occupied) or to enumerate the people living at the address once we know the status for cases that do not respond. In both panels, units identified as vacant based on administrative record information will be identified and no NRFU visits will be conducted. For units identified as occupied with a determined population based on administrative records, they will be handled differently in each of the experimental panels. In one panel, they will be identified before NRFU starts and no NRFU visits will be conducted. In the second panel, they will be identified but we will attempt one interview at the unit before utilizing administrative records information. Also, to study adaptive design principles, the Census Bureau will vary the number of personal visit attempts to in different geographic areas based on hard-to-count criteria like response rates. We also will study when it is feasible to discontinue attempts to collect information from each non-responding household and instead move to attempting to collect information from a householder's neighbor or another knowledgeable source.

NRFU Evaluation Follow-up (EFU)—The goal of the Evaluation Follow-up is to obtain the most accurate Census Day status of each housing unit in this study by revisiting addresses where we find discrepancies between the NRFU results and administrative records information for the address. This mostly will include those addresses where information collected during NRFU conflicts with information we have from administrative records for that address. We also will include some addresses in this study where information from governmental administrative record and/or third party sources have had possible changes in household composition over a two-year period.

Content Testing—The 2015 Census Test questionnaire for both sites will include questions on housing tenure, household roster, age, date of birth, race and Hispanic origin, and relationship. The 2015 Census Test will include a combined race and Hispanic origin question that is similar to one used in the 2014 Census Test. This combined question provides examples and write-in areas for each major response category. Respondents will be asked to self-identify by selecting one or more checkboxes, and reporting a specific origin for each checkbox selected. The inclusion of the combined question will allow the Census Bureau to conduct imputation research using this combined format in a setting when there are self-responses, administrative records and NRFU enumerator responses (Maricopa site only). This will allow the Census Bureau to learn how imputation approaches for the combined question might need to be different than approaches used in the past when the questions were asked separately. For the relationship question, the 2015 Census Test will include new response categories recommended by OMB for opposite-sex and same-sex husband/wife/spouse households, and for the category for unmarried partner. The Census Bureau is currently considering the inclusion of new categories for same-sex couples on the decennial census questionnaire. In August 2009, the Secretary of Commerce requested that the Office of Management and Budget (OMB) establish the interagency task force [Measuring Relationship in Federal Household Surveys] to research issues related to improving the collection and tabulation of marriage and relationship data. One focus of the research was family relationships, particularly with respect to same-sex couples who report being married. The first phase of research involved focus groups conducted primarily with persons cohabiting in same-sex relationships. The focus groups explored the meaning and interpretation of the current decennial Census and American Community Survey (ACS) relationship and marital status items. The second phase of qualitative research was conducted by the Census Bureau under the auspices of the OMB working group. As a result of the focus groups and expert panel review, two alternatives were developed for recommended wording to be further tested in larger-scale quantitative content tests. The 2015 Census Test includes testing the new relationship question that used these new same-sex response categories. In addition, the 2015 Census Test will include a question on the internet instrument that will allow respondents to report that a housing unit they own is vacant as of Census Day, and to provide the reason for the vacancy status (*e.g.,* a seasonal or rental unit). This new question will enable the Census Bureau to identify some vacant housing units during self-response so they can be removed from NRFU operations.

The materials mailed to the respondents will inform them that the survey is mandatory in accordance with Title 13, United States Code, Sections 141 and 193. This information also will be available via a hyperlink from within the Internet instrument.

The results of the 2015 Census Test from both sites will help guide the design of additional 2020 Decennial Census testing later this decade. Testing in 2015 is necessary to build on the findings from the 2014 Census Test and to establish recommendations for contact strategies, response options, and field operation efficiencies that can be further refined and tested in later studies. At this point in the decade, the Census Bureau needs to acquire evidence showing whether the strategies being tested can reduce the cost per housing unit during a decennial census, while still providing high quality and accuracy of the census data.

Along with other results, the response rates to paper and Internet collection will be used to help inform 2020 Decennial program planning and

metrics determination. Several demographic questions and coverage probes are included in this test to combine with results from other recent testing opportunities to achieve optimal coverage for decennial censuses and surveys.

The specific goal for the Non-ID Processing research is to continue evaluating enhancements to the Census Bureau's process to collect address information needed for real-time matching and geocoding of Non-ID responses. Testing enhancements to Non-ID processing will inform planning for the 2020 Census design, as well as the infrastructure required to support large scale, real-time processing of electronic Non-ID response data submitted via the Internet or a Census-provided questionnaire application designed for mobile devices.

The goal of the advertising and outreach component of the Savannah site Test is twofold; first, we are supporting the entire OSR test by educating respondents and motivating self-response in an effort increase response rates. Secondarily, this is our first opportunity to evaluate the effects of new advertising media on response rates. Specifically we are interested in assessing digital and targeted digital advertising, mediums the Census Bureau did not employ in the 2010 Census but that are now available due to the evolution of technology. Results of this test will inform additional tests and will help the Census Bureau begin planning for the 2020 Census communications campaign.

The data collected from households and individuals during the 2015 Census Test will be used to research and evaluate new methodologies and systems to plan the 2020 Census. The Census Bureau will not publish any tabulations or population estimates using the results from this test. However, methodological papers may be written that include summary tallies of response characteristics or problems identified, and responses may be used to inform future research studies building upon the results of these tests. The Census Bureau plans to make the evaluation results of this study available to the general public.

In the Maricopa County site, where the Census Bureau will conduct NRFU, the 2015 Census Test is designed to collect information to:

- Research the cost and quality impacts of differing approaches to removing workload from the NRFU universe through the use of administrative records information.
- Research the cost and quality impacts of new NRFU contact strategies that make use of adaptive design and a re-engineered management structure employing an Area Operations Support Center housed at the Regional Office, automated payroll, automated training, and minimal face-to-face contact between enumerators and supervisors. For these experimental panels enumerators also provide work-time availability in advance, and the system assigns them the optimal number of cases to attempt each day, as well as the routing they should employ.

We are continuing our research on differing approaches to removing workload from the NRFU universe. In one approach we will remove all cases (both occupied and vacant) from the NRFU workload when we have administrative records data for the address. In a second approach we will make one contact attempt (for those cases considered occupied based on administrative records) before removing them from NRFU. The goal is to determine how these approaches vary regarding costs and quality measures. Results from both of these alternative strategies will be compared to a control panel that will conduct NRFU operations similar to how it was done in the 2010 Census. The testing will also obtain detailed data on when and how enumerators use proxy respondents.

The Census Bureau will conduct an additional NRFU data collection activity in the Maricopa site with enumerator-owned commercially provided mobile devices. The use of employee owned equipment/services is commonly referred to as ''Bring Your Own Device'' or BYOD. After selecting enumerators for this study, a sample of up to 5,000 households will be contacted at the end of the NRFU field operation using this methodology. These will be additional households not included in the other test activities (*e.g.,* the self-response phase). The objectives of this component of the test are to:

- Design, develop, deploy, and support secure software solutions that can be installed on employee's personally owned commercially available mobile devices;
- Conduct interviews of respondents using these employee owned mobile devices; and
- Capture lessons learned for future operations, including: focus groups with a sub-set of the respondents, questionnaires for the enumerators, and collecting feedback from the local census office.

Focus groups also will be conducted in the Maricopa site to ask respondents about their experiences with the 2015 Census Test. Respondents will be recruited into groups with regard to their treatment and demographic characteristics (*e.g.,* age, education). For example, respondents will be recruited into one of the groups of 8–12 participants by age and education as well as whether they were NRFU respondents or non-respondents. Participants also will be asked about their general concerns with government collection and protection of confidential data. For the Nonresponse Follow-up groups only, we will ask participants their reactions to enumerators using personal devices when conducting Census interviews. At the end of the focus groups, we will be asking participants for whom we have acquired additional data to verify whether this information is accurate.

All focus groups will be tape-recorded to facilitate a summary of the results. Participants will be asked to sign consent forms and give permission to be recorded. All participants will be informed that their response is voluntary and that the information they provide is confidential. Respondents will receive a $75 stipend after the focus group concludes.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Dated: January 8, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–00321 Filed 1–12–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2014–0064]

Extension of the Extended Missing Parts Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) implemented a pilot program (Extended

Missing Parts Pilot Program) in which an applicant, under certain conditions, can request a 12-month time period to pay the search fee, the examination fee, any excess claim fees, and the surcharge (for the late submission of the search fee and the examination fee) in a nonprovisional application. The Extended Missing Parts Pilot Program benefits applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program benefits the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2015, to better gauge whether the Extended Missing Parts Program offers sufficient benefits to the patent community for it to be made permanent. The requirements of the program have not changed.

DATES: *Duration:* The Extended Missing Parts Pilot Program will run through December 31, 2015. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed before December 31, 2015. The USPTO may further extend the pilot program (with or without modifications) depending on the feedback received and the continued effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: On December 8, 2010, after considering written comments from the public, the USPTO changed the missing parts examination procedures in certain nonprovisional applications by implementing a pilot program (*i.e.,* Extended Missing Parts Pilot Program). *See Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 Off. Gaz. Pat. Office 44 (Jan. 4, 2011). The USPTO has previously extended the Extended Missing Parts Pilot Program. *See Extension of the Extended Missing Parts Pilot Program,* 76 FR 78246 (Dec. 16, 2011), 1374 Off. Gaz. Pat. Office 113 (Jan. 10, 2012); *Extension of the Extended Missing Parts Pilot Program,* 78 FR 2256 (Jan. 10, 2013), 1387 Off. Gaz. Pat. Office 46 (Feb. 5, 2013); *Extension of Extended Missing Parts Pilot Program,* 79 FR 642 (Jan. 6, 2014), 1398 Off. Gaz. Pat. Office 197 (Jan. 28, 2014).

The USPTO is further extending the Extended Missing Parts Pilot Program until December 31, 2015. The USPTO may further extend the Extended Missing Parts Pilot Program, or may discontinue the pilot program after December 31, 2015, depending on the results of the program. The requirements of the program, which have not been modified, are reiterated below. Applicants are strongly cautioned to review the pilot program requirements before making a request to participate in the Extended Missing Parts Pilot Program.

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within 12 months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement. Title II of the Patent Law Treaties Implementation Act of 2012 (PLTIA) amended the provisions of title 35, United States Code, including 35 U.S.C. 119(e), to implement the Patent Law Treaty (PLT). *See* Public Law 112–211, §§ 20–203, 126 Stat. 1527, 1533–37 (2012). In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that an applicant may file a petition under 37 CFR 1.78(b) to restore the benefit of a provisional application filed up to fourteen months earlier. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62368–69 (Oct. 21, 2013) (final rule). Any petition to restore the benefit of a provisional application must include the benefit claim, the petition fee, and a statement that the delay in filing the subsequent application was unintentional. This change was effective on December 18, 2013, and applies to any application filed before, on, or after December 18, 2013. However, if a petition under 37 CFR 1.78(b) to restore the benefit claim of a prior provisional application is required, the application is not eligible for participation in the Extended Missing Parts Pilot Program.

I. Requirements

In order for an applicant to be provided a 12-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) The applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/AIA/421, titled ''Certification and Request for Extended Missing Parts Pilot Program''; (2) the application must be an original (*i.e.,* not a Reissue) nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous 12 months, and the specific reference to the provisional application must be in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(3)); and (4) the applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, the applicant will need to satisfy filing date requirements and publication requirements. In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that an application (other than an application for a design patent) filed on or after December 18, 2013, is not required to include a claim to be entitled to a filing date. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62638 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. However, if an application is filed without any claims, the Office of Patent Application Processing will issue a notice giving the applicant a two-month (extendable) time period within which to submit at least one claim in order to avoid abandonment (*see* 37 CFR 1.53(f)). The Extended Missing Parts Pilot Program does not change this time period. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of 18 months from the earliest filing date for which benefit is sought. Therefore, the

nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) the executed inventor's oath or declaration in compliance with 37 CFR 1.63 or an application data sheet containing the information specified in 37 CFR 1.63(b); (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any compact disc requirements to be satisfied and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, the applicant will need to satisfy the publication requirements within a two-month extendable time period.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/AIA/421. For utility patent applications, the applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of ''Certification and Request for Missing Parts Pilot'' for the certification and request on the EFS-Web screen. Form PTO/AIA/421 is available on the USPTO Web site at *http://www.uspto.gov/forms/aia0421.pdf.* Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/patents/ebc/index.jsp.*

The utility application including the certification and request to participate in the pilot program may also be hand-carried to the USPTO or filed by mail, for example, by Priority Mail Express® in accordance with 37 CFR 1.10. However, applicants are advised that, effective November 15, 2011, as provided in the Leahy-Smith America Invents Act, a new additional fee of $400.00 for a non-small entity ($200.00 for a small entity) is due for any nonprovisional utility patent application that is not filed by EFS-Web. *See* Public Law 112–29, § 10(h), 125 Stat. 283, 319 (2011). This non-electronic filing fee is due on filing of the utility application or within the two-month (extendable) time period to reply to the Notice to File Missing Parts of Nonprovisional Application. Applicants will not be given the 12-month time period to pay the non-electronic filing fee. Therefore, utility applicants are strongly encouraged to file their utility applications via EFS-Web to avoid this additional fee.

For plant patent applications, the applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. *See Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200 (Oct. 27, 2009), 1348 Off. Gaz. Pat. Office 394 (Nov. 24, 2009).

II. Processing of Requests

If the applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send the applicant a Notice to File Missing Parts of Nonprovisional Application that sets a 12-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The 12-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, *see Electronic Office Action,* 1343 Off. Gaz. Pat. Office 45 (June 2, 2009), and *http://www.uspto.gov/patents/process/status/e-Office_Action.jsp.* After an applicant files a timely reply to the Notice to File Missing Parts within the 12-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

For a detailed discussion regarding treatment of applications that are not in condition for publication, processing of improper requests to participate in the program, and treatment of authorizations to charge fees, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76403–04 (Dec. 8, 2010), 1362 Off. Gaz. Pat. Office 44, 47–49 (Jan. 4, 2011).

III. Important Reminders

Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112(a) and is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that, in order to be accorded a filing date, a nonprovisional application (other than an application for a design patent) must include a specification with or without claims. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62369 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. Although a claim is not required in a nonprovisional application (other than an application for a design patent) for filing date purposes and the applicant may file an amendment adding additional claims as prescribed by 35 U.S.C. 112 and drawings as prescribed by 35 U.S.C. 113 later during prosecution, the applicant should consider the benefits of submitting a complete set of claims and any necessary drawings on filing of the nonprovisional application. This would reduce the likelihood that any claims and/or drawings added later during prosecution might be found to contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Accordingly, any foreign filings must, in most cases, still be made within 12 months of the filing date of the provisional application if the

applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within 12 months of the earliest application for which rights are left outstanding in order to be entitled to priority.

For additional reminders, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76405 (Dec. 8, 2010), 1362 Off. Gaz. Pat. Office 44, 50 (Jan. 4, 2011).

Dated: January 7, 2015.

Michelle K. Lee,

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

[FR Doc. 2015–00372 Filed 1–12–15; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0084]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 12, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Joint Services Support (JSS) System; OMB Control Number 0704–XXXX.

Type of Request: New Collection.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Annual Responses: 12,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The information collection requirement is necessary for the National Guard Bureau and its participating programs (Yellow Ribbon Reintegration Program (Guard and Reserve Component-wide), Family Program, Employer Support Program, financial Management Awareness Program, Sexual Assault Prevention and Response Program, Psychological Health Program, and Warrior Support Program) to ensure key activities may be associated with system-registrants for program management, accountability, reporting and support purposes. Examples of use of such information include: Validating event registration and attendance, enabling users to login to system to facilitate outreach and communication activities, enabling leadership across the participating programs, with oversight and reporting.

In addition, JSS plans on collecting Civilian Employer Information (CE) from Service members. Defense Manpower Data Center (DMDC) will be ceasing its CEI Web site as of October 1, 2012. The service components as a result have been tasked to take over the collection of CEI prior to this date.

JSS in particular helps the Yellow Ribbon Reintegration Program and (in the future) also help Employer Support for the Guard and Reserve, reporting program activities, as required by a congressional mandate.

Affected Public: Individuals or Households; Federal Government; State, Locale or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: January 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–00308 Filed 1–12–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–HA–0162]

Proposed Collection; Comment Request

Correction

In notice document 2014–30753 appearing on pages 34–35 in the issue of January 2, 2015, make the following correction:

On page 34, in the second column, under the **DATES** heading, in the second line, ''March 3, 2014'' should read ''March 3, 2015''.

[FR Doc. C1–2014–30753 Filed 1–12–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors. This meeting will be open to the public.

DATES: Wednesday, January 28, 2015, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: DAU Headquarters, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Caren Hergenroeder, Protocol Director, DAU. Phone: 703–805–5134. Fax: 703–805–5940. Email: *caren.hergenroeder@dau.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda

9:00 a.m. Welcome and Announcements

9:10 a.m. DAU Update

9:30 a.m. Executive Coaching

10:30 a.m. Break

10:45 a.m. Acquisition Workforce Training Perceptions

11:45 a.m. Concluding Remarks

12:00 p.m. Adjourn

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703–805–5134.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting. Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703–805–5412, *christen.goulding@dau.mil.*

Dated: January 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–00314 Filed 1–12–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense, Defense Intelligence Agency, National Intelligence University.

ACTION: Notice of closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

DATES: Tuesday, January 27, 2015 (7:00 a.m. to 5:00 p.m.) and Wednesday, January 28, 2015 (8:00 a.m. to 12:00 p.m.).

ADDRESSES: National Intelligence University, Joint Base Anacostia-Bolling, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Intelligence University, Washington, DC 20340–5100, Phone: (202) 231–3344.

SUPPLEMENTARY INFORMATION: Due to difficulties beyond the control of the Department of Defense, the Designated Federal Officer was unable to submit the **Federal Register** notice pertaining to the National Intelligence University Board of Visitors' meeting, scheduled for January 27, 2015, that ensured compliance with the requirements of 41 CFR § 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, waives the 15-calendar day notification requirement pursuant to 41 CFR § 102–3.150(b).

This meeting is being held pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409.

Purpose: The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Agenda: The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: AY 2014 Accreditation/Outcomes Assessment; College of Strategic Intelligence; School of Science and Technology Intelligence; Center for International Engagement; Office of Research; Outreach, Alumni, Foundation; Assessment Planning Roll-up; Plans, Programming, and Budget; Faculty Planning; Core Curriculum; Executive Session; Leadership Program; Cyber Program; Board Business: NI Scholars, Honorary Degrees, Meeting Schedule, Succession Planning.

The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Dated: January 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–00343 Filed 1–12–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, January 30, 2015. The Public Session will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: One Liberty Center, Suite 150, Conference Room, 875 North Randolph Street, Arlington VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: At this meeting, the Judicial Proceedings Panel will deliberate on the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239), as amended, Section 576(a)(2) requirement to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112—81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel may deliberate on any of the topics addressed in its meetings since August 2014, including Article 120 of the Uniform Code of Military Justice, the Special Victims' Counsel Programs of the military Services, victim privacy issues in military sexual assault cases, and the rights and needs of sexual assault victims throughout the judicial process. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to its tasking and these topics.

Agenda

- 8:30 a.m.–9:00 a.m. Administrative Session (41 CFR 102–3.160, not subject to notice & open meeting requirements)
- 9:00 a.m.–4:45 p.m. Panel Deliberations on Initial JPP Report
- 4:45 p.m.–5:00 p.m. Public Comment

Availability of Materials for the Meeting: A copy of the January 30, 2015 meeting agenda or any updates to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials presented related to the meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. The location for this meeting is a secure Federal office building. Two forms of photo identification are required for public entry and all entrants and their belongings must pass through security screening in the lobby before proceeding to the meeting.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on January 30, 2015 in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: January 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–00315 Filed 1–12–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Impact Statement for the Training Mission and Mission Support Activities at Fort Campbell, Kentucky

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the availability of the Draft Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) to analyze the potential impacts of training and mission support activities on the environmental resources of Fort Campbell and the surrounding region. The Draft PEIS analyzes the No Action Alternative, four distinct and separate Proposed Action Alternatives, and a fifth Proposed Action Alternative that combines two or more separate alternatives. The Proposed Action would meet the Senior Commander's Soldier training requirements, support the Range Complex Master Plan, and streamline the NEPA analysis process for routine range and training land actions occurring at Fort Campbell.

DATES: Comments must be received by February 27, 2015 to be considered in the preparation of the Final PEIS.

ADDRESSES: Please send written comments to Mr. Gene Zirkle, NEPA/Wildlife Program Manager, Environmental Division, Building 2159 13th Street, Fort Campbell, Kentucky 42223; or by email to *gene.a.zirkle.civ@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Gene Zirkle, NEPA/Wildlife Program Manager, Environmental Division, 270–798–9854, during normal working business hours Monday through Friday, 7:30 a.m. to 4:00 p.m. CST; or by email to *gene.a.zirkle.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: The Draft PEIS evaluates environmental and socioeconomic impacts of implementing proposed training and mission support activities at Fort Campbell and to the surrounding region. The resource areas considered for evaluation include air quality, airspace, biological resources, cultural resources, energy, facilities,

land use, hazardous materials/waste, noise, socioeconomics, soils, traffic and transportation, water resources, and wetland resources. There would be no significant impacts; there could be moderate impacts to soils, biological resources, and water resources.

Fort Campbell covers 105,068 acres in Kentucky and Tennessee. Fort Campbell is home to the 101st Airborne Division ((Air Assault (101ABN DIV (AASLT)), the 5th Special Forces Group, 160th Special Operations Aviation Regiment (SOAR), and other tenant units. The mission of Fort Campbell is primarily to support and train the units stationed on the installation in preparation for a variety of assigned combat and combat related missions.

The purpose of the Proposed Action is to meet Senior Commander training requirements and provide forces that train on Fort Campbell with state-of-the-art and modernized equipment. The action would also implement site-specific range modernization needs contained within the Range Complex Master Plan. The action would also serve to streamline the NEPA analysis process for routine range and training land actions occurring at Fort Campbell that are currently not covered under a previous NEPA analysis or program/plan. The Draft PEIS analyzes the potential environmental impacts of the No Action Alternative—continuing existing training missions and environmental programs, and maintaining existing environmental conditions through current operational controls. The Proposed Action Alternatives include four distinct and separate alternatives and one alternative combining two or more separate alternatives:

- Alternative 1—Site-Specific Projects in Support of Soldier Training.
- Alternative 2—Implement the Use of Adaptable Use Zones to Facilitate Future Modernization and Range Facility Construction.
- Alternative 3—Streamline Review of Routine Range and Training Land Actions.
- Alternative 4—Programmatically Evaluate the Reactivation of Installation—Controlled Airspace.
- Alternative 5—Implement Two or More Proposed Action Alternatives.

Federally recognized Indian tribes, federal, state, and local agencies, organizations, and the public are invited to be involved in the Draft PEIS comment period by participating in meetings and/or submitting written comments regarding the Draft PEIS. Written comments will be accepted within 45 days of publication of the Notice of Availability in the **Federal Register**. Comments received will be considered in preparation of the Final PEIS. Notification of the date, time, and location for the meetings will be published locally.

The Draft PEIS is available for review in the following local libraries:

- Clarksville-Montgomery County Library; 350 Pageant Lane, Suite 404, Clarksville, TN 37042.
- Christian County Library; 101 Bethel Street, Hopkinsville, KY 42240.
- Robert F. Sink Library; Building 38, Screaming Eagle Blvd., Fort Campbell, KY 42223.
- John L. Street Library; 244 Main Street, Cadiz, KY 42211.
- Stewart County Public Library; 102 Natcor Drive, Dover, TN 37058.

The Draft PEIS can also be viewed at the following Web site: *http://www.campbell.army.mil/Pages/TMMSA.aspx.*

Please submit written comments to Mr. Gene Zirkle, NEPA/Wildlife Program Manager, Environmental Division, Building 2159 13th Street, Fort Campbell, KY 42223; or by email to *gene.a.zirkle.civ@mail.mil.* Mr. Zirkle may be reached at 270–798–0854.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–00277 Filed 1–12–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0004]

Agency Information Collection Activities; Comment Request; Measures and Methods for National Reporting System for Adult Education

AGENCY: Office of Career Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 16, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0004 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Michelle Meier, 202–245–7890.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Measures and Methods for National Reporting System for Adult Education.

OMB Control Number: 1830–0027.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 5,700.

Abstract: The change proposed here is to modify the learning objectives associated with each educational functioning level identified in the NRS. As proposed here, the modified learning objectives, known as descriptors, will help modernize the accountability system to reflect the adult educational demands of the 21st Century. The current NRS educational functioning level descriptors remain in effect until further notice from OCTAE. The change proposed here will have no effect on the regulatory burden of the NRS-related information collection.

Dated: January 7, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–00296 Filed 1–12–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. 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, February 4, 2015, 8:30 a.m.–5:00 p.m.; Thursday, February 5, 2015, 8:30 a.m.–3:00 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Kristen Skopeck, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–5803; or Email: *kristen.skopeck@rl.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.

Tentative Agenda:

- Potential Draft Advice
- Worker Health and Safety Protection Related to Chemical Vapor Exposures
- Discussion Topics
- Central Plateau Inner Area Principles
- Hanford Advisory Board Committee Reports
- Tri-Party Agreement Agencies' Updates
- Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings 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 Kristen Skopeck at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kristen Skopeck 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 Kristen Skopeck's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab*.

Issued at Washington, DC, on January 8, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–00324 Filed 1–12–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–41–000; PF14–13–000]

Equitrans, L.P.; Notice of Application

Take notice that on December 30, 2014, Equitrans, L.P. (Equitrans), filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to own, construct, and operate certain pipeline and compression facilities located in West Virginia and Ohio (Ohio Valley Connector Project). Equitrans also requests authority to own, operate, and maintain the proposed facilities under its Part 284, Subpart G blanket transportation certificate pursuant to the terms and conditions of Equitrans' FERC Gas Tariff. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Paul W. Diehl, Senior Counsel, Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222. Telephone (412) 395–5540, fax (412) 553–7781, and email: *pdiehl@eqt.com*.

Equitrans proposes to construct 50 miles of pipeline and 36,000 horsepower compression facilities located in West Virginia and Ohio. The project will provide up to 850,000 dekatherms per day of additional firm transportation service to mid-continent and Gulf Coast markets. The Project will provide tie-ins with Rockies Express Pipeline, LLC, Texas Eastern Transmission, LP (TETCO), and existing Equitrans Mainline and Sunrise Transmission System facilities. The estimated cost of these facilities will be $416.00 million and Equitrans proposes to create a separate rate zone for the Project. Equitrans proposes an in-service date of June 2016.

On June 20, 2014, the Commission staff granted Equitrans' request to use the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF14–13–000 to staff activities involving the proposed facilities. Now, as of the filing of this application on December 30, 2014, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15–41–000, as noted in the caption of this Notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify

federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 28, 2015.

Dated: January 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00311 Filed 1–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14647–000]

OHP Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 18, 2014, OHP Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Applegate River Dam Hydroelectric Project (Applegate Project or project) to be located on the Applegate River, near Medford in Jackson County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission. The project would occupy 15.8 acres of U.S. Bureau of Land Management, 14.6 acres of U.S. Army Corps of Engineers (Corps), and 26.3 acres of U.S. Forest Service's lands.

The proposed project would utilize head from the existing Applegate dam, reservoir, and a low level intake pipe owned and operated by the Corps, and consist of the following new facilities: (1) A multi-level withdrawal structure to withdraw water from the reservoir at centerline elevations of 1,933, 1,955 and 1,967 feet mean sea level; (2) two 750-foot-long steel penstocks with diameters of 66-inches and 84-inches coupled with turbine shut-off valves at the intersection with the powerhouse and a bypass to the tailrace; (3) a 55- by 55-foot powerhouse containing two vertical Francis turbine units rated for a total of capacity of 10 megawatts; (4) two 20-foot-long integral steel draft tubes located within the powerhouse; (5) a 40-foot-long, 40-foot-wide open channel concrete tailrace; (6) an underground 15-mile-long, 35-kilovolt transmission line; (7) a substation; and (8) appurtenant facilities.

The estimated annual generation of the Applegate Project would be 28 gigawatt-hours.

Applicant Contact: Rett Hubbard, Oregon Hydro Power Services, LLC, 285 Oregon Ave., Suite 7, Creswell, OR 97426; phone: (541) 632–4706.

FERC Contact: Julia Kolberg; phone: (202) 502–8261.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineVSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14647–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14647) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00312 Filed 1–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. ER14–2862–000	12–2–14	Melanie Cook.
Exempt		
1. CP13–483–000, CP13–492–000	12–8–14	FERC Staff.[1]
2. CP13–483–000, CP13–492–000	12–9–14	FERC Staff.[2]
3. CP13–483–000, CP13–492–000	12–10–14	FERC Staff.[3]
4. CP13–483–000, CP13–492–000	12–11–14	FERC Staff.[4]
5. CP13–483–000, CP13–492–000	12–12–14	FERC Staff.[5]
6. CP13–483–000, CP13–492–000	12–19–14	Hon. Ron Wyden.
7. ER14–1242–000	12–30–14	Sault Ste. Marie Area Public Schools.

[1] Comments received by Commission staff while in attendance at a public meeting.
[2] Comments received by Commission staff while in attendance at a public meeting.
[3] Comments received by Commission staff while in attendance at a public meeting.
[4] Comments received by Commission staff while in attendance at a public meeting.
[5] Comments received by Commission staff while in attendance at a public meeting.

Dated: January 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00313 Filed 1–12–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0045; FRL—9920–10–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Municipal Waste Combustors (40 CFR part 60, subparts Ea and Eb) (Renewal)'' (EPA ICR No. 1506.13, OMB Control No. 2060–0210) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 12, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0045, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public

docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: These standards apply to each municipal waste combustor (MWC) unit with a capacity greater than 250 tons per day of municipal solid waste which commenced construction, modification or reconstruction after December 20, 1989. MWCs are required to keep records and periodically report their compliance status. Information required by the NSPS is necessary to ensure that emission standards are attained and that MWC's are properly operated and maintained.

Form Numbers: None.

Respondents/affected entities: Owners and operators of municipal waste combustor units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts Ea and Eb).

Estimated number of respondents: 13 (total).

Frequency of response: Initially, quarterly, semiannually, and annually.

Total estimated burden: 20,272 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,897,888 (per year), includes $136,636 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 149 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. These changes are due to the following adjustments: (1) The number of sources subject to each Subpart was revised to reflect more recent information obtained through the Agency's research within the MWC sector; (2) the number of sources required to submit initial notification and site analysis was corrected to reflect this activity as a burden only for new sources, rather than for existing sources; (3) several mathematical errors in calculating burden costs were corrected; and (4) all estimates were updated using more recent labor rates.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–00307 Filed 1–12–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–1151]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

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 comments should be submitted on or before February 12, 2015. 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1151.

Title: Sections 1.1420, 1.1422 and 1.1424, Pole Attachment Access Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 823 respondents; 36,207 responses.

Estimated Time per Response: 20–45 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 449,441 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: In Report and Order and Order on Reconsideration, FCC 11–50, the Commission adopted rules that related to implementation of section 224 pole attachment access rules. Specifically, the pole attachment access rules create a series of deadlines or ''timelines'' by which communications providers (''attachers'') request and receive permission from electric utilities and incumbent LECs (''pole owners'' or ''utilities'') to attach facilities to utility poles (''access''). A denial (or partial grant) of access by a utility must include all relevant evidence and information, and explain how the evidence and information relate to lack of capacity, safety, reliability, or engineering standards. In practice, this requirement causes the utility to survey the requested poles where access is requested and to perform an engineering analysis. Other paperwork burdens are triggered during the pole-preparation stage of the timeline (''make-ready''). These include sending letters of notification to any known entities with existing attachments and the requesting attacher. Such notification letters are sent when a make-ready schedule is established. If the make-ready period is interrupted; and if the pole owner asserts its right to one 15-day extension of time, notification letters are also required. Pole owners both perform and coordinate make-ready work. Additionally, the Order adopted a rule requiring utilities to post a list of approved contractors, and required new attachers that use contractors to perform pole attachment surveys or make-ready work in lieu of the utility using its own workers to choose from among approved contractors. If an attacher uses a utility-approved contractor, it must notify the utility, and invite the utility to send a representative to oversee the work.

Finally, the Order also broadens the existing enforcement process by permitting incumbent local exchange carriers (LECs) to file complaints alleging that the attachment rates demanded by electric utilities are unreasonable. The Order also encourages incumbent LECs that benefit from lower pole attachment costs to file data at the Commission that demonstrate that the benefits are being passed on to consumers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–00334 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–1854]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice; correction

SUMMARY: The Enforcement Bureau published a document in the **Federal Register** of January 7, 2015, debarring Mr. Marvin Mitch Freeman from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for three years. The document contained incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, 202–418–1697.

Correction

In the **Federal Register** of January 7, 2015, in FR Doc. 2015–00034, on pages 888–889, in the third column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Mr. Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Jeffrey.Gee@fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. 2015–00352 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–1856]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice; correction

SUMMARY: The Enforcement Bureau published a document in the **Federal Register** of January 7, 2015, debarring Ms. Donna P. English from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for three years. The document contained incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, 202–418–1697.

Correction

In the **Federal Register** of January 7, 2015, in FR Doc. 2015–00036, on page 889, in the third column, correct the **FOR FURTHER INFORMATION CONTACT** section to read:

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Mr. Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Jeffrey.Gee@fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. 2015–00354 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–1855]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice; correction

SUMMARY: The Enforcement Bureau published a document in the **Federal Register** of January 7, 2015, debarring Mr. Gregory Paul Styles from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for three years. The document contained incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, 202–418–1697.

Correction

In the **Federal Register** of January 7, 2015, in FR Doc. 2015–00035, on page 888, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** section to read:

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale

is unavailable, you may contact Mr. Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Jeffrey.Gee@fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. 2015–00355 Filed 1–12–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–14AOO]

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 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; (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

Monitoring and Reporting System for the Division of Community Health's Cooperative Agreement Programs—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In September 2014, the Division of Community Health (DCH), Centers for Disease Control and Prevention (CDC), announced 93 awards under three new cooperative agreement programs authorized by the Public Health Service Act and the Prevention and Public Health Fund of the Affordable Care Act (FOA DP14–1417, FOA DP14–1418, and FOA DP14–1419PPHF14). The new programs are designed to address chronic diseases and risk factors for chronic diseases, including physical inactivity, poor diet, obesity, and tobacco use. The programs will provide support for implementation of broad, evidence- and practice-based policy and environmental improvements in a mix of 93 large and small cities, urban rural areas, tribes, multi-sectorial community coalitions, and racial and ethnic communities experiencing chronic disease disparities. Awardees include a combination of 41 state, local, and tribal governmental agencies and 52 non-governmental (private sector) entities.

CDC is seeking OMB approval to collect information from the new DCH awardees utilizing an electronic Policy, Environment, Programmatic, and Infrastructure Database (PEPID) designed to enable the accurate, reliable, uniform and timely submission to CDC of each awardee's work plan and progress reports. Monitoring allows CDC to determine whether an awardee is meeting performance goals, to make adjustments in the type and level of technical assistance provided to them, and to provide oversight of the use of federal funds. The burden per response for routine, semi-annual reporting through PEPID is three hours. The burden estimate also includes a one-time allocation of 15 hours for initial population of the PEPID system, which is annualized over the period of the information collection request.

CDC is also requesting OMB approval to conduct targeted, special purpose information collections on an as-needed basis. Due to substantial interest in the new cooperative agreement programs, CDC estimates that each DCH awardee could be asked to participate in one special purpose information collection per year to supplement routine progress reporting. Each special purpose information collection request will be submitted to OMB for approval through the Change Request mechanism, and will include the data collection instrument(s) and a description of purpose and methods. The ability to conduct special purpose data collections will enable CDC to effectively manage programmatic activities and respond to inquiries. The estimated burden per response for each special data request is six hours.

OMB approval is requested for three years. Participation is required for cooperative agreement awardees. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,596.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
DCH Program Awardees (state, local and tribal government entities).	DCH PEPID: Initial population	14	1	15
	DCH PEPID: Semi-annual reporting	41	2	3
	Special PEPID Request	41	1	6
DCH Program Awardees (private sector entities)	DCH PEPID: Initial population	18	1	15
	DCH PEPID: Semi-annual reporting	52	2	3
	Special Data Request	52	1	6

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–00268 Filed 1–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0168]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Disclosure Regarding Additional Risks in Direct-to-Consumer Prescription Drug Television Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit either electronic or written comments on the collection of information by February 12, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910-New and title ''Disclosure Regarding Additional Risks in Direct-to-Consumer (DTC) Prescription Drug Television (TV) Advertisements (Ads).'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Disclosure Regarding Additional Risks in Direct-to-Consumer Prescription Drug Television

Advertisements—(OMB Control Number 0910–NEW)

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Prescription drug advertising regulations (21 CFR 202.1) require that broadcast (TV or radio) advertisements present the product's major risks in either audio or audio and visual parts of the advertisement; this is often called the ''major statement.'' There is concern that as currently implemented in DTC ads, the major statement is often too long, which may result in reduced consumer comprehension, minimization of important risk information and, potentially, therapeutic non-compliance due to fear of side effects. At the same time, there is concern that DTC TV ads do not include adequate risk information or leave out important information. These are conflicting viewpoints. A possible resolution is to limit the risks in the major statement to those that are serious and actionable, and include a disclosure to alert consumers that there are other product risks not included in the ad. For example, the disclosure could be, ''This is not a full list of risks and side effects. Talk to your doctor and read the patient labeling for more information.'' The Office of Prescription Drug Promotion plans to investigate the effectiveness of this ''limited risks plus disclosure'' strategy through empirical research.

Our primary hypothesis is that, relative to inclusion of the full major statement, providing limited risk information along with the disclosure about additional risks will promote improved consumer perception and understanding of serious and actionable drug risks. We will also investigate other questions such as whether overall drug risk and benefit perceptions are affected by these changes. To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance. With the sample size described further in this document, we will have sufficient power to detect small-to-medium sized effects in the main study.

Participants will be consumers who self-identify as having been diagnosed with one of three possible medical conditions: Depression, high cholesterol, or insomnia. All participants will be 18 years of age or older. We will exclude individuals who work in healthcare or marketing settings because their knowledge and experiences may not reflect those of the average consumer. Recruitment and administration of the study will take place over the Internet. Participation is estimated to take approximately 30 minutes.

Within medical condition, participants will be randomly assigned to view one of four possible versions of a DTC ad, as depicted in table 1. One version will present the full major statement without the disclosure regarding additional risks (Conditions C, G, and K). This version will implement existing ads in the marketplace. Stimuli variations for the other three versions will be achieved by replacing the audio track of the original ad with the revised risk and disclosure statements described previously. Thus, a second version of the ad will include the full major statement plus the disclosure about additional risks (Conditions A, E, and I). A third version will include an abbreviated statement of risks without the disclosure about additional risks (Conditions D, H, and L). The fourth version will include an abbreviated statement of risks as well as the disclosure about additional risks (Conditions B, F, and J).

After viewing the ad, participants will respond to questions about information in the ad. Measures are designed to assess perception and understanding of product risks and benefits; perception and understanding of the disclosure about additional risks; perceptions of product quality; intention to seek more information about the product; and perceptions of trust/skepticism regarding product claims and the sponsor. The questionnaire is available upon request.

TABLE 1—STUDY DESIGN

Medical condition	Disclosure regarding additional risks	Major statement	
		Version 1	Version 2
Depression	Present	A	B
	Absent	C	D
High Cholesterol	Present	E	F
	Absent	G	H
Insomnia	Present	I	J
	Absent	K	L

Note. Version 1 = current major statement; Version 2 = abbreviated major statement.

In the **Federal Register** of February 18, 2014 (79 FR 9217), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received comments from 26 groups or individuals in response to our **Federal Register** notice. This amounted to 55 comments that specifically referenced the study and were PRA-related.

FDA's specific responses to the comments are divided into sections. The first section addresses pharmaceutical industry comments from the Pharmaceutical Research and Manufacturers of America (PhRMA), Abbvie, Pfizer, and Eli Lilly and Company. The second section addresses comments from other organizations, including the Patient, Consumer, and Public Health Coalition, Washington Legal Foundation, Consumers Union, and Coalition for Healthcare Communication. The third section addresses comments from individuals (names indicated in-text when available). Many commenters indicated support for this research. We appreciate this support. Comments that are not PRA-relevant (*e.g.,* ''Ban DTC'') or do not relate to the proposed study are not included in this document or addressed in our responses. For brevity, all public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document.

Responses to Comments From the Pharmaceutical Industry

PhRMA

1. Use of an existing drug ad could have confounding results due to consumer familiarity with medicines and drug classes used to treat their existing condition.

Response: The decision to implement and modify existing ads was arrived at in an effort to balance the integrity of the research with cost considerations. It is significantly less expensive to implement and modify existing ads than it is to create and modify fictitious ads. Nonetheless, we appreciate this concern and in response, we have added questions to the survey to measure ad familiarity, which we can then control for in our analyses.

2. If FDA goes forward with the strategy to use existing ads, (a) avoid using a drug ad that has aired within the past 12 months or that contains any iconic images or marks, (b) alter the brand and established names of the drugs, (c) record a new voiceover for the major statement using fictionalized risk information, and (d) ensure that fictionalized risks are not similar to or associated with related drugs.

Response: We do not intend to fictionalize the risks and side effects or brand and established names. Our goal in using existing information is to ensure external validity of study findings when we draw comparisons between consumers who view existing versus modified risk statements. We intend to control for familiarity by measuring ad familiarity.

3. Participant sample should consist of consumers who self-identify as having the disease the drug featured in the ad treats.

Response: As stated in **Federal Register** Notice, ''participants will be consumers who self-identify as having been diagnosed with one of three possible medical conditions.'' The medical condition diagnosed will be consistent with the medical condition targeted by the advertising.

Abbvie

1. Ask participants to identify the name of the drug prior to asking about benefits and risks.

Response: Participants in this research will see only one drug ad and therefore perceptions will necessarily be associated with that one drug. It is outside the scope of this project to investigate drug name recall and/or recognition. Therefore, to avoid unnecessarily burdening participants, we do not intend to include these questions.

2. Include patients across a wider range of ages and with acute conditions.

Response: We proposed to recruit participants 18 years of age and older who self-identify as having been diagnosed with the medical condition being advertised. We considered many variables in choosing the conditions to test, including acute versus chronic conditions. We acknowledge that the type of condition (for example, acute, symptomatic, chronic, silent) may interact with the risk profile of the product (for example, very risky to less risky). With these variables in mind, we chose conditions that represent chronic and symptomatic diseases and a range of risk profiles.

3. Add a question to ascertain that participants can identify risks of the drug.

Response: Risk recall is currently assessed by Q6. Risk recognition is currently assessed by Q7.

4. Regarding Q8, if a fact-based statement was presented, it would be valuable to word the question to see if respondents comprehend the statement.

Response: Q8 (now Q9) reads, ''In your opinion, if [DRUG] did help a person's [condition], how much would it help?'' The purpose of this question is to assess anticipated efficacy magnitude of the drug based on the advertising. This question has been subject to cognitive testing and refinement in other FDA research, confirming that respondents understand and are able to respond to this question.

5. Regarding Q18 and Q19 (Q23 and Q24 in revised questionnaire):

a. *These questions assume that participants are knowledgeable about alternative treatments; if they are knowledgeable, it is unclear what treatment participants might select as a comparator.*

Response: We agree with this concern. In response, we have added language introducing these questions. The language reads, ''Please think about other medicines you know of that treat [condition]. If you are not aware of other medicines that treat [condition], please choose the answer [Neither disagree nor agree].'' Additionally, following Q23 and Q24, we intend to inquire which drug(s) participants had in mind with an open-ended question.

b. *The focus of the questions should be on how to interpret the information when presented with all risks versus only major and most likely risks.*

Response: The purpose of these questions is to assess anticipated efficacy and risk relative to other medicines that treat the condition. By drawing comparisons between the experimental conditions, we will be able to assess if anticipated efficacy and risk relative to other medicines differs due to exposure to the existing set of risks versus an abbreviated set (Condition 1) and whether or not a disclosure is presented (Condition 2).

c. *A question should be added to ascertain if respondents can identify major risks of the drug.*

Response: Risk recall is currently assessed by Q6. Risk recognition is currently assessed by Q7.

d. *To assess participant ability to balance the risks of the drug with its benefits, respondent's knowledge of the effectiveness of the drug should be queried using a 5 or 7 point scale anchored from Not Effective to Very Effective.*

Response: The purpose of Q23 and Q24 is not to assess risk-benefit tradeoff. See response to comment 5b for the purpose of these questions. Note also that a number of questions already assess anticipated effectiveness of the drug (*e.g.,* Q8 and Q9). Risk-benefit tradeoff is assessed by Q12 and Q13a–c.

6. Reword Q26 get the respondent to focus on the format of the information presentation versus how the study was executed.

Response: The language of this question (now Q28) has been reformatted to include the specific disclosure language. The purpose of this question is to assess noticeability and understanding of the concept that not all risks were presented. Later questions (*e.g.,* Q29a) assess understanding of the specific statement wording.

7. Add questions to assess how informative and actionable participants found the list of risks and side effects.

Response: We agree with this suggestion and have now incorporated questions into the survey to assess these reactions.

Pfizer

1. It may prove difficult for respondents to quantify risk and benefit in Q7 and Q9 given that the ads will not explicitly quantify risk or benefit information; FDA should use these data only to assess relative differences across ad treatments.

Response: The purpose of these questions (now Q8 and Q10) is to assess perceived benefit and risk based on the advertising shown. We do not expect participants to quantify benefits and risks as they were empirically measured.

2. Avoid asking participants how other people will react.

Response: We agree with this suggestion and have revised the questionnaire accordingly.

3. Q18 and Q19 may prove difficult to interpret. Given that participants have not seen the revised major statements before, they may perceive drugs in the test ads to be more or less effective simply because other drugs advertised on TV are not using these formats. If implemented broadly, the comparative effect would likely go away.

Response: We appreciate the possibility that findings obtained in this study may differ from outcomes once implemented broadly. Still, it is important to measure these constructs. Findings from this study are one of a number of factors that would be considered prior to broad implementation in broadcast advertisements. These questions are reflected in Q23 and Q24 in the revised questionnaire.

4. Add questions to assess how clear, confusing, and important participants found the list of risks and side effects; also assess whether participants felt too much risk information and not enough risk information was presented.

Response: We agree with these suggestions and have incorporated questions into the survey that assess these constructs.

5. Delete Q11; the ads likely do not provide information about how easy or difficult it is to treat the condition with the drug.

Response: We agree with this suggestion and have modified the questionnaire accordingly.

6. Delete Q17; persuasiveness of the ad is subjective and difficult for respondents to assess.

Response: Our intention in asking this question (now Q26d) is to determine if displaying only serious and actionable risks along with a disclosure results in perceptions that the ad is more persuasive. We believe this is an important construct to measure and therefore will retain the question. Additionally, we have added Q17 (''I am interested in trying [DRUG]'') as an indirect measure of persuasion.

7. Delete Q23; it is not clear how respondents would be able to assess the quality of the drug.

Response: Our intention in asking this question (now Q25) is to determine if displaying only serious and actionable risks along with a disclosure results in perceptions that the drug is of high quality. This perception is based exclusively on the advertising and not on quality as it might be measured empirically. To clarify this intention, we have added instructions indicating that judgments should be reached based on the information in the prescription drug ad. We believe perceived drug quality an important construct to measure and therefore will retain the question.

8. Delete Q29a–d; it is not clear how assessing skepticism is relevant to the study objectives.

Response: Due to concerns about the length of the questionnaire, we have deleted these questions.

Eli Lilly and Company

1. Include a general population control group.

Response: The decision not to include a general population sample was arrived at in an effort to balance the integrity of the research with cost considerations. Each medical condition, or general population sample, comes at significant cost. The medical conditions we chose were selected because they represent conditions that are both chronic, symptomatic, and have a range of risk profiles (see response to Abbvie Comment 2). Although we appreciate the value of collecting data on a general population sample, we do not intend to adopt this suggestion in the present research based on cost considerations.

2. Immediately following unaided recall (Q1b; now Q3) and category assignments (Q2 and Q3; Q2 now deleted, Q3 now Q4), it is advised that close-ended questions assessing respondents' perception of whether the information in the ad is easily understood (similar to Q20 battery; now Q13) be added.

Response: We agree that these questions are important and central to the research objectives, and so we have placed these questions earlier in the revised questionnaire. However, we are unclear on the rationale for inquiring about these topics immediately following Q4. We plan to instead measure recall and recognition of benefits and risks before inquiring about the clarity in presentation of benefits and risks. We believe that involvement in answering recall and recognition questions first will allow consumers to provide a more accurate assessment of whether the information is easily understood.

3. Several questions (Q7, Q8, Q9, Q11, Q18, Q19, and Q23) appear to lack relevance to the research objectives and should be modified or deleted.

Response: The purpose of Q7, Q8, and Q9 (now Q8 through Q11) is to assess perceived benefit and risk of taking the drug. The purpose of Q18 and Q19 (now Q23 and Q24) is to assess anticipated efficacy and risk relative to other medicines that treat the condition. The purpose of Q23 (now Q25) is to assess perceived quality of the drug. We have modified these questions to communicate that perceptions should be based on the impression participants received from the advertising. By drawing comparisons between the experimental conditions, we may determine that the risk and disclosure statements alter the previously mentioned perceptions. We agree that Q11 lacks direct relevance to the research objectives and therefore have deleted this item.

4. Q36 suggests that participants may be allowed to complete the study using a mobile device; pre-testing should be conducted to determine the appropriateness of this option.

Response: We intend to restrict participants to using devices that allow full functionality of study procedures. We will retain a modified version of Q36 (now Q39) to ascertain that this requirement was followed.

5. Provide instructions to respondents regarding ad downloading/buffering to ensure they can see and hear the stimuli.

Response: We agree with this suggestion and intend to implement it.

6. Maintain consistent scale parameters throughout the survey to avoid confusion by participants and reduce bias in analysis.

Response: We agree with this recommendation and have adopted it in cases where the specific scale has not been validated by prior research.

7. Terms in Q2 (e.g., over-the-counter drug) should be defined or presented in consumer friendly language.

Response: Due to concerns about the length of the questionnaire, we have deleted this question.

8. In Q3, the response option ''High Blood Pressure'' may confuse participants who are diagnosed with both high cholesterol and high blood pressure; consider an alternative condition for high blood pressure.

Response: We agree with this recommendation and have replaced ''high blood pressure'' with ''seasonal allergies.'' Q3 is reflected in Q4 in the revised questionnaire.

9. Q13, Q14, and Q15 (Q18 through Q22 battery in revised questionnaire) should be modified so that the respondent would indicate intention or likelihood for themselves, without asking them to project to others.

Response: We agree with this recommendation and have modified these questions accordingly.

10. Improve programming instructions to clarify which respondents are asked Q27 and Q28 versus those that are skipped to Q29.

Response: Participants in conditions in which the risk disclosure is not shown are skipped to Q30 in revised questionnaire. We have clarified this intention in the programming language.

Responses to Comments From Other Groups and Organizations

Patient, Consumer, and Public Health Coalition (PCPHC)

1. Define ''serious and actionable.''

Response: We define ''actionable'' as something the patient would know (e.g., pre-existing condition or allergy) or recognize (e.g., observable physical or mental symptom) and can act upon to help mitigate (e.g., get immediate medical help to prevent a bad outcome). For example, ''stop using the product and get immediate medical help if you have swelling of the face, lips, tongue, or throat.'' Serious risks would include those that appear in the warnings and precautions section of labeling and results in any of the following outcomes: Death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed previously.

2. Ensure a diverse participant sample: Internet recruitment may favor inclusion of younger, more affluent and Internet-adept populations; the medical conditions chosen may not adequately reflect the general U.S. consumer audience.

Response: The rapid expansion of Internet access across the U.S. population has made panel participation feasible for an increasingly broader range of respondents. Still, there are some demographic groups that are more responsive than others; but that can be found across all research methodologies. For example, there is a natural skew on those that will take a research phone call and those that will attend a focus group. The same can be said for Internet research as well. To rectify those skews, we utilize the Research Now panel, which is recruited to match a natural distribution of all demographic groups. Research Now works with clients to set fixed quota expectations in the survey instrument itself to enforce the final distribution and work with the invitation mix to balance the outcome as needed during the field period. Research Now's panels are recruited through a partner network of ubiquitous brands utilizing a ''By-Invitation-Only'' approach and through tailored online marketing with over 300 diverse online affiliate partners and targeted Web site advertising. Specifically, Research Now uses e-Rewards® ''By-Invitation-Only'' recruitment methodology to invite pre-validated individuals to participate in their Consumer and Business Panels. Their recruitment methods provide a sample mix representative of the general population and also provide access to hard-to-reach business professionals and low-incidence consumers who are

typically less likely to join panels. Research Now controls and manages the demographic make-up of their panels and enrolls individuals who share known characteristics—ensuring access to populations of interest to the study. Their panels also comply with, or exceed, all applicable industry standards published by: ESOMAR, Market Research Society (U.S.), Australian Market & Social Research Society (Australia), Berufsverband Deutscher Markt—und Sozialforscher e.V. (Germany), Council of American Survey Research Organizations (U.S.), and Marketing Research and Intelligence Association (Canada).

Regarding choice of medical conditions, we considered many variables in choosing the conditions to test, including acute versus chronic conditions. We acknowledge that the type of condition (for example, acute, symptomatic, chronic, silent) may interact with the risk profile of the product (for example, very risky to less risky). With these variables in mind, we chose conditions that represent chronic and symptomatic diseases and a range of risk profiles.

3. Study conditions must be as similar to real life situations as possible.

Response: Because this is the first test of abbreviated risk statements with disclosures, our primary goal is to closely examine the cognitive effects of exposure to the test ads in a controlled experiment. As such, internal validity is a greater priority than external validity. We considered presenting test ads within a clutter reel to help mimic real world conditions, but worry that this approach may introduce unwanted bias (*e.g.,* how attention-getting the test ad is compared to the filler ads). To increase study realism without sacrificing internal validity, we have chosen a sample that would potentially be interested in the drug. In addition, modified ads will be professionally developed and appear realistic.

4. Examine presentation of major statement earlier in the advertisement, when a greater proportion of consumers may be paying attention.

Response: We recognize the value of asking this question; consumers may respond differently if the major statement was to be presented earlier in an advertisement. However, this is a different research question than proposed by the present study and so we do not intend to address it in this research. We encourage other researchers to pursue this unique empirical question.

Washington Legal Foundation

1. Supports the proposed collection and requests that it be expanded to test an alternative hypothesis that the average consumer is very unlikely to be ''misled into believing that the drug poses no significant health risks for him'' if a broadcast DTC advertisement for the drug ''alerts consumers to its potential benefits, states generally that taking the drug poses significant potential health risks, lists any types of individuals who are categorically contra-indicated for the drug, and then asks the consumer to consult with his doctor for a more detailed explanation of risks,'' and to include a First Amendment analysis.

Response: FDA appreciates the support for the proposed collection. However, FDA declines to expand the scope of this proposed information collection as suggested. The primary objective of the proposed study is to assess whether consumer perception and understanding of serious and actionable drug risks is improved if DTC television ads for prescription drugs present limited information focused on those serious and actionable risks together with a disclosure that there are additional risks, as compared to a broader presentation of risk information without disclosure that there are additional risks, like that commonly used in TV ads today. The presentation of risk information about prescription drugs to consumers implicates multiple important public health concerns, including how the presentation of both risk and benefit influences consumer judgments about the risk-benefit trade-off of advertised drugs, and how it impacts consumer decisions about whether or not to approach a healthcare provider about advertised drugs.

In considering how to allocate its limited resources for research, FDA must make choices and has identified its initial hypothesis as a useful one to help improve understanding of how different approaches in DTC television advertisements can impact consumer perception and understanding of drug risks. Once this proposed research is complete and published, the results will facilitate further consideration and analysis, including by outside entities, and may suggest additional topics for research.

A First Amendment analysis is likewise outside the scope of the current proposed research and FDA therefore declines to redesign the study along the lines suggested by the comment.[1] Of course, when FDA implements its regulatory program, it does so in a manner that seeks to promote and protect the public health, consistent with its statutory authorities and mandate, while harmonizing this goal with First Amendment interests.

Consumers Union

1. Define ''serious and actionable.''

Response: Please see our response to PCPHC Comment 1.

2. The proposed study could lead to replacing the current requirement to reference where to get full drug/device information with a mere mention that there are more side effects.

Response: Adequate provision refers to elements in a broadcast ad describing ways viewers can get the full product labeling, such as through the manufacturer's Web site, through a print ad, by calling the manufacturer's toll-free number, and by asking their healthcare provider. The proposed research was not designed to inform whether adequate provision should or should not remain in DTC advertising, and therefore the study results should not be used for such purposes.

3. The study procedures should reflect the way an average consumer would see or hear an ad (e.g., when the consumer's focus is not necessarily on the ad).

Response: Please see our response to PCPHC Comment 3.

Coalition for Healthcare Communication

1. Include a qualitative leg to the study.

Response: Although adding a qualitative leg to the study would likely generate interesting and insightful outcomes, cost considerations restrict us from doing so. Note however that we do intend to conduct cognitive interviews prior to administration of the main study. Cognitive interviews involve a trained interviewer who will sit with participants as they view the stimuli, complete the questionnaire, and discuss their thought processes out loud, prompting participants to explain why they answered certain questions as they did. Findings from the cognitive interviews will then inform development of the final stimuli and questionnaire.

2. Include physicians in the study.

Response: We agree that physician perspectives about prescription drug advertising are important and

[1] We also note that we disagree with several aspects of the comment's assertions related to First Amendment law, but we do not believe it is necessary or appropriate to address those arguments here.

interesting. However, as their perspective is outside the scope of the current research, we do not intend to adopt this suggestion. Note that we recently completed a separate study examining this topic, entitled ''Healthcare Professional Survey of Prescription Drug Promotion.'' Results from this study will be made available in the peer-reviewed literature.

3. Recruit respondents and analyze results by age cohort.

Response: We agree that recruiting participants across a wide range of ages is important and our sample will reflect this shared perspective.

4. Consider including communication media beyond television.

Response: We understand that it is important to understand effects of prescription drug advertising across mediums. Commonalities exist across multiple communication mediums, but also differences that may impact consumer perception of drug benefits and risks. Consequently, our research program has investigated various topics across these mediums. We intend to focus on television advertising in this study because it is most closely related to the research objectives, and due to cost considerations.

5. Reconsider using existing DTC ads in the proposed study.

Response: Please refer to our response to PhRMA comments 1 and 2.

6. Clearly define what ''serious and actionable'' risks are.

Response: Please refer to our response to PCPHC comment 1.

Responses to Comments From Individuals

Mel Sokotch

1. To ensure ad presentation is consistent with real world viewing conditions, the test ad should be presented as part of a clutter reel.

Response: Please refer to our response to PCPHC comment 3.

2. Immediately following the clutter reel with test ad inserted, initial survey questions should include open-ended assessment of issues such as recall, communication, and motivation. The ad should then be presented again and followed by additional questions designed to assess the impact of the ad.

Response: Our current procedures involve two presentations of the ad: once prior to administering the questionnaire and once during the questionnaire immediately preceding specific questions about the risk disclosure statement. To avoid unnecessarily burdening participants, we do not intend to show the ad a third time, per this recommendation.

Anonymous

1. As an end consumer, the side effects listed give us information to research further to determine the severity of the side effects.

Response: We address this concern by asking participants, in open-ended fashion, to list the thoughts that were going through their mind as they viewed the ad. In doing so, we hope to learn whether this is a broad concern among consumers. We are also assessing perceptions of risk.

2. Prescription drug commercials seek to persuade consumers, and healthcare providers have little time to discuss these risks and side effects with patients; thus, providing this information in television advertisements is important and necessary.

Response: Current regulations (21 CFR 202.1(e)(1)) require that prescription drug broadcast advertisements present the major risks of the drug as well as provide adequate provision, or mention of where the patient can obtain additional information about risks and side effects of the drug (*e.g.,* Web sites, magazines). We recognize that providing risk information is an important and necessary component. As stated in the **Federal Register,** however, there is also concern that the length and content of some major statements is not adequately communicating this important information. Thus, we are conducting empirical research to test this question. This study does not address the question of adequate provision.

John Bonanno; Aaron Heyman; Thomas Klugh (Similar Comment)

1. All warnings should be clearly stated.

Response: Per 21 CFR 202.1, current regulations require that broadcast ads disclose the product's major risks; these are typically the most common and the most serious risks described in labeling. At the same time the full product labeling should be made available through other means (see Guidance for Industry: Consumer-Directed Broadcast Advertisements [2]). With this in mind, the current study is addressing the impact of the current major statement risk format versus an abbreviated format, along with a disclosure indicating that not all risk information was presented.

John Sovitsky

1. Existing regulations do not go far enough; warnings should be described in text as large as benefits, and spoken at a slower, more intelligible speed.

Response: Although interesting, this comment is outside the scope of the present research.

Duane De Vries; Gary Graham (Similar Comment)

1. Consumers need all of the information that they can get to protect them against unscrupulous drug companies.

Response: Please see response to previous comment.

Nila Jamerson; Charles McCloud (Similar Comment)

1. Risk disclosures in drug ads are tedious and unneeded; they should be provided by healthcare providers.

Response: Communication between healthcare providers and patients about drug risks is an important component of the healthcare decision making process. Nonetheless, the regulations require that benefit information in prescription drug ads should be balanced with presentation of risk information so that consumers can adequately consider both benefits and risks (*i.e.,* the risk-benefit trade off) before approaching a healthcare provider about the drug.

Janessa

1. Additional risks should remain in TV ads; otherwise, advertised drugs sound like cure-all miracles.

Response: Note that we do not propose studying whether all risk information should be eliminated from broadcast ads. In both the current major statement condition and the experimental condition with abbreviated major statement plus disclosure, significant risks associated with the drug are presented in broadcast advertisements. Thus, we do not agree that the presentation would imply a cure-all miracle.

Patricia Simon

1. The number of participants is far too few.

Response: Sample size per experimental condition in the main study is 125. This sample size is based on a statistical power analysis with power set at .90 and alpha equal to .05 assuming a small to medium effect size. Thus, power analyses support that our sample size is adequate.

[2] *http://www.fda.gov/downloads/Regulatory Information/Guidances/ucm125064.pdf.*

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Disclosure regarding additional risks in DTC prescription drug TV ads	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot Study Screener	1700 (insomnia), 539 (high cholesterol), 3774 (depression).	1	6,013	0.03 (2 minutes).	180
Main Study Screener	4252 (insomnia), 1347 (high cholesterol), 9433 (depression).	1	15,032	0.03 (2 minutes).	451
Pilot Study	600 (200 for each medical condition)	1	600	0.50 (30 minutes).	300
Main Study	1500 (500 for each medical condition)	1	1500	0.50 (30 minutes).	750
Total					1,681

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 7, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–00269 Filed 1–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Organ Transplantation (ACOT).

Date And Time: January 27, 2015, from 12:30 p.m. to 4:30 p.m. Eastern Standard Time.

Place: The meeting will be via audio conference call and Adobe Connect Pro.

Status: The meeting will be open to the public.

Purpose: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, thereby increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members including the Chair. Members serve as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine, and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

Agenda: The Committee will hear presentations including those on the following topics: Kidney Paired Donation, Vascularized Composite Allografts; the HOPE Act; and recommendations sent to the Secretary. Agenda items are subject to change as priorities indicate.

After Committee discussions, members of the public will have an opportunity to comment. Because of the Committee's full agenda and timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be posted on Department's organ donation Web site at *http://www.organdonor.gov/legislation/advisory.html#meetings.*

The draft meeting agenda will be posted on *www.blsmeetings.net/ACOT.* Those participating in this meeting should register by visiting *www.blsmeetings.net/ACOT.* The deadline to register for this meeting is Monday, January 26, 2015. For all logistical questions and concerns, please contact Anita Allen, Seamon Corporation at 301–658–3442 or send an email to *aallen@seamoncorporation.com.*

The public can join the meeting by:

1. (Audio Portion) Calling the Conference Phone Number (888–324–4391) and providing the Participant Code (2426); and

2. (Visual Portion) Connecting to the ACOT Adobe Connect Pro Meeting using the following URL and entering as GUEST: *https://hrsa.connectsolutions.com/acot1/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.* Call (301) 443–0437 or send an email to *ptongele@hrsa.gov* if you are having trouble connecting to the meeting site.

Public Comment: It is preferred that persons interested in providing an oral presentation email a written request, along with a copy of their presentation, to Patricia Stroup, MBA, MPA, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, at *pstroup@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative.

The allocation of time may be adjusted to accommodate the level of expressed interest. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may request it during the public comment period. Public participation and ability to comment will be limited to time as it permits.

FOR FURTHER INFORMATION CONTACT: Patricia Stroup, MBA, MPA, Executive

Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 17W65, Rockville, Maryland 20857; telephone (301) 443–1127.

Jackie Painter,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2015–00322 Filed 1–12–15; 8:45 am]

BILLING CODE 4165–15–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 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 Library of Medicine Special Emphasis Panel; Conflicts R01.

Date: March 6, 2015.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 7, 2015.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2015–00280 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 meeting.

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 Biomedical Imaging and Bioengineering Special Emphasis Panel; K-awards and R13 conference support review.

Date: February 25, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM II, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00289 Filed 1–12–15; 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; NIAID Peer Review Meeting.

Date: February 2, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3E61, 5601 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, Rockville, MD 20852–7616, 240–669–5019, *schleefrr@niaid.nih.gov.*

Late notification due to delayed response from panel members.

(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: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00292 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Osteoporosis Fellowship Review.

Date: January 20, 2015.

Time: 4:00 p.m. to 5:00 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: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Long-Term Outcomes of Bariatric Surgery Using Large Datasets.

Date: January 29, 2015.

Time: 2:30 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 (Virtual Meeting).

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: February 2–3, 2015.

Time: 8:00 a.m. to 5:00 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: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Selected Topics in Transfusion Medicine.

Date: February 5–6, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: February 5–6, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC, 1199 Vermont Avenue NW., Washington, DC 20005.

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: February 5, 2015.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: February 5–9, 2015.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: February 5, 2015.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–095: Differentiation and Integration of Stem Cells (Embryonic and Induced-Pluripotent) into Developing or Damaged Tissues.

Date: February 6, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW., Washington, DC,

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: February 9–10, 2015.

Time: 8:00 a.m. to 10:00 a.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: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: February 9–10, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW., Washington, DC 20037.

Contact Person: Mark D Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *lindnermd@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: February 10–11, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 10–11, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.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: January 7, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00285 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Research Project Grant.

Date: February 4, 2015.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, Suite 703, 6701 Democracy Boulevard Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov*.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Building Evidence: Effective Palliative/End of Life Care Interventions.

Date: February 6, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD., Scientific Review Officer Office of Review, National Institutes of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 7, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00281 Filed 1–12–15; 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; TEDDY Data Coordinating Center (UC4).

Date: February 5, 2015.

Time: 1:00 p.m. to 3:00 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: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, Md 20892–2542, 301–594–7682, *campd@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: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00290 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Behavioral Genetics and Epidemiology.

Date: February 2, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Evaluation of Adjuncts to Opioid Therapies for the Treatment of Chronic Pain.

Date: February 3, 2015.

Time: 2:00 p.m. to 4:00 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: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: February 5–6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: February 5, 2015.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 20724.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Electrical Signaling, Ion Transport and Arrhythmias.
Date: February 5, 2015.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Lawrence E Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Molecular Imaging and Probe Development.
Date: February 5–6, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.
Date: February 5–6, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development and Application of PET and SPECT Imaging Ligands as Biomarkers for Drug Discovery and for Pathophysiological Studies of CNS Disorders.
Date: February 6, 2015.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.
Date: February 9, 2015.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.
Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer, Cardiovascular and Sleep Epidemiology Panel B.
Date: February 9–10, 2015.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marines' Memorial Club, 609 Sutter Street, San Francisco, CA 94102.
Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@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: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00291 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel.
Date: February 2, 2015.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5b01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: February 12, 2015.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: February 18, 2015.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Branch, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 1600 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892, (301) 435–8382, *hindialm@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: February 23, 2015.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: March 2, 2015.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Branch,

National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 1600 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892, (301) 435–8382, *hindialm@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 6, 2015.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review officer, National Institutes of Health, NICHD, SRB, 6100 Executive Blvd., Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: February 17–18, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Branch, National Institutes of Health, Eunice Kennedy Shriver, National Institute For Child Health & Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: March 2, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–2717, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: March 5–6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administratior, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: March 13, 2015.

Time: 8:00 a.m. to 5:00 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: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6916, *kielbj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 7, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00283 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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 National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: February 4, 2015.

Open: 8:30 a.m. to 12:40 p.m.

Agenda: Discussion of Program Policies.

Place: National Institutes of Health, Building 31, 6th Floor, C Wing, Conf. Room #6, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 6th Floor, C Wing, Conf. Room #6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D. Director, Division of Extramural Research Activities, NIAMS/NIH, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@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 Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 8, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00323 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee.
Date: February 12–13, 2015.
Time: 8:00 a.m. to 12:00 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: Jeannette L. Johnson, Ph.D., Deputy Review Branch Chief, National Institutes of Health, National Institute on Aging, Gateway Building, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee.
Date: February 12–13, 2015.
Time: 4:00 p.m. to 2:00 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: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee.
Date: February 12–13, 2015.
Time: 4:00 p.m. to 2:00 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: Alicja L. Markowska, Ph.D., DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee.
Date: February 12–13, 2015.
Time: 4:00 p.m. to 1:00 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: Kimberly Firth, Ph.D., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *kimberly.firth@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00287 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Bone Mass Regulation.
Date: January 14, 2015.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00288 Filed 1–12–15; 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 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 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; Center of Excellence for Research on CAM (CERC) Study Section.
Date: March 12–13, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate 9 grant applications.
Place: Embassy Suites at Chevy Chase, 4300 Military Rd. NW., Washington, DC 20015.
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: January 7, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00284 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse 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 on Drug Abuse Special Emphasis Panel; Identification of Gene Variants for Addiction Related Traits by Next-Gen Sequencing in Model Organisms Selectively Bred for Addiction Traits (UH2/UH3).

Date: January 22, 2015.

Time: 12:00 p.m. to 2:00 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: Jagadeesh S. Rao, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301–443–9511, *jrao@nida.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA I/START Small Grant Review (R03).

Date: February 19, 2015.

Time: 1:00 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, (Virtual Meeting).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00) Review.

Date: March 11, 2015.

Time: 11:00 a.m. to 3:30 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: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 7, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00282 Filed 1–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on February 5, 2015, from 11:00 a.m. to 5:00 p.m., and February 6, 2015, from 9:00 a.m. to 2:00 p.m. E.S.T. The DTAB will convene in closed sessions on these two days.

On February 5, 2015, from 11:00 a.m. to 5:00 p.m., and February 6, 2015, from 9:00 a.m. to 2:00 p.m., the Board will meet in closed session to discuss confidential hair testing best practices and data, as well as proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(4), 5 U.S.C. 552b(c)(9)(B), and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees Web site, *http://www.samhsa.gov/about-us/advisory-councils/drug-testing-advisory-board-dtab,* or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: February 5, 2015, from 11:00 a.m. to 5:00 p.m. E.S.T.: CLOSED, February 6, 2015, from 9:00 a.m. to 2:00 p.m. E.S.T.: CLOSED.

Place: Sugarloaf Conference Room, SAMHSA Building, 1 Choke Cherry Road, Rockville, Maryland 20850.

Contact: Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 7–1043, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Fax:* 240–276–2610, *Email: janine.cook@samhsa.hhs.gov*.

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2015–00310 Filed 1–12–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0121]

Agency Information Collection Activities: Trusted Traveler Programs and U.S. APEC Business Travel Card

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Trusted Traveler Programs and U.S. APEC Business Travel Card. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 12, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 49529) on August 21, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Trusted Traveler Programs and U.S. APEC Business Travel Card.

OMB Number: 1651–0121.

Form Numbers: 823S (SENTRI) and 823F (FAST).

Abstract: This collection of information is for CBP's Trusted Traveler Programs, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified land border ports of entry along the U.S.-Mexico border; the Free and Secure Trade (FAST) Program, which provides expedited border processing for known, low-risk commercial drivers; and Global Entry, which allows pre-approved, low-risk air travelers expedited clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed. These Trusted Traveler Programs are provided for in 8 CFR 235.7 and 235.12.

This information collection also includes the U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-track immigration lanes at airports in the 20 other APEC member countries. This program is mandated by the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011, Public Law 112–54, and provided for by 8 CFR 235.13 and 8 CFR 103.7(b)(1)(ii)(N).

The data is collected on the applications and kiosks for the Trusted Traveler Programs. Applicants may apply to participate in these programs by using the Global On-line Enrollment System (GOES) at *https://goes-app.cbp.dhs.gov.* Applicants may also apply for SENTRI and FAST using paper forms (CBP Form 823S for SENTRI and CBP Form 823F for FAST) available at *http://www.cbp.gov* or at Trusted Traveler Enrollment Centers.

After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-service inspection process using a Global Entry kiosk. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States. When using the Global Entry kiosks, participants are required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

SENTRI (Form 823S)

Estimated Number of Annual Respondents: 46,000.

Estimated Number of Total Annual Responses: 46,000.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 30,820.

Estimated Annual Costs: $5,623,500.

FAST (Form 823F)

Estimated Number of Annual Respondents: 28,910.

Estimated Number of Total Annual Responses: 28,910.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 19,370.

Estimated Annual Costs: $1,445,500.

Global Entry

Estimated Number of Annual Respondents: 630,125.

Estimated Number of Total Annual Responses: 630,125.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 422,184.

Estimated Annual Costs: $63,012,500.

ABTC

Estimated Number of Annual Respondents: 4,250.

Estimated Number of Total Annual Responses: 4,250.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 723.

Estimated Annual Costs: $297,500.

Global Entry Kiosks:

Estimated Number of Annual Respondents: 2,200,000.

Estimated Number of Total Annual Responses: 2,200,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 35,200.

Dated: January 7, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–00302 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0114]

Agency Information Collection Activities: Crewman's Landing Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crewman's Landing Permit (CBP Form I–95). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 12, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 63934) on October 27, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Crewman's Landing Permit.

OMB Number: 1651–0114.

Form Number: Form I–95.

Abstract: CBP Form I–95, *Crewman's Landing Permit,* is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I–95 serves as the physical evidence that an alien crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I–95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-95.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 433,000.

Total Number of Estimated Annual Responses: 433,000.

Estimated time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Dated: January 7, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–00301 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0002]

Agency Information Collection Activities: General Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: General Declaration (CBP Form 7507). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 12, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 64825) on October 31, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction

Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health.

OMB Number: 1651–0002.

Form Number: Form 7507.

Abstract: CBP Form 7507, *General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health,* must be filed for all aircraft entering under the provisions of 19 CFR 122.41. This form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs. CBP Form 7507 collects information about the flight routing, the numbers of passengers embarking and disembarking, a declaration of health for the persons on board, details about disinfecting and sanitizing treatments during the flight, and a declaration attesting to the accuracy and completeness and truthfulness of all other documents that make up the manifest.

CBP Form 7507 is authorized by 19 U.S.C. 1431, 1433, and 1644a; 39 U.S.C. 602(b) and provided for by 19 CFR 122.43, 122.48, 122.54, 122.73, and 122.144. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207507.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 7507.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,000,000.

Estimated Time per Response: 5 minutes.

Estimated Annual Burden Hours: 83,000.

Dated: January 7, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–00303 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 24, 2014.

DATES: *Effective:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on June 24, 2014. The next triennial inspection date will be scheduled for June 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 16025–C Jacintoport Blvd., Houston, TX 77015, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Inspectorate America Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	ASTM D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–03	ASTM D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	ASTM D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27–13	ASTM D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry.
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	ASTM D 93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.

CBPL No.	ASTM	Title
27–54	ASTM D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00361 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of International Marine Consultants as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of International Marine Consultants as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that International Marine Consultants, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of September 19, 2014.

DATES: *Effective:* The approval of International Marine Consultants, as commercial gauger became effective on September 19, 2014. The next triennial inspection date will be scheduled for September 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that International Marine Consultants, #429 Padre Rufo St., San Juan, PR 00917, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. International Marine Consultants is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00363 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 29, 2014.

DATES: *Effective:* The approval of Inspectorate America Corporation, as commercial gauger became effective on July 29, 2014. The next triennial inspection date will be scheduled for July 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Inspectorate America Corporation, 11346 Pennywood Ave., Baton Rouge, LA 70809, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical property.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete

listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00360 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 30, 2014.

DATES: *Effective:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 30, 2014. The next triennial inspection date will be scheduled for July 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2632 Ruby Ave., Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	ASTM D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	ASTM D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	ASTM D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27–13	ASTM D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry.
27–46	ASTM D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	ASTM D 93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.
27–54	ASTM D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00356 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum

products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 11, 2014.

DATES: *Effective:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 11, 2014. The next triennial inspection date will be scheduled for April 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 6050 Egret Ct., Benicia, CA 94510, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
2	Tank Calibration.
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–46	D5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00362 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of May 14, 2014.

DATES: *Effective Dates:* The approval of Inspectorate America Corporation, as commercial gauger became effective on May 14, 2014. The next triennial inspection date will be scheduled for May 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Inspectorate America Corporation, 101 Widgeon Drive, St. Rose, LA 70087, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical property.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to

cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.*http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*

Dated: January 5, 2015.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2015–00358 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–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 January 1, 2015, 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:* January 1, 2015.

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 2014–29, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2015, and ending on March 31, 2015. 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 April 1, 2015, and ending June 30, 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 overpayments (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	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
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
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	033115	3	3	2

Dated: January 7, 2015.

R. Gil Kerlikowske,

Commissioner.

[FR Doc. 2015–00300 Filed 1–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5849–N–01]

Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee General Subcommittee Teleconference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC, General Subcommittee. The teleconference meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The teleconference meeting will be held on February 11, 2015, 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). The teleconference numbers are: U.S. toll-free: 1–877–336–1829, and Access Code: 8764141.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator and Designated Federal Official (DFO), Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9166, Washington, DC 20410, telephone 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, (42 U.S.C. 5401 et. seq.) as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring; and
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make oral comments on the business of the MHCC are encouraged to register by or before February 6, 2015 using the following email address: *mhcc@homeinnovation.com;* or mail to Home Innovation, 400 Prince Georges Blvd., Upper Marlboro, MD 20774; Attention: Kevin Kauffman. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the General Subcommittee.

Tentative Agenda:

February 11, 2015, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST)

I. Call to Order and Roll Call

II. Opening Remarks: Subcommittee Chair and DFO

III. Address Multifamily Aspect of Manufactured Housing:

- Creating and defining the term
- Create the justification statement that states why it is permitted
- Determine where is should go in the Code
- Create a list of issues
- Assign subcommittee members tasks for next subcommittee

teleconference
IV. Open Discussion
V. Adjourn: 4:00 p.m.

Dated: January 8, 2015.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2015–00364 Filed 1–12–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104 BAC 4334–12]

Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting Notice.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: February 4, 2015, at 1:00 p.m.

ADDRESSES: Endeavor Room of the Captain Cook Hotel, 939 W. 5th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Johnson, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The *Exxon Valdez* Oil Spill Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV.

The *Exxon Valdez* Oil Spill Public Advisory Committee Meeting agenda will include orientation for committee members, election of the committee chair, and discussion of the *Exxon Valdez* Oil Spill Trustee Council's Long-Term Herring and Monitoring Programs and habitat-related matters. An opportunity for public comments will be provided. The final agenda and materials for the meeting will be posted on the *Exxon Valdez* Oil Spill Trustee Council Web site at *www.evostc.state.ak.us.* All *Exxon Valdez* Oil Spill Public Advisory Committee meetings are open to the public.

Mary Josie Blanchard,

Deputy Director, Office of Environmental Policy and Compliance.

[FR Doc. 2015–00266 Filed 1–12–15; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N241; 80221–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Baker's Larkspur (*Delphinium bakeri*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for Baker's Larkspur (*Delphinium bakeri*) for public review and comment. The recovery plan includes downlisting objectives and criteria, and specific actions necessary to reclassify the species from endangered to threatened on the Federal Lists of Endangered and Threatened Wildlife and Plants.

DATES: We must receive any comments on the draft recovery plan on or before March 16, 2015.

ADDRESSES: You may obtain a copy of the recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825 (telephone 916–414–6700).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

We listed Baker's larkspur throughout its entire range on January 26, 2000 (65 FR 4156). The species is endemic to Marin and Sonoma Counties, California, and is currently known from one small historical occurrence along Marshall-Petaluma Road in west Marin County. The remaining historical occurrence of Baker's larkspur occurs on decomposed shale in the mixed woodland plant community at an elevation range of 295 feet (ft) (90 meter (m)) to 672 ft (205 m) in moderately moist, shaded conditions on a shallow veneer of soil along an extensive north-facing slope. These habitat requirements limit the availability of suitable reintroduction sites with appropriate habitat conditions and compatible land use. Although habitat conversion and road maintenance were historically responsible for decreasing numbers, those threats have been curtailed. Because of the extreme range restriction of this already-narrow endemic, and its small population size, the plant is highly vulnerable to extinction from random events, including wildfire, herbivory, disease and pest outbreaks, and human disturbance.

Recovery Plan Goals

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The goal of this recovery plan is to improve the status of Baker's larkspur so that it can be downlisted. Due to the current lack of information about the species' biology and habitat requirements, the magnitude of current threats, and the precarious environment where the single historical population of the species persists, we are unable to determine appropriate delisting criteria; therefore, we focus on meeting the goal of downlisting. To meet the recovery goal of downlisting, the following objectives have been identified:

1. Expand the existing populations of Baker's larkspur and establish additional self-sustaining populations of Baker's larkspur throughout its known ecological and

geographical range, while preserving extant genetic diversity.

2. Ensure existing and future populations are protected from incompatible uses, such as road maintenance.

3. Reduce herbivory by slugs, snails, and gophers to the point that it does not affect the species at a population level.

As Baker's larkspur meets reclassification criteria, we will review its status and consider it for downlisting on the Federal Lists of Endangered and Threatened Wildlife and Plants.

Public Comments Solicited

We solicit written comments on the draft recovery plan described in this notice. All comments received by the date specified above will be considered in development of a final recovery plan for Baker's larkspur. You may submit written comments and information by mail or in person to the Sacramento Fish and Wildlife Office at the above address (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed this recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 7, 2015.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2015–00392 Filed 1–12–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N240; FF08E00000–FXES11120800000–145]

Draft Environmental Assessment and Proposed Wright Solar Park Multi-Species Habitat Conservation Plan, Merced County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comment; permit application, draft environmental assessment, proposed habitat conservation plan.

SUMMARY: This notice advises the public that we, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental assessment (EA) under the National Environmental Policy Act of 1969, as amended (NEPA), in response to an application from Wright Solar Park, LLC (the applicant) for an incidental take permit (ITP) pursuant to the Endangered Species Act of 1973, as amended (Act). The applicant has prepared the draft Wright Solar Park Habitat Conservation Plan (HCP) to describe and implement a conservation plan that will minimize and mitigate environmental effects associated with the construction, operation, maintenance, and decommissioning of an up-to-200-megawatt photovoltaic power generating facility and implementation of conservation actions associated with the Habitat Conservation Plan in Merced County, California. We also announce a 60-day public comment period on the permit application, including the draft EA and the proposed HCP. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

DATES: To ensure consideration, please send your written comments by March 16, 2015.

ADDRESSES: Please address written comments to Mike Thomas, Chief, Conservation Planning Division, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address in **ADDRESSES** or at (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice advises the public that we, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental assessment (EA) under the National Environmental Policy Act of 1969, as amended (NEPA), in response to an application from Wright Solar Park, LLC (the applicant) for an incidental take permit (ITP) pursuant to the Endangered Species Act of 1973, as amended (Act). The application addresses the proposed incidental take (take) of three animal species proposed as ''covered species'' within a 5,181-acre permit area during a proposed permit term of 40 years. The applicant has prepared the draft Wright Solar Park Habitat Conservation Plan (HCP) to describe and implement a conservation plan that will minimize and mitigate environmental effects associated with the construction, operation, maintenance, and decommissioning of an up-to-200-megawatt photovoltaic power generating facility and implementation of conservation actions associated with the Habitat Conservation Plan in Merced County, California. We also announce a 90-day public comment period on the permit application, including the draft EA and the proposed HCP. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR parts 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.;* Act).

Availability of Documents

You may obtain copies of the draft EA and the draft HCP from the individuals in **FOR FURTHER INFORMATION CONTACT**, or from the Sacramento Fish and Wildlife Office Web site at *http://www.fws.gov/sacramento.* Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Background Information

Section 9 of the Act (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR part 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. ''Take'' of federally listed fish or wildlife is defined under the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct'' (16 U.S.C. 1532(19). The term ''harm'' is defined in the regulations as ''an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering'' (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed fish and wildlife species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicants will minimize and mitigate the impact of such taking to the maximum extent practicable;

(3) The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The draft HCP addresses, and the applicant seeks incidental take authorization for, three animal species (two federally endangered and one federally threatened). The proposed permit would provide take authorization for all species identified in the draft HCP as covered species.

The following two federally listed as endangered species are proposed to be included as covered species in the proposed HCP:

Blunt-nosed leopard lizard (*Gambelia sila*)

San Joaquin kit fox (*Vulpes macrotis mutica*)

The following federally listed as threatened species is proposed to be included as a covered species in the proposed HCP:

Central California distinct population segment of the California tiger salamander (*Ambystoma californiense*)

Implementation of activities proposed for coverage under the proposed ITP includes the following general categories:

(1) Construction and operation activities within solar sites;

(2) Management and maintenance activities within movement corridors;

(3) Management activities within the areas designated for conservation (conservation sites), including monitoring and reporting actions;

(4) Activities associated with implementation of the conservation program specified in the draft HCP;

(5) Decommissioning; and

(6) Implementation of the conservation program.

Construction-related activities could include grading and compaction, trenching, paving of access roads, installation of solar arrays, meteorological stations, transmission lines, septic leech fields, fencing, and landscaping. Construction of solar facilities is anticipated to be completed over a 26-month period from the commencement of the initial development, and is anticipated to be complete by late 2016. Operation-related activities could include solar panel maintenance, on-site parking, operation of solar modules, inspection, repair of equipment, and operation of lighting. Typical activities associated with decommissioning of the solar energy facility include removal of all solar electric systems, buildings, cabling, electrical components; breaking up of concrete pads and foundations; removal of access roads; additional grading; and replacement of soil disturbed from decommissioning. Preservation/enhancement and conservation plan management activities could include vegetation control (*i.e.,* grazing and mowing), fence installation, and special status species monitoring (*i.e.,* surveys such as trapping, use of remote cameras, and spotlighting).

The proposed covered activities related to development, operations, maintenance and decommissioning of the solar sites would result in the permanent or temporary disturbance of up to 2,731 acres of existing land cover within the proposed 5,181-acre permit area. The proposed covered activities related to management of the conservation sites would also result in some disturbance of land cover, but overall these actions are expected to benefit the covered species. The solar site parcels encompass 2,731 acres, and conservation sites total 2,450 acres. The covered lands within the solar park area consist of low rolling hills, and are currently actively used as dry-farmed agricultural land. Surrounding land uses include open space, rangeland, active and inactive agricultural land, and some existing and potential urban development. The proposed HCP conservation strategy prescribes conditions for implementing each covered activity that avoid or minimize potential take of the covered species, and identifies mitigation for species impacts that cannot be avoided.

National Environmental Policy Act Compliance

Our proposed permit issuance decision triggers compliance with NEPA, which requires that environmental information be available to public officials and citizens before Federal decisions are made and before Federal actions are taken. We prepared the draft EA to inform the public of the proposed HCP; our proposed permit action; alternatives to that action; the environmental impacts of the alternatives, including the proposed action; and any irreversible commitments of resources; and to address comments received during early public scoping efforts.

Alternatives in the Draft Environmental Assessment

The Service is providing notice of the availability of our draft EA, which evaluates the impacts of the Proposed Action Alternative (including the HCP), and a No Action Alternative.

No Action Alternative: Under the No Action Alternative, we would not issue an incidental take permit to the applicant; the applicant would not implement an HCP and would avoid the take of the proposed covered species. The No Action Alternative would not address the applicant's underlying needs, would not contribute to meeting the State of California's renewable energy goals, and would not assist with the offset of carbon emissions. The 5,181 acres identified as the permit area would likely remain as agricultural land and undisturbed open space, and the 2,731 acres identified as conservation sites would not be permanently conserved. As a result, there would be no conservation benefit to covered species as a result of the Proposed Action. Agricultural activities, such as disking and harvesting, would likely continue, resulting in continued reduced habitat quality as a result of frequent vegetation removal and soil disturbance within the solar park area.

Proposed Action Alternative: Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed HCP, which includes the covered activities and the conservation measures described in Background Information, and described with more detail in the applicant's proposed Wright Solar Park Habitat Conservation Plan.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community,

Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

(1) Biological information concerning the species;

(2) Relevant data concerning the species;

(3) Additional information concerning the range, distribution, population size, and population trends of the species;

(4) Current or planned activities in the subject area and their possible impacts on the species; and

(5) The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and

(6) Identification of any other environmental issues that should be considered with regard to the proposed transmission line and permit action.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of desert tortoise. We will make our final permit decision no sooner than 30 days after the public comment period closes.

Dated: January 7, 2015.

Paul B. McKim,

Acting Deputy Regional Director, Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2015–00390 Filed 1–12–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B814.IA001213]

Renewal of Agency Information Collection for Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information titled ''Tribal Energy Resource Agreements'' (TERAs) under the Office of Indian Energy and Economic Development Office (IEED) authorized by OMB Control Number 1076–0167. This information collection expires March 31, 2015.

DATES: Submit comments on or before March 16, 2015.

ADDRESSES: You may submit comments on the information collection to Mr. Stephen Manydeeds, Chief, Division of Energy and Mineral Development, 13922 Denver West Parkway, Suite 200, Lakewood, CO 80401; facsimile: (303) 969–5273; email: *Stephen.Manydeeds@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Manydeeds, telephone: (720) 407–0600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005, 25 U.S.C. 3503 authorizes the Secretary of the Interior to approve individual Tribal Energy Resource Agreements (TERAs). The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary.

This information collection conducted under TERA regulations at 25 CFR 224 will allow IEED to determine the capacity of tribes to manage the development of energy resources on tribal lands. Information collection:

- Enables IEED to engage in a consultation process with tribes that is designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERA agreements;
- Provides wide public notice and opportunity for review of TERA agreements by the public, industry, and government agencies;
- Ensures that the public has an avenue for review of the performance of tribes in implementing a TERA;
- Creates a process for preventing damage to sensitive resources as well as ensuring that the public has fully communicated with the tribe in the petition process;
- Ensures that a tribe is fully aware of any attempt by the Department of the Interior to resume management authority over energy resources on tribal lands; and
- Ensures that the tribal government fully endorses any relinquishment of a TERA.

II. Request for Comments

The Assistant Secretary—Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0167.

Title: Tribal Energy Resource Agreements.

Brief Description of Collection: Submission of this information is required for Indian tribes to apply for, implement, reassume, or rescind a TERA that has been entered into in accordance with the Energy Policy Act of 2005 and 25 CFR 224. This collection also requires the tribe to notify the public of certain actions. A response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 14.

Frequency of Response: On occasion.

Estimated Time per Response: Ranges from 32 hours to 1,080 hours.

Estimated Total Annual Hour Burden: 10,752 hours.

Estimated Total Non-hour Cost Burden: $48,200.

Dated: January 7, 2015.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–00388 Filed 1–12–15; 8:45 am]

BILLING CODE 4310–G1–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–943]

Certain Wireless Headsets; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 8, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of One-E-Way, Inc. of Pasadena, California. A supplement was filed on December 24, 2014. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless headsets by reason of infringement of certain claims of U.S. Patent No. 7,865,258 (''the '258 patent'') and U.S. Patent No. 8,131,391 (''the '391 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is avaiable for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 7, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless headsets by reason of infringement of one or more of claims 3, 4, 8, 10, and 11 of the '258 patent and claims 1–6 and 10 of the '391 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

One-E-Way, Inc., 3016 E. Colorado Boulevard #70848, Pasadena, CA 91107

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan

Sony Corporation of America, 550 Madison Avenue, New York, NY 10022

Sony Electronics, Inc., 16530 Via Esprillo, San Diego, CA 92127

Sennheiser Electronic GmbH & Co. KG, Am Labor 1, 30900 Wedemark, Germany

Sennheiser Electronic Corporation, 1 Enterprise Drive, Old Lyme, CT 06371

BlueAnt Wireless Pty, Ltd., 658 Church Street, Building 1, Level 4, Richmond, VIC 3121, Australia

BlueAnt Wireless, Inc., 125 South Wacker Drive, Suite 300, Chicago, IL 60606

Creative Technology Ltd., 31 International Business Park, #03–01, Lobby C, Creative Resource, Singapore 609921

Creative Labs, Inc., 1901 McCarthy Boulevard, Milpitas, CA 95035

Beats Electronics, LLC, 8501 Steller Drive, Culver City, CA 90232

Beats Electronics International Ltd., The Malt House South, Grand Canal Quay, Dublin 2, Ireland

Jawbone, Inc., 99 Rhode Island Street, 3rd Floor, San Francisco, CA 94103,

GN Netcom A/S d/b/a Jabra, Lautrupbjerg 7, Ballerup, København, 2750, Denmark

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

By order of the Commission.

Issued: January 8, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–00325 Filed 1–12–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of breach investigations completed during calendar year 2013. This summary addresses four proceedings under section 337 of the Tariff Act of 1930. There were no breach investigations in title VII proceedings or rules violation investigations completed in 2013. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, section 337 of the Tariff Act of 1930, the North American Free Trade Agreement (NAFTA) Article 1904.13, and safeguard-related provisions such as sections 202 of the Trade Act of 1974, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) and confidential business information (''CBI'') (safeguard-related provisions and section 337) of other parties or non-parties. *See, e.g.,* 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; and 19 U.S.C. 1516a(g)(7)(A); 19 CFR 207.100, *et. seq.* The discussion below describes APO breach investigations that the Commission has completed during calendar year 2013, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); 74 *FR* 54071 (October 21, 2009); 75 FR 54071 (October 27, 2010), 76 FR 78945 (December 20, 2011), 77 FR 76518 (December 28, 2012), and 78 FR 79481 (December 30, 2013). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

A. Antidumping and Countervailing Duty Investigations

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: Storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by

the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in safeguard investigations contain similar though not identical provisions.

B. Section 337 Investigations

The APOs in section 337 investigations differ from those in title VII investigations as there is no set form and provisions may differ depending on the investigation and the presiding administrative law judge. However, in practice, the provisions are often quite similar. Any person seeking access to CBI during a section 337 investigation including outside counsel for parties to the investigation, secretarial and support personnel assisting such counsel, and technical experts and their staff who are employed for the purposes of the investigation is required to read the APO, agree to its terms by letter filed with the Secretary of the Commission indicating that he agrees to be bound by the terms of the Order, agree not to reveal CBI to anyone other than another person permitted access by the Order, and agree to utilize the CBI solely for the purposes of that investigation.

In general, an APO in a section 337 investigation will define what kind of information is CBI and direct how CBI is to be designated and protected. The APO will state what persons will have access to the CBI and which of those persons must sign onto the APO. The APO will provide instructions on how CBI is to be maintained and protected by labeling documents and filing transcripts under seal. It will provide protections for the suppliers of CBI by notifying them of a Freedom of Information Act request for the CBI and providing a procedure for the supplier to take action to prevent the release of the information. There are provisions for disputing the designation of CBI and a procedure for resolving such disputes. Under the APO, suppliers of CBI are given the opportunity to object to the release of the CBI to a proposed expert. The APO requires a person who discloses CBI, other than in a manner authorized by the APO, to provide all pertinent facts to the supplier of the CBI and to the administrative law judge and to make every effort to prevent further disclosure. The APO requires all parties to the APO to either return to the suppliers or destroy the originals and all copies of the CBI obtained during the investigation.

The Commission's regulations provide for certain sanctions to be imposed if the APO is violated by a person subject to its restrictions. The names of the persons being investigated for violating an APO are kept confidential unless the sanction imposed is a public letter of reprimand. 19 CFR 210.34(c)(1). The possible sanctions are:

1. An official reprimand by the Commission.

2. Disqualification from or limitation of further participation in a pending investigation.

3. Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to 19 CFR 201.15(a).

4. Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice.

5. Making adverse inferences and rulings against a party involved in the violation of the APO or such other action that may be appropriate. 19 CFR 210.34(c)(3).

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the facts and obtain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out

Continued

the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction. However, a warning letter is considered in a subsequent APO breach investigation.

Sanctions for APO violations serve three basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; (b) disciplining breachers; and (c) deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO. In section 337 investigations, technical experts and their staff who are employed for the purposes of the investigation are required to sign onto the APO and agree to comply with its provisions.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g), 19 U.S.C. 1333(h), 19 CFR 210.34(c).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APOB investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI/CBI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI/CBI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel participating in Commission investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI or CBI omitted from brackets. However, the confidential information is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI or CBI in a recoverable form was a breach of the APO.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient.

In addition, attorneys who are signatories to the APO representing

in 19 CFR 207.100—207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific APO Breach Investigations

Case 1: This case involved a draft complaint that inadvertently contained CBI from a previous Commission investigation. The draft complaint was generated by one law firm, transferred to a second firm, then transferred to a third firm, and then filed with the Commission as an actual complaint.

One attorney at the first firm breached an APO when he transferred to other law firms a draft complaint which he believed contained only public information, but instead included attachments containing CBI from a previous Commission section 337 investigation. Two attorneys at the firm to which the draft complaint had been first transferred also breached the APO. The lead attorney in this second law firm was responsible for the transfer of the draft complaint containing the CBI to a third law firm which was expected to use the document to draft a complaint in a new section 337 investigation. Upon learning that there might be CBI included in the draft complaint and its attachments, the lead attorney and another attorney in that firm assigned a non-signatory attorney to confirm whether documents were not redacted. The lead attorney at the third law firm to which the draft complaint was ultimately transferred and five other attorneys at that law firm were signatories to the complaint that was filed in the new section 337 investigation which included the attachments containing CBI from the original section 337 investigation.

The draft complaint was prepared by paralegals at the first law firm. They were expected to use only public information from the record of a previous Commission section 337 investigation and from public information obtained from the USPTO. The paralegals mistakenly included documents from the previous investigation that contained CBI, although the pages were clearly marked as containing CBI. The attorney responsible for the draft complaint did not check to be sure all the information in the complaint was public. He supervised the preparation of two USB drives, on which the assembled documents were copied, to be given to attorneys in two other law firms for use in a public filing for a future section 337 investigation. The Commission issued a warning letter to the attorney. In doing so, the Commission considered several mitigating circumstances, including the unintentional nature of the breach, that the attorney did not directly disclose the CBI to a non-signatory to the APO, that the attorney took immediate steps to investigate the situation that led to the inclusion of the CBI in the materials forwarded to the second firm, and that the attorney had not previously breached a Commission APO. The attorney received the warning letter for his breach because it was ultimately his responsibility to ensure that the draft complaint contained no CBI subject to the APO in the original section 337 investigation.

The Commission issued private letters of reprimand to two attorneys in the second law firm. The lead attorney was held responsible for the breach involving the transfer of the CBI to the non-signatories at the third law firm. The Commission found that the attorney was ultimately responsible for ensuring that the materials to be transferred to non-signatories for use in a matter unrelated to the original Commission investigation did not contain materials that were subject to the APO. The Commission considered certain mitigating circumstances; namely, the attorney was not responsible for the initial collection of the documents and was merely an intermediary in the chain of responsibility for passing the documents from one law firm to another, the firm took immediate steps to investigate its role in the breach, including locating and securing copies of the CBI at issue, and the attorney had not previously breached a Commission APO.

The lead attorney and a second attorney in the law firm were both found responsible for involving a non-signatory attorney in the investigation of the original APO breach. In reaching its decision to issue private letters of reprimand to both attorneys, the Commission considered the presence of aggravating circumstances. First, due to their actions, a non-signatory had access to and could have read the CBI. In addition, the breach was not inadvertent or unintentional and the Commission was not informed of this breach until the lead attorney responded to the Commission's request for information regarding the original breach. Finally, the Commission found that by involving the non-signatory in the investigation of the APO breach, the attorneys were interpreting the APO without seeking Commission guidance.

The Commission considered whether good cause existed, pursuant to Commission rule 201.15(a), to sanction the non-signatory attorney in the second firm who was assigned to investigate the initial APO breach. The Commission did not sanction the attorney but issued a warning letter. It considered the mitigating circumstances that the attorney exercised some caution by not actually reading the CBI documents and that he had not previously breached a Commission APO. The Commission noted that the attorney was aware that he was a non-signatory to the APO and noted that his actions directly contributed to the disclosure of CBI by agreeing to review the CBI documents as part of the investigation into the APO breach.

The Commission considered whether to sanction six attorneys at the third law firm because they were signatories to the public complaint which was filed in a new section 337 investigation, and which included the attachments containing CBI which were subject to an APO in an earlier investigation. Since none of the attorneys in the third firm were signatories to the APO in the original section 337 investigation the Commission did not find that they breached the APO but, instead, considered whether there was good cause to sanction them under Commission rule 201.15(a). The Commission determined that there was good cause to sanction the lead attorney and, thus, issued a private letter of reprimand to the lead attorney. The Commission noted that the attorney's actions directly led to the disclosure of CBI, which was clearly marked as such, by including the CBI as public exhibits to a complaint in a Commission investigation unrelated to the original section 337 investigation. It was ultimately the lead attorney's responsibility to ensure that the materials that were used in the filing of an unrelated complaint contained only materials that were not subject to the APO in the original investigation. The Commission noted certain mitigating circumstances; namely, the attorney was not responsible for the initial collection of the documents in question but was merely in the chain of receiving parties of the documents being transmitted from one law firm to another; the breach was unintentional; his law firm promptly investigated the circumstances of the breach and took immediate corrective measures to ensure that access to the CBI was restricted; he had not previously breached a Commission APO; and his firm assured the

Commission that it will take extra caution to prevent a similar occurrence in the future and will not rely on the representations of co-counsel regarding the confidential nature of documents.

The Commission also issued warning letters to the remaining five attorneys at the third law firm who were not signatories to the original APO and who had signed the complaint in the new unrelated investigation. Two of the five attorneys participated in filing the complaint. The Commission stated that the actions of the two attorneys directly led to the disclosure of CBI, which was clearly marked as such, by including the CBI as public exhibits to a complaint in a Commission investigation unrelated to the original section 337 investigation. In issuing warning letters, the Commission noted the same mitigating factors mentioned above with regard to the lead attorney in the third firm who received a private letter of reprimand.

Case 2: The Commission determined that two attorneys breached the APO by filing a confidential version of an initial determination (''ID'') containing CBI, as part of the public appendix to a brief in district court litigation. The filing was made through the district court's electronic-case-filing (''ECF'') system.

The confidential version of the ID was filed by a paralegal at the law firm under the supervision of the two attorneys, both of whom had subscribed to the APO. The law firm later discovered the disclosure and notified the opposing party. The CBI was publicly available for six weeks. The law firm requested the district court to restrict access to the electronic filing and the district court complied. The district court notified the law firm that the court did not track access to ECF documents and could not determine who, if anyone had accessed the ID electronically. The law firm conducted an inquiry into whether any of the employees of the party it represented in the district court litigation had accessed the ID. The opposing party also conducted an inquiry into whether any of its employees had accessed the ID. From these inquires, the law firm is not aware of any unauthorized access to the CBI.

The Commission took into consideration the following mitigating factors: The breach was inadvertent; neither the attorneys at issue nor the law firm as a whole have breached a Commission APO in the past; the law firm discovered its own breach and took prompt steps to try to cure the breach; and the law firm implemented actions to improve internal procedures to make this type of breach less likely in the future. The Commission noted, however, that the law firm was not able to demonstrate whether anyone improperly accessed the CBI while it was publicly available so the Commission presumes public access to the confidential documents. Thus, in accordance with past Commission practice, the Commission issued private letters of reprimand to the two attorneys.

Case 3: The Commission determined that an attorney breached an APO by filing public versions of certain documents, which contained the CBI of the opposing party.

Counsel for the opposing party contacted the Secretary to the Commission to notify the Secretary that public versions of certain documents, specifically the public versions of a response to a petition for review and summary of the response, filed by the attorney in question contained CBI. The Secretary's office promptly removed the CBI documents from the public record. The attorney subsequently re-filed the public version documents without the CBI. An audit trail for the CBI documents showed that the documents were accessed by a non-party to the investigation.

The Commission issued a private letter of reprimand to the attorney for the APO breach. The Commission noted as mitigating factors that once the attorney was notified that the public version of the documents contained CBI the attorney moved quickly to cure the disclosure, the disclosure of the CBI was inadvertent, the attorney has not been involved in any alleged APO breach in the past two years, and the attorney had the ALJ's instruction not to over-redact in mind while preparing the public versions of the brief. However, the Commission points out that the aggravating factors were that the breach was discovered by opposing counsel and not the alleged breaching attorney, unauthorized persons accessed the CBI at issue, and the attorney acted unilaterally in deciding that certain information did not constitute CBI without seeking guidance from the Commission.

Case 4: The Commission determined that the lead attorney and the lead attorney's law firm did not breach the APO when documents containing CBI were stolen from the locked car trunk of a paralegal employed by the law firm.

The law firm had internal practices and procedures regarding the protection of CBI governed by an APO including policies regarding the maintenance and transport of CBI. In some cases, the law firm did let its personnel perform work at home involving CBI as long as they used and kept the CBI in a locked facility, which could not be accessed by others. The paralegal had such an arrangement in his home.

The provisions of the APO did not specifically prohibit the transport of documents containing CBI to a home office or require personal custody and maintenance of the CBI in a locked facility of the home office after such transport. The lead attorney promptly notified the proper authorities after learning of the theft.

The Commission issued a letter to the lead attorney notifying the attorney that the Commission does not consider the law firm or lead attorney to have breached the APO, but the letter does recommend that the law firm review its procedures regarding the protection of CBI, and the law firm's enforcement of such procedures.

By order of the Commission.

Issued: January 7, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–00299 Filed 1–12–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection COPS Office Progress Report

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 79 FR 66405, November 7, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until February 12, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or

additional information, please contact Kimberly J. Brummett, Program Specialist, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (phone: 202–353–9769). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the 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/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* COPS Office Progress Report.

3. *The agency form number:* N/A.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the COPS Progress Report by recipients of COPS hiring and non-hiring grants. Grant recipients must complete this report in order to inform COPS of their activities with their awarded grant funding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,200 grantees will be required to submit an active progress report each quarter. The estimated range of burden for respondents is expected to be between 20 minutes to 25 minutes for each quarterly completion.

6. *An estimate of the total public burden (in hours) associated with the collection:*

The estimated public burden associated with this collection is 2000 hours. It is estimated that respondents will take up to 25 minutes each quarter to complete the quarterly progress report. The burden hours for collecting respondent data sum to 2000 hours (1200 respondents × .4167 hours × 4 times annually = 2000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: January 7, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–00274 Filed 1–12–15; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 7, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States* v. *ARG Corporation,* Civil Action No. 10–cv–311.

In August 2010, the United States filed suit against ARG Corporation (''ARG'') and Norbert Toubes under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for the recovery of response costs incurred at the South Bend Lathe Superfund Site (the ''Site''), in South Bend, Indiana. The Consent Decree resolves ARG's and Mr. Toubes' CERCLA liability for past response costs at the Site for a total of $500,000. ARG and Mr. Toubes are required to pay $250,000 on February 1, 2015 and $250,000 on August 1, 2015.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *ARG Corporation,* D.J. Ref. No. 90–11–3–09441. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–00275 Filed 1–12–15; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–132)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 6,133,036, Preservation of Liquid Biological Samples, NASA Case No. MSC–22616–2 and USPN 6,716,392, Preservation of Liquid Biological Samples, NASA Case No. MSC–22616–3 to Coated Preservative Products, LLC, having its principal place of business in Warner Robins, GA. The patent rights in these inventions have been assigned to the United States of America as

represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AL, Houston, Texas 77058; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office, Johnson Space Center, 2101 NASA Parkway, Mail Code AO52, Houston, TX 77058, Phone (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–00329 Filed 1–12–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects.

DATES: Written comments on this notice must be received by March 16, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: Request for Proposals.

OMB Approval Number: 3145–0080.

Expiration Date of Approval: June 30, 2015.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.2—''Solicitation and Receipt of Proposals and Information'' prescribes policies and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 41,850 hours.

Dated: January 7, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–00271 Filed 1–12–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. NSF will publish periodic summaries of the proposed projects.

DATES: Written comments on this notice must be received by March 16, 2015, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance

Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: Grantee Reporting Requirements for the Engineering Research Centers (ERCs).

OMB Number: 3145–0220.

Expiration Date of Approval: May 31, 2015.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

Proposed Project: The Engineering Research Centers (ERC) program supports an integrated, interdisciplinary research environment to advance fundamental engineering knowledge and engineered systems; educate a globally competitive and diverse engineering workforce from K–12 on; and join academe and industry in partnership to achieve these goals. ERCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

ERCs conduct world-class research with an engineered systems perspective that integrates materials, devices, processes, components, control algorithms and/or other enabling elements to perform a well-defined function. These systems provide a unique academic research and education experience that involves integrative complexity and technological realization. The complexity of the systems perspective includes the factors associated with its use in industry, society/environment, or the human body.

ERCs enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. ERCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers are required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, ERCs also are required to submit management and performance indicators annually to NSF via a data collection Web site that is managed by a technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of cash and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the ERC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Vision and impact, (2) strategic plan, (3) research program, (4) innovation ecosystem and industrial collaboration, (5) education, (6) infrastructure (leadership, management, facilities, diversity) and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, progress toward center goals, problems the Center has encountered in making progress towards goals and how they were overcome, plans for the future and anticipated research and other barriers to overcome in the following year, and specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued ERC program maintenance and growth.

Estimate of Burden: 150 hours per center for 17 centers for a total of 2,550 hours.

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 17 ERCs.

Dated: January 7, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–00272 Filed 1–12–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: February 27, 2015, 12:00 p.m.–4:00 p.m. EST, Teleconference.

Place: National Science Foundation, Room 1020, Safford I Building, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8820.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To provide updates on agency activities and to discuss the Committee's draft annual report due 15 March 2015.

Dated: January 7, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–00273 Filed 1–12–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 27, 2015.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

8612 Safety Study: Integrity Management of Gas Transmission Pipelines in High Consequence Areas

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, January 21, 2015.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Terry Williams, (202) 314–6100 or by email at *Terry.Williams@ntsb.gov.*

Dated: Friday, January 9, 2015.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2015–00439 Filed 1–9–15; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0226]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 16, 2014 (79 FR 62209).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Assessment of Cyber Security for Byproduct Materials Licensees.

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* One-time.

6. *Who will be required or asked to report:* All medical, industrial, and academic users of Category 1 and 2 radioactive materials.

7. *An estimate of the number of annual responses:* 720.

8. *The estimated number of annual respondents:* 720.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,800.

10. *Abstract:* The NRC is seeking to better understand the cyber security threats confronting medical, industrial, and academic users of Category 1 and 2 radioactive materials. This information will be gathered utilizing a questionnaire or set of questionnaires issued to the different types of byproduct materials licensees. This is a voluntary information request.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by February 12, 2015. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 6th day of January, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–00305 Filed 1–12–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0088]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 3, 2014 (79 FR 59867). No comments were received.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

3. *Current OMB approval number:* 3150–0047.

4. *The form number if applicable:* NRC Form 450F.

5. *How often the collection is required:* On Occasion.

6. *Who will be required or asked to report:* NRC-regulated facilities and their contractors who require access to, and possession of, NRC classified information.

7. *An estimate of the number of annual responses:* 323.

8. *The estimated number of annual respondents:* 129.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 984.7 (832.7 reporting hours + 152 recordkeeping hours).

10. *Abstract:* The NRC-regulated facilities and their contractors who are

authorized to possess classified matter are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material. This clearance is being revised to add a voluntary form (NRC Form 450F) for fulfilling reporting requirements under § 95.17 of Title 10 of the *Code of Federal Regulations.*

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by February 12, 2015February 12, 2015. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at (202) 395–7315.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 6th day of January, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–00306 Filed 1–12–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1041, EA–14–190, NRC–2014–0281]

In the Matter of STP Nuclear Operating Company, South Texas Project Electric Generating Station, Independent Spent Fuel Storage Installation: Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; modification.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a general license to the STP Nuclear Operating Company, authorizing the operation of the South Texas Project Electric Generating Station Independent Spent Fuel Storage Installation (ISFSI), in accordance with its regulations. The Order is being issued to STPNOC to impose additional security requirements because STPNOC has identified near term plans to store spent fuel in an ISFSI under the general license provisions of the NRC's regulations. The Order was issued on December 30, 2014, and became effective immediately.

ADDRESSES: Please refer to Docket ID NRC–2014–0281 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0281. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain-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.*
- 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: L. Raynard Wharton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9196; email: *Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to § 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice, in the matter of South Texas Project Electric Generating Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately). The text of the Order (w/o attachments, contain Safeguards Information) is as follows:

II. Further Information

I

The NRC has issued a general license to STPNOC, authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended and 10 CFR part 72. This Order is being issued to STPNOC because STPNOC has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has

conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, and the environment, continue to be adequately protected, and that the common defense and security continue to be adequately protected, in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at STPNOC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to promote the common defense and security and to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions should be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that STPNOC is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, STPNOC's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. STPNOC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the South Texas Project Electric Generating Station's physical security plan. STPNOC shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. STPNOC must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, STPNOC must receive written verification from the NRC (Office of Nuclear Material Safety and Safeguards) that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B. 1. STPNOC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause STPNOC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide STPNOC's justification for seeking relief from, or variation of, any specific requirement.

2. If STPNOC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, STPNOC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, STPNOC must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. STPNOC shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. STPNOC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

STPNOC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by STPNOC as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, STPNOC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, STPNOC and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register.** Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which STPNOC relies and the reasons as to why the Order should not have been issued. If a person other than STPNOC requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave

to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315, must be filed in accordance with the NRC's E-filing rule (72 FR 49139; August 28, 2007). The E-filing process requires participants to submit and serve all adjudicatory documents electronically, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by STPNOC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), STPNOC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is

published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions of this Order, as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 30th day of December, 2014.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Acting Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the Federal Register notice

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated June 14, 2013

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (*e.g.,* driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with ''Protection of Information,'' in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past three years, and/or academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government-granted security clearance (*i.e.,* Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.,* Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.,* Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to

make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official,'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information,'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (*e.g.,* a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–03B46M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–5877, or by email to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an email to *det@nrc.gov.* The email must include the licensee's company name, address, point of contact (POC), POC email address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–415–7513. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right to Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.,* law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2015–00379 Filed 1–12–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457, STN 50–454 and STN 50–455; NRC–2012–0203]

Issuance; Exelon Generation Company, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's decision under 10 CFR 2.206; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision with regard to a petition dated April 29, 2012, filed by Mr. Barry Quigley (the petitioner), requesting that the NRC take action with regard to Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2. The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2012–0203 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0203. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision (ADAMS Accession No. ML14239A313), on a petition filed by the petitioner on April 20, 2012 (ADAMS Accession No. ML12130A318).

The petitioner requested that the NRC immediately shutdown Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, until all turbine building (TB) high-energy line break (HELB) concerns were identified and those important to safety were corrected.

As the basis of the request, the petitioner asserted:

- An adequate supply of combustion air for the emergency diesel generators (EDGs) is threatened because the combustion air can be diluted with steam. Although the combustion air is drawn from an air shaft (not the TB), it is also the same air shaft that supplies ventilation for the EDG room. Under certain conditions, the ventilation damper alignment is such that steam that enters the EDG room from the ventilation exhaust can back flow into the inlet air shaft. From there it can be drawn into the engine, potentially starving the engine of air.
- The effects of high temperature in the engineered safeguards features (ESF) switchgear (SWGR) rooms on the protective relaying setpoints have not been evaluated. The concern is that high temperatures could alter the setpoints such that protective actions occur under normal loading conditions.
- The current method of analysis for TB HELB uses a ''lumped volume'' approach wherein the mass and energy (M&E) of the ruptured line mixes instantly with the entire volume before flowing into the areas of concern. Because this substantially reduces the energy flow, it does not always give conservative results. For example, the petitioner's preliminary assessment using the

subdivided volume feature in GOTHIC showed that the structural limits on the block wall between the ESF SWGR rooms would be substantially exceeded.

• There has been no structured and detailed review of the licensing requirements for HELB.

On May 14, 2012, the petitioner and the licensee met with the NRC's Petition Review Board. The meeting provided the petitioner and the licensee an opportunity to provide additional information and to clarify issues cited in the petition. On November 15, 2012, the petitioner and the licensee again met with the NRC's Petition Review Board at the request of the Petition Review Board. The transcripts of these meetings were treated as supplements to the petition and are available in the ADAMS (Accession Nos. ML 12145A633 and ML 12347A354, respectively).

The NRC sent a copy of the proposed director's decision to the petitioner and the licensee for comment on June 18, 2014. The petitioner and the licensee were asked to provide comments within 30 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. The staff did not receive any comments on the proposed director's decision.

The Director of Nuclear Reactor Regulation has determined that the request, to require immediate shutdown of Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, until all turbine building (TB) high-energy line break (HELB) concerns were identified and those important to safety were corrected be denied. The Director of Nuclear Reactor Regulation has determined to partially grant the petition in that the licensing basis requirements for high energy line break were reviewed during the review of the application for the Braidwood/Byron measurement uncertainty recapture uprate, which was completed in the February 7, 2014 (ADAMS accession No. ML13281A000). The reasons for this decision are explained in the director's decision NRC–2012–0203 pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations.

The NRC will file a copy of the director's decision with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 22nd day of December, 2014.

For the Nuclear Regulatory Commission.

William Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–00369 Filed 1–12–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors: Sunshine Act Meeting

DATES AND TIMES: On January 6, 2015, members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service met in Washington, DC, via teleconference, and voted unanimously to move their previously announced January 7, 2015, meeting to January 6, 2015. In addition, the members voted to close the meeting to public observation and to revise the items to be considered. The Committee determined that no earlier public notice was possible.

MATTERS CONSIDERED:

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Governors' Executive Session.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service certified that the meeting might be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at 202–268–4800.

Julie S. Moore,

Secretary, Board of Governors.

[FR Doc. 2015–00506 Filed 1–9–15; 4:15 pm]

BILLING CODE P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Evidence for Application of Overall Minimum: OMB 3220–0083.

Under section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. This is referred to as the Social Security Overall Minimum Guarantee, which is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of Forms G–319, Statement Regarding Family and Earnings for Special Guaranty Computation, and G–320, Student Questionnaire for Special Guaranty Computation. One response is required of each respondent. Completion is required to obtain or retain benefits. The RRB proposes non-burden impacting editorial changes to Forms G–319 and G–320.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
G–319 (completed by the employee)			
With assistance	5	26	2

ESTIMATE OF ANNUAL RESPONDENT BURDEN—Continued

Form number	Annual responses	Time (minutes)	Burden (hours)
Without assistance	230	55	211
G–319 (completed by spouse)			
With assistance	5	30	2
Without assistance	10	60	10
G–320			
(Age 18 at Special Guaranty Begin Date or Special Guaranty Age 18 Attainments)	30	15	7
G–320			
(Student Monitoring done in Sept, March and at end of school year)	10	15	2
Total	290		234

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2015–00318 Filed 1–12–15; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 11a1–1(T) SEC File No. 270–428, OMB Control No. 3235–0478.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 11a1–1(T) (17 CFR 240.11a1–1(T)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

On January 27, 1976, the Commission adopted Rule 11a1–1(T)—Transactions Yielding Priority, Parity, and Precedence (17 CFR 240.11a1–1(T)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''), to exempt certain transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principal purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 663 respondents that require an aggregate total of 19 hours to comply with this rule. Each of these approximately 663 respondents makes an estimated 20 annual responses, for an aggregate of 13,260 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 19 hours (13,260 x 5 seconds/60 seconds per minute/60 minutes per hour = 19 hours). The approximate cost per hour is $323, resulting in a total cost of compliance for the annual burden of $6,137 (19 hours @$323).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: January 7, 2015.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2015–00293 Filed 1–12–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, January 14, 2015 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to adopt rules under the

Securities Exchange Act of 1934 (''Exchange Act'') governing the security-based swap data repository (''SDR'') registration process, the duties of such repositories, and the core principles applicable to such repositories.

• The Commission will consider whether to adopt Regulation SBSR under the Exchange Act to provide for regulatory reporting of security-based swap information and the public dissemination of security-based swap transaction, volume, and pricing information by registered SDRs.

• The Commission will consider whether to propose certain new rules, rule amendments, and guidance to Regulation SBSR under the Exchange Act to address, among other things, the reporting duties for cleared and platform-executed security-based swap transactions.

The duty officer determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–00418 Filed 1–9–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 15, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–00419 Filed 1–9–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74011; File No. SR–NYSEARCA–2014–149]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE ArcaBook

January 7, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 24, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE ArcaBook to: (1) Establish eligibility requirements for redistribution on a managed non-display basis and add an access fee for managed non-display data recipients, operative on January 1, 2015; and (2) establish a fee cap for redistributor internal support use, operative on March 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE ArcaBook, as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''), as follows:

• To establish eligibility requirements for redistribution of market data on a Managed Non-Display basis and establish an access fee for Managed Non-Display data recipients, operative on January 1, 2015; and

• To establish a fee cap for redistributor internal support use, operative on March 1, 2015.

Proposed Changes to Managed Non-Display Services and Fees

Non-Display Use of NYSE Arca Equities market data means accessing, processing, or consuming NYSE Arca Equities market data delivered via direct and/or Redistributor [4] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution. A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE ArcaBook and does not allow for further internal distribution or external redistribution of NYSE ArcaBook by the data recipients. Managed Non-Display Services Fees apply when a data recipient's non-

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ''Redistributor'' means a vendor or any other person that provides an NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[5]

A Redistributor approved for Managed Non-Display Services is required to report to the Exchange on a monthly basis the data recipients that are receiving NYSE ArcaBook through the Redistributor's Managed Non-Display Service. A data recipient receiving NYSE ArcaBook through a Redistributor's Managed Non-Display Service does not have any reporting requirements.

Currently, to be approved for Managed Non-Display Services, a Redistributor of the Managed Non-Display Services must be approved under the Unit-of-Count policy.[6] In connection with the retirement of the Unit-of-Count Policy,[7] eligibility for Managed Non-Display Services of NYSE ArcaBook would no longer be based on eligibility under the Unit-of-Count Policy. The Exchange proposes instead to establish eligibility requirements specifically for the redistribution of market data for Managed Non-Display Services. The Exchange also proposes to add an access fee that would apply to a data recipient that receives NYSE ArcaBook from an approved Redistributor of Managed Non-Display Services.

The proposed eligibility requirements for the provision of Managed Non-Display Services would be similar to the eligibility requirements for the Unit-of-Count Policy in that they would require the Redistributor to manage and control the access to NYSE ArcaBook for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, to be eligible to provide Managed Non-Display Services, the Redistributor would be required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE ArcaBook in the Redistributor's own messaging formats (rather than using raw message formats) by reformatting and/or altering NYSE ArcaBook prior to retransmission without affecting the integrity of NYSE ArcaBook and without rendering NYSE ArcaBook inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. The proposed eligibility requirements are similar to data distribution models currently in use and align the Exchange with other markets.[8]

The reporting requirements associated with the Managed Non-Display Service would not change. A Redistributor approved for Managed Non-Display Service would be required to report to the Exchange on a monthly basis the data recipients that are receiving NYSE ArcaBook through the Redistributor's Managed Non-Display Service. A data recipient receiving NYSE ArcaBook through a Redistributor's Managed Non-Display Service would continue not to have any reporting requirements.

In addition, the Exchange proposes to adopt an Access Fee of $1,000/month applicable only to data recipients that receive NYSE ArcaBook from an approved Redistributor of Managed Non-Display Services, operative January 1, 2015. Currently, data recipients are required to pay an Access Fee of $2,000/month to receive NYSE ArcaBook, which has not been charged to data recipients of Managed Non-Display Services of NYSE ArcaBook. Because the purpose of an access fee is to charge data recipients for access to the Exchange's proprietary market data, the Exchange believes it is appropriate to charge an access fee to all data recipients, including recipients of Managed Non-Display Services.[9] In recognition that data recipients of Managed Non-Display Services receive NYSE ArcaBook in a controlled format, the Exchange proposes to establish an Access Fee that would be applicable only to data recipients of Managed Non-Display Services and that would be half the size of the current Access Fee. In connection with this change, the Exchange also proposes to amend the Fee Schedule to specify that the current Access Fee of $2,000/month is charged to data recipients other than those receiving data through Managed Non-Display Services. The proposed Managed Non-Display Access fee would be in addition to the current Managed Non-Display Services Fee of $1,800/month by each data recipient.

Proposed Redistributor Internal Support User Fee Cap

The Exchange currently charges a Professional User Fee of $40/month. This user fee generally applies to each display device that has access to NYSE ArcaBook. The Exchange proposes to establish a Redistributor Support Fee Cap of $2,000/month, the equivalent of fees payable for 50 Professional Users per month, effective as of March 1, 2015, and to add the Redistributor Support Fee Cap to the Fee Schedule.

The proposed cap on user fees would apply to a Redistributor's internal users who receive the NYSE ArcaBook data feed and provide support to the Redistributor for the NYSE ArcaBook data feed in the areas of customer service, data quality, development, software product management, product development, programming, technical operations, technical support, and sales. These internal users would be required to be located on the Redistributor's premises or to access NYSE ArcaBook only on the Redistributor's platform. Internal users using NYSE ArcaBook in connection with trading, investment advice, newsroom activities, research, algorithmic programming for trading systems, free trials/sales promotions, personal use, or to perform any other functions not related to the provision of support functions to the Redistributor's external customers would not be included in the Redistributor Support Fee Cap.[10]

Redistributors would have to request that their Professional User Fees related to such internal support functions be counted towards the Redistributor

[5] *See* Securities Exchange Act Release Nos. 69315 (Apr. 5, 2013), 78 FR 21668 (Apr. 11, 2013) (SR–NYSEArca–2013–37) and 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–93) (''Non-Display Fee filings'').

[6] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–23) (establishing Unit-of-Count Policy for NYSE Arca BBO and NYSE Arca Trades). NYSE ArcaBook uses the Unit-of-Count Policy for purposes of determining eligibility for Managed Non-Display Services.

[7] The Exchange has separately proposed to retire the Unit-of-Count Policy and modify the eligibility requirements for Managed Non-Display Services for all of its proprietary market data products, including NYSE ArcaBook, and thereby harmonize the eligibility requirements for all NYSE Arca Equities data products that have Managed Non-Display fees. *See* SR–NYSEArca–2014–147 (filing for NYSE Arca BBO and NYSE Arca Trades) and SR–NYSEArca–2014–148 (filing for NYSE Arca Integrated Feed) (collectively, ''NYSE Arca 2014 Filings'').

[8] *See* Securities Exchange Act Release Nos. 70748 (Oct. 23, 2013), 70748 (Oct. 23, 2013), 78 FR 64569 (Oct. 29, 2013) (SR–Phlx–2013–105) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for NASDAQ OMX PHLX (''Phlx'')); 70269 (Aug. 27, 2013), 78 FR 54336 (Sept. 3, 2013) (SR–NASDAQ–2013–106) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for NASDAQ Stock Market (''NASDAQ'')); and 69182 (Mar. 19, 2013), 78 FR 18378 (Mar. 26, 2013) (SR–Phlx–2013–28) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for Phlx equities market PSX).

[9] In order to harmonize its approach to fees for its market data products, the Exchange is proposing to establish access fees for Managed Non-Display Services for NYSE Arca BBO, NYSE Arca Trades, and NYSE Arca Integrated Feed that are also half of the existing access fee for each respective data feed. *See* NYSE Arca 2014 Filings, *supra* note 7.

[10] *See* Nasdaq Global Data Policies, Oct. 10, 2014, *http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsData/datapolicies.pdf* (last visited Dec. 15, 2014), ''Non-Billable: Internal Administrative Usage Policy,'' which establishes similar standards for internal administrative usage on a non-billable basis.

Support Fee Cap. To be eligible for the fee cap, a Redistributor would have to provide the Exchange with a list of all employees who would be reported as eligible internal users, and to include in the list the job functions of the employees and explanations of their uses of NYSE ArcaBook. The Exchange reserves the right under its contracts with Redistributors to monitor use closely and be provided with updated lists of employees, their job functions and their use of NYSE ArcaBook, upon request. If an employee's use of NYSE ArcaBook does not meet the requirements of internal support function described above, it would not be eligible for the Redistributor Support Fee Cap and would be charged a separate Professional User Fee.

The proposed Redistributor Support Fee Cap would be operative March 1, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that revising the eligibility requirements for Managed Non-Display Services so that the requirements are more closely aligned with the nature of the services being provided is reasonable. The proposed additional requirements for hosting in the Redistributor's data center and for reformatting and/or altering the market data prior to retransmission are also consistent with similar requirements of other markets for the provision of managed data.[13]

The Exchange believes that the proposed Access Fee for Managed Non-Display Services is reasonable, because the data is of value to recipients, and it is reasonable to charge them a lower access fee because they are receiving the data through a Redistributor in a controlled form rather than from the Exchange in raw form. The Exchange believes that the proposed fee directly and appropriately reflects the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. NASDAQ and Phlx also both offer managed non-display data solutions and charge access fees for such services.[14] The fee is also equitable and not unfairly discriminatory because it would apply to all data recipients that choose to subscribe to Managed Non-Display Services for NYSE ArcaBook.

The Exchange believes that it is reasonable to establish the Redistributor Support Fee Cap. The purpose of the Professional User Fee is to charge for each use of NYSE ArcaBook data feed. The Exchange believes it is appropriate to charge user fees for employees who provide internal support functions at Redistributors because the business model of Redistributors is distributing data, and as a related function, providing support functions for such distribution of data. Accordingly, the internal support functions at a Redistributor contribute to the value that such Redistributor provides to its own customers, and are therefore an integral part of a Redistributor's business model. While such internal use is a value to a Redistributor and its customers, the Exchange recognizes that internal support functions differ from other uses of NYSE ArcaBook, which is why the Exchange provides for a Redistributor Support Fee Cap. The Exchange believes it is reasonable to establish a fee cap to reflect the value that such support functions serve within a Redistributor. While the NYSE anticipates that only the largest vendors would devote sufficient personnel to administrative functions to take advantage of the proposed increased fee cap, in the Exchange's view, limiting the fee exposure of its largest vendors does not unreasonably discriminate against other vendors under Section 603(a)(2) of Regulation NMS.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the feeds.

The Exchange notes that NYSE ArcaBook is entirely optional. The Exchange is not required to make NYSE ArcaBook available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE ArcaBook. Firms that do purchase NYSE ArcaBook do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE ArcaBook or any other similar products are attractively priced or not.

Firms that do not wish to purchase NYSE ArcaBook at the new prices have a variety of alternative market data products from which to choose,[15] or if NYSE ArcaBook does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE ArcaBook. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[16] Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.[17]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] *See supra* note 8.

[14] *See supra* note 8. NASDAQ offers a Managed Data Solution that assesses a monthly Managed Data Solution Administration fee of $1,500 and monthly Subscriber fees of $60 for non-professionals to $300 for professionals. *See* NASDAQ Rule 7026(b). Phlx charges a monthly Managed Data Solution Administration fee of $2,000 and a monthly Subscriber fee of $500. The monthly License fee is in addition to the monthly Distributor fee of $3,500 (for external usage), and the $500 monthly Subscriber fee is assessed for each Subscriber of a Managed Data Solution. *See* Securities Exchange Act Release No. 70748 (October 23, 2013), 78 FR 64569 (October 29, 2013) (SR–Phlx–2013–105).

[15] *See* NASDAQ Rule 7023 (Nasdaq Totalview) and BATS Rule 11.22(a) and (c) (BATS TCP Pitch and Multicast Pitch).

[16] *See* In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

[17] For example, Goldman Sachs Execution and Clearing, L.P. has disclosed that it does not use proprietary market data in connection with Sigma X, its ATS. *See* response to Question E3, available at *http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gsec-order-handling-practices-ats-specific.pdf.* By way of comparison, IEX has disclosed that it uses proprietary market data feeds from all registered stock exchanges and the LavaFlow ECN. *See http://www.iextrading.com/about/.*

U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [18]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.[19]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [20]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [21] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[22]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a

[18] NetCoalition, 615 F.3d at 535.

[19] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[20] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in *U.S.* v. *Deutsche Borse AG* and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'')

[21] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[22] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE ArcaBook unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE ArcaBook can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in November 2014 more than 80% of the transaction volume on each of NYSE Arca Equities and the Exchange's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT''), was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[23] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[24]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as various forms of ATSs, including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.[25]

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, have provided certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[26] Similarly, LavaFlow ECN

[23] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[24] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[25] FINRA's Alternative Display Facility also receives over-the-counter trade reports that it sends to CTA.

[26] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

provides market data to its subscribers at no charge.[27] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE ArcaBook, competitors offer a close substitute product.[28] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010. As noted above, LavaFlow ECN provides market data to its subscribers at no charge.[29]

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[30] of the Act and subparagraph (f)(2) of Rule 19b–4[31] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[32] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–149 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–149. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–149 and should be submitted on or before February 3, 2015.

[27] *See* ''LavaFlow—ADF Migration,'' available at *https://www.lavatrading.com/news/pdf/LavaFlow_ADF_Migration.pdf.*

[28] *See supra* note 15.

[29] *See supra* note 27.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(2).

[32] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00295 Filed 1–12–15; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 74010; File No. SR–NYSE–2014–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending the Bylaws of New York Stock Exchange LLC's Wholly-Owned Subsidiary, NYSE Regulation, Inc., To Provide That Non-Affiliated Directors of NYSE Regulation, Inc. Would Not Be Removed for Cause If They Are Acting in Good Faith in Exercising Their Responsibilities as Directors Related to NYSE Regulation's Functions and Responsibilities Delegated to It Under the Delegation Agreement Between New York Stock Exchange LLC, NYSE Regulation and NYSE Market (DE), Inc.

January 7, 2015.

On November 7, 2014, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 amend the Sixth Amended and Restated Bylaws (''Bylaws'') of its wholly-owned subsidiary, NYSE Regulation, Inc. (''NYSE Regulation''), to provide that non-affiliated directors of NYSE Regulation (''Non-Affiliated Directors'')[3] would not be removed for cause if they are acting in good faith in exercising their responsibilities as directors related to NYSE Regulation's functions and responsibilities delegated to it under the delegation agreement between the Exchange, NYSE Regulation, and NYSE Market (DE), Inc. (''Delegation Agreement'').[4] The proposed rule change was published for comment in the **Federal Register** on November 26, 2014.[5] The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Article III, Section 4 of the Bylaws to provide that Non-Affiliated Directors would not be removed for cause if they are acting in good faith in exercising their responsibilities as directors related to the functions and responsibilities of NYSE Regulation delegated to it under the Delegation Agreement. The Exchange also proposes to make a conforming change to the Bylaws so that the title of the Bylaws would read ''Seventh Amended and Restated Bylaws of NYSE Regulation, Inc.''

Currently, Article III, Section 4 of the Bylaws provides that the Exchange may only remove Non-Affiliated Directors for ''cause.'' The Exchange proposes to amend Article III, Section 4 so that ''cause'' would not encompass ''decisions or actions taken in good faith by a Non-Affiliated Director in his or her capacity as a Director of [NYSE Regulation] and related'' to NYSE Regulation's delegated regulatory functions and responsibilities under the Delegation Agreement. The Exchange stated that this proposed amendment to the Bylaws would make explicit that conduct consistent with a Non-Affiliated Director's duties and responsibilities related to NYSE Regulation's delegated functions and responsibilities would not constitute grounds for removal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[7] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed amendment to the Bylaws would make explicit that conduct consistent with a Non-Affiliated Director's duties and responsibilities related to NYSE Regulation's delegated functions and responsibilities would not constitute grounds for such director's removal from NYSE Regulation's Board of Directors. The Exchange stated that the proposed amendment to the Bylaws would provide Non-Affiliated Directors of NYSE Regulation with reasonable assurances that actions or decisions, which were consistent with their fiduciary duty and which such Non-Affiliated Directors believed, in good faith, to be the proper exercise of NYSE Regulation's delegated functions and responsibilities, could not be used as a basis to remove those directors from office. The Exchange believes that the proposal would remove uncertainty surrounding this issue and would contribute to a more effective, efficient, and orderly decision-making process by NYSE Regulation's Board of Directors. Based on the foregoing, the Commission believes the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2014–62) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00294 Filed 1–12–15; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Bylaws define ''Non-Affiliated Directors'' as U.S. Persons who are not members of the Board of Directors of Intercontinental Exchange, Inc. (''ICE'') and qualify as independent under NYSE Regulation's director independence policy. *See* Bylaws of NYSE Regulation, Inc., Article III, Section 1(A); *see also* Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07) (approving NYSE Regulation's director independence policy). The Bylaws require that a majority of NYSE Regulation's Board of Directors consist of Non-Affiliated Directors. The remaining directors are NYSE Regulation's Chief Executive Officer (''CEO'') and members of the ICE Board of Directors that qualify as independent under NYSE Regulation's director independence policy. The Exchange represents that the Bylaws do not require any affiliated directors other than the NYSE Regulation CEO.

[4] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving NYSE's business combination with Archipelago Holdings, Inc.). The Exchange has posted a copy of the Delegation Agreement on its public Web site at *www.nyse.com.*

[5] *See* Securities Exchange Act Release No. 73657 (November 20, 2014), 79 FR 70608 (SR–NYSE–2014–62).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 74012; File No. SR–Phlx–2015–03]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program in Rule 1059, Accommodation Transactions

January 7, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 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 extend the pilot program in Rule 1059, Accommodation Transactions, to allow cabinet trading to take place below $1 per option contract under specified circumstances (the ''pilot program'').

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

NASDAQ OMX PHLX Rules

* * * * *

Options Rules

* * * * *

Rule 1059. Accommodation Transactions

(a)–(b) No change.

• • • *Commentary:*

.01 No change.

.02 Limit Orders Priced Below $1: Limit orders with a price of at least $0 but less than $1 per option contract may trade under the terms and conditions in Rule 1059 above in each series of option contracts open for trading on the Exchange, except that:

(a)–(c) No change.

(d) Unless otherwise extended, the effectiveness of the Commentary .02 terminates January 5, [2015] *2016* or, upon permanent approval of these procedures by the Securities and Exchange Commission, whichever occurs first.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades, to allow the Commission adequate time to consider permanently allowing transactions to take place on the Exchange in open outcry at a price of at least $0 but less than $1 per option contract.[3] Prior to the pilot program, Rule 1059 required that all orders placed in the cabinet were assigned priority based upon the sequence in which such orders were received by the specialist. All closing bids and offers would be submitted to the specialist in writing, and the specialist effected all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and Registered Options Traders (''ROTs'') could be made at $1 per option contract, but such orders could not be placed in and must yield to all orders in the cabinet. Specialists effected all cabinet transactions by matching closing purchase or sale orders which were placed in the cabinet or, provided there was no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.[4] All cabinet transactions were reported to the Exchange following the close of each business day.[5] Any (i) member, (ii) member organization, or (iii) other person who was a non-member broker or dealer and who directly or indirectly controlled, was controlled by, or was under common control with, a member or member organization (any such other person being referred to as an affiliated person) could effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of $1.00 per contract.

On December 30, 2010, the Exchange filed an immediately effective proposal that established the pilot program being extended by this filing. The pilot program allowed transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract until June 1, 2011.[6] These lower priced transactions are traded pursuant to the same procedures applicable to $1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program.[7] On May 31, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2011 to consider whether to seek permanent approval of the temporary procedure.[8] On November 30, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

[4] Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

[5] *See* Exchange Rule 1059.

[6] Phlx Rule 1059, Commentary .02; *See* Securities Exchange Act Release No. 63626 (December 30, 2010), 76 FR 812 (January 6, 2011) (SR–Phlx–2010–185).

[7] Prior to the pilot, the $1 cabinet trading procedures were limited to options classes traded in $0.05 or $0.10 standard increments. The $1 cabinet trading procedures were not available in Penny Pilot Program classes because in those classes, an option series could trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). The pilot allows trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier) in all classes, including those classes participating in the Penny Pilot Program.

[8] *See* Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR–Phlx–2011–72).

June 1, 2012.[9] On May 29, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2012.[10] On November 1, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2013.[11] On May 8, 2013, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2014.[12] On December 4, 2013, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2015.[13] The Exchange now proposes an extension of the pilot program to allow additional time to consider its effects while the pilot program continues uninterrupted.

The Exchange believes that allowing a price of at least $0 but less than $1 will continue to better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out its position even at the $1 cabinet price (*e.g.,* the series might be quoted no bid).

The Exchange hereby seeks to extend the pilot period for such $1 cabinet trading until January 5, 2016. The Exchange seeks this extension to allow the procedures to continue without interruption.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that allowing for liquidations at a price less than $1 per option contract pursuant to the pilot program will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted. The Exchange believes the extension is of sufficient length to allow the Commission to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option in accordance with its attendant obligations and conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposal does not raise any issues of intra-market competition because it applies to all options participants in the same manner.

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 rule 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, provided that the self-regulatory organization has given 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,[16] 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]

Under Rule 19b–4(f)(6) of the Act,[19] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b–4(f)(6) becomes operative so that the pilot may continue without interruption. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the program. Based on the foregoing, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–03 on the subject line.

[9] *See* Securities Exchange Act Release No. 65852 (November 30, 2011), 76 FR 76212 (December 6, 2011) (SR–Phlx–2011–156).

[10] *See* Securities Exchange Act Release No. 67106 (June 4, 2012), 77 FR 34108 (June 8, 2012) (SR–Phlx–2012–74).

[11] *See* Securities Exchange Act Release No. 68201 (November 9, 2012), 77 FR 68871 (November 16, 2012) (SR–Phlx–2012–131).

[12] *See* Securities Exchange Act Release No. 69583 (May 15, 2013), 78 FR 30380 (May 22, 2013) (SR–Phlx–2013–53).

[13] *See* Securities Exchange Act Release No. 71096 (December 17, 2013), 78 FR 77538 (December 23, 2013) (SR–Phlx–2013–120).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] The Exchange has satisfied this requirement.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.*

[20] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–03. 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–Phlx–2015–03 and should be submitted on or before February 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00298 Filed 1–12–15; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8999]

Culturally Significant Objects Imported for Exhibition Determinations: ''J.M.W. Turner: Painting Set Free''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''J.M.W. Turner: Painting Set Free,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about February 24, 2015, until on or about May 24, 2015, the Fine Arts Museums of San Francisco, San Francisco, California, from on or about June 20, 2015, until on or about September 20, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 7, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–00471 Filed 1–12–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority: 380]

Delegation by the Secretary of State to the Under Secretary for Arms Control and International Security of Authority To Make Findings and Submit Reports Regarding Compliance With the Treaty on Conventional Armed Forces in Europe

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and Executive Order 13313, dated July 31, 2003, and to the extent authorized by law, I hereby delegate to the Under Secretary for Arms Control and International Security the authority to make findings, including certifications, determinations, and assessments, and to submit the Report on Compliance With the Treaty on Conventional Armed Forces in Europe, consistent with Condition 5(C) of the Resolution of Advice and Consent to Ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe of November 19, 1990 (the ''Flank Document'').

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: December 30, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–00359 Filed 1–12–15; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 8998]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:00 a.m. on Wednesday, February 4, 2015, in the Alexander Hamilton Room on the 9th floor of the Ballston Common Plaza, 4200 Wilson Blvd., Arlington, VA 20598–7200. The USCG Offices in the Ballston Commons Plaza are located above the Ballston Common Mall. The primary purpose of the meeting is to prepare for the second Session of the International Maritime Organization's (IMO) Sub-Committee on Ship Design and Construction to be held at the IMO Headquarters, United Kingdom, February 16–20, 2015.

The agenda items to be considered include:

—Amendments to SOLAS chapter II–1 subdivision and damage stability regulations

—Guidelines on safe return to port for passenger ships

—Second-generation intact stability criteria

—Amendments to the criterion for maximum angle of heel in turns of the 2008 IS Code
—Amendments to part B of the 2008 IS Code on towing, lifting and anchor handling operations
—Guidelines addressing the carriage of more than 12 industrial personnel on board vessels engaged on international voyages
—Classification of offshore industry vessels and a review of the need for a non-mandatory code for offshore construction support vessels
—Amendments to SOLAS regulation II–1/1 and development of associated Guidelines to ensure the adequacy of testing arrangements for watertight compartments
—Provisions to ensure the integrity and uniform implementation of the 1969 TM Convention
—Guidelines for use of Fibre Reinforced Plastic (FRP) within ship structures
—Amendments to SOLAS and FSS Code to make evacuation analysis mandatory for new passenger ships and review of the Recommendation on evacuation analysis for new and existing passenger ships
—Interpretation of SOLAS regulation II–2/13.6 on means of escape from ro-ro cargo spaces
—Review of conditions under which passenger ship watertight doors may be opened during navigation and development of amendments to SOLAS regulation II–1/22 and MSC.1/Circ.1380 (5.1.1.5)
—Amendments to SOLAS chapter II–1 and associated guidelines on damage control drills for passenger ships
—Guidelines for wing-in-ground craft
—Review of general cargo ship safety
—Amendments to the 2011 ESP Code
—Unified interpretation to provisions of IMO safety, security, and environment-related Conventions

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LT Stephanie Waller, by email at *Stephanie.e.waller@uscg.mil,* by phone at (202) 372–1374, or by fax at (202) 372–1925, not later than January 28, 2015, 7 days prior to the meeting. A call-in number option will be available upon RSVP. Requests made after January 28, 2015, might not be able to be accommodated.

Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to USCG Offices. This location is accessible by taxi, privately owned conveyance, and public transportation (located near the Ballston Metro Station). Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: February 5, 2014.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 7, 2015.

[FR Doc. 2015–00279 Filed 1–12–15; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0081]

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

DATES: Comments must be submitted on or before February 12, 2015.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Charlene Doyle, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., NVS–431, Washington, DC 20590. Ms. Doyle's phone number is 202–366–1276.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB. A **Federal Register** notice requesting comments on the following information collection was published on July 7, 2014 (79 FR 38358). The agency received no comments on that notice.

Title: Tire Pressure Monitoring System—Outage Rate and Repair Costs (TPMS–ORRC).

OMB Number: 2127–0626.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Improperly inflated tires pose a safety risk, increasing the chance of skidding, hydroplaning, longer stopping distances, and crashes due to flat tires and blowouts. In an effort to decrease the number of vehicles with improperly inflated tires, Tire Pressure Monitoring Systems (TPMS) were mandated in Federal Motor Vehicle Safety Standard (FMVSS) No. 138, so that drivers are warned when the pressure in one or more of the vehicle's tires has fallen to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. Executive Order 12866 requires Federal agencies to evaluate their existing regulations and programs and measure their effectiveness in achieving their objectives. Since the phase-in of TPMS, there has been only one evaluation of TPMS. This evaluation, the TPMS–SS (OMB #2127–0626), was conducted in 2011 as a special study through the infrastructure of the National Automotive Sampling System, to collect nationally representative data on how effective TPMS was in reducing underinflation in the on-road fleet of passenger vehicles. Analysis of the survey results indicated that direct TPMS is 55.6-percent effective at preventing severe underinflation as defined in FMVSS No. 138. However, effectiveness was substantially lower in vehicles that were 6–7 years old at the time of the survey. The purpose of this survey, Tire Pressure Monitoring System—Outage Rate and Repair Costs (TPMS–ORRC), is to examine why the effectiveness of TPMSs in older vehicles is reduced and what can be done to increase it. In contrast to previous research on TPMS, this information collection request represents a more comprehensive investigation of TPMS systems by engaging the general public, suppliers, and professional establishments involved in TPMS repair. This robust investigation will address key questions concerning the operational status of TPMS systems, consumers' attendant knowledge, attitudes, and awareness of TPMS

systems, and the causes and costs of TPMS system malfunction.

Affected Public: Individuals and businesses.

Estimated Total Annual Burden: 1,354 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including: Whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended and 49 CFR 1.95.

Terry T. Shelton,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2015–00304 Filed 1–12–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2015.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 12, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov*, calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov*.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0119.

Type of Review: Extension without change of a currently approved collection.

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

Abstract: Under provisions of the Internal Revenue Code 26 U.S.C. 5382(a)(3), 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 therefore requires importers of natural wine to supply this certification in order to comply with that statutory requirement.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 6,600.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–00342 Filed 1–12–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of Citizens Coinage Advisory Committee January 27–28, 2015, public meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 27–28, 2015.

Date: January 27–28, 2015.

Time: January 27, 8:45 a.m. to 4:45 p.m., January 28, 8:45 a.m. to 1:00 p.m.

Location: Conference Rooms B & C, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of candidate designs for the 2015 High Relief 24K Gold Coin and Silver Medal and the Jack Nicklaus Congressional Gold Medal; and review and discussion of themes for the 65th Infantry ''Borinqueneers'' Congressional Gold Medal, the 2017 Twentieth Anniversary American Eagle Platinum Bullion Coin Program, the 2018–2020 American Eagle Platinum Bullion Coin Program, and the 2016 24K Gold Coin Anniversary products (Mercury Dime, Walking Liberty Half Dollar, Standing Liberty Quarter).

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 5, 2015.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2015–00380 Filed 1–12–15; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

Vol. 80 Tuesday,

No. 8 January 13, 2015

Part II

Environmental Protection Agency

40 CFR Parts 260 and 261

Definition of Solid Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2010–0742; FRL–9728–5–OSWER]

RIN 2050–AG62

Definition of Solid Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, or the Agency) is publishing a final rule that revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.

DATES: This final rule is effective on July 13, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2010–0742. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, such as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the RCRA Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, at (703) 308–8672, (*atagi.tracy@epa.gov*) or Amanda Kohler, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, at (703) 347–8975, (*kohler.amanda@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Entities potentially affected by today's action include over 5,000 industrial facilities in 634 industries (at the 6-digit North American Industry Classification System (NAICS) code level) that generate or recycle hazardous secondary materials (HSM). Most of these 634 industries have relatively few entities that are potentially affected. The top-5 economic sectors (at the 2-digit NAICS code level) with the largest number of potentially affected entities are as follows: (1) 41% in NAICS code 33—the manufacturing sector, which consists of metals, metal products, machinery, computer & electronics, electrical equipment, transportation equipment, furniture, and miscellaneous manufacturing subsectors, (2) 23% in NAICS code 32—the manufacturing sector, which consists of wood products, paper, printing, petroleum & coal products, chemicals plastics & rubber products, and nonmetallic mineral products manufacturing subsectors, (3) 3.0% in NAICS code 92—the public administration sector, (4) 2.9% in NAICS code 61—the educational services sector, and (5) 2.8% in NAICS code 54—the professional, scientific and technical services sector.

Information on the estimated future economic impacts of today's action is presented in section XXI of this notice, as well as in the RIA available in the docket for today's action.

Preamble Outline

I. Statutory Authority
II. Which revisions to the regulations is EPA finalizing?
III. History of the Definition of Solid Waste
IV. When will the final rule become effective?
V. Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator
VI. Verified Recycler Exclusion Replacing the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation
VII. Remanufacturing eXclusion
VIII. Revisions to the Definition of Legitimacy and Prohibition of Sham Recycling
IX. Revisions to Solid Waste Variances and Non-Waste Determinations
X. Effect on Facilities Currently Operating Under Solid Waste Exclusions
XI. Effect on Spent Petroleum Catalysts
XII. Effect on CERCLA
XIII. General Comments on the 2011 Proposed Revisions to the Definition of Solid Waste
XIV. Major Comments on the Exclusion for Hazardous Secondary Materials Legitimately Reclaimed Under the Control of the Generator and Recordkeeping for Speculative Accumulation
XV. Major Comments on the Replacement of the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation
XVI. Major Comments on the Remanufacturing Exclusion
XVII. Major Comments on Legitimacy
XVIII. Major Comments on the Revisions to Solid Waste Variances and Non-Waste Determinations
XIX. Major Comments on the Proposed Revisions to Pre-2008 Recycling Exclusions
XX. State Authorization
XXI. Statutory and Executive Order (E.O.) Reviews

I. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as ''RCRA.''

II. Which revisions to the regulations is EPA finalizing?

In today's rule, EPA is revising a number of provisions related to the definition of solid waste as it applies to the regulation of hazardous waste under Subtitle C of RCRA (42 U.S.C. 6921 through 6939(e)). These revisions affect certain types of hazardous secondary materials that are currently conditionally excluded from the definition of solid waste when reclaimed. These exclusions were promulgated in October 2008 (73 FR 64688, October 30, 2008) and were intended to encourage the recovery and reuse of valuable resources as an alternative to land disposal or incineration, while at the same time maintaining protection of human health and the environment. In response to concerns raised by stakeholders about potential increases in risks to human health and the environment from hazardous secondary materials, today's rule revises the 2008 DSW final rule in order to ensure that the rule, as implemented, encourages reclamation in a way that protects human health and the environment from the

mismanagement of hazardous secondary materials.

The six major regulatory areas are summarized below.[1] The intent of this summary is to give a brief overview of the actions EPA is taking today. More detailed discussions, including the Agency's rationale for the changes, are found in later sections of this preamble.

A. Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator

Under today's final rule, EPA is retaining the exclusion for hazardous secondary materials that are legitimately reclaimed under the control of the generator (''generator-controlled exclusion''), with certain revisions from the 2008 DSW final rule. These revisions include (1) adding a codified definition of ''contained,'' (2) adding recordkeeping requirements for same-company and toll manufacturing reclamation, (3) making notification a condition of the exclusion, (4) adding a requirement to document that recycling under the exclusion is legitimate, and (5) adding emergency preparedness and response conditions. In addition, we have amended the speculative accumulation provisions to add a recordkeeping requirement. This requirement applies to all persons subject to speculative accumulation.

The generator-controlled exclusion (40 CFR 261.4(a)(23)) excludes certain hazardous secondary materials (*i.e.,* listed sludges, listed by-products, and spent materials) from the definition of solid waste if they are generated and legitimately reclaimed within the United States or its territories under the control of the generator. Specifically, hazardous secondary materials are excluded if (1) the reclamation process meets the definition of legitimate recycling under 40 CFR 260.43; (2) the materials are not speculatively accumulated as defined in 40 CFR 261.1(c)(8) (including a new recordkeeping requirement, being finalized today); (3) they meet the notification condition under 40 CFR 260.42; (4) they are managed in a unit that meets the new definition of ''contained'' in 40 CFR 260.10, which specifies that storage units must be in good condition, properly labeled, do not hold incompatible materials, and address potential risks of fires or explosions; and (5) the generator satisfies certain emergency preparedness and response conditions. Further discussion of the generator-controlled exclusion can be found in section V of this preamble.

B. Verified Recycler Exclusion Replacing the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Legitimate Reclamation

EPA is replacing the exclusions at 40 CFR 261.4(a)(24) and (25) for hazardous secondary materials that are transferred from the generator to other persons for the purpose of reclamation with an exclusion for hazardous secondary materials sent for reclamation to a verified recycler. By this change, EPA intends to promote safe and sustainable reclamation of these materials. Under this new exclusion, generators who want to recycle their hazardous secondary materials without having them become hazardous wastes must send their materials to either a RCRA-permitted reclamation facility or to a verified recycler of hazardous secondary materials who has obtained a solid waste variance from EPA or the authorized state. In order to obtain a variance from EPA or the authorized state, the recycler must (1) demonstrate their recycling is legitimate; (2) have financial assurance in place to properly manage the hazardous secondary material when the facility closes; (3) not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly; (4) have the proper equipment and trained personnel, and meet emergency preparedness and response conditions to safely recycle the material; (5) manage the residuals from recycling properly; and (6) take steps to protect nearby communities and reduce risk of potential unpermitted releases of the hazardous secondary material to the environment (*i.e.*, releases that are not covered by a permit (such as a permit to discharge to water or air). Further discussion of the replacement of the transfer-based exclusion with the verified recycler exclusion can be found in section VI of this preamble.

C. Remanufacturing Exclusion

EPA is also finalizing an exclusion from the definition of solid waste for certain higher-value solvents transferred from one manufacturer to another for the purpose of extending the useful life of the solvent by remanufacturing the spent solvent back into the commercial grade solvent. This remanufacturing exclusion will help promote sustainable materials management by extending the productive use of these materials, which reduces the need for raw materials used and the environmental impacts associated with production of these materials. In addition, EPA is also making clear that a rulemaking petition pursuant to 40 CFR 260.20 can be submitted for adding other higher-value hazardous secondary materials that are destined to be remanufactured into similarly higher-value products. Further discussion of this exclusion can be found in section VII of this preamble.

D. Prohibition of Sham Recycling and Revisions to the Definition of Legitimacy

In this final rulemaking, EPA is codifying in its regulations at 40 CFR 261.2(g) the long-standing policy that hazardous secondary materials found to be sham recycled are discarded and solid wastes, thereby prohibiting materials that are sham recycled from being excluded from the definition of solid waste.

In addition, EPA has changed the definition of legitimate recycling in § 260.43 to make clear that all four factors identified in § 260.43 must be met, but also to provide some flexibility in determining legitimacy for certain types of recycling. In particular, in cases where there is no analogous product made from raw materials, EPA has clarified that the product of recycling is still a legitimate product when it meets widely recognized commodity standards (*e.g.*, commodity-grade scrap metal) or when the hazardous secondary material is recycled back into the production process from which it was generated (*e.g.*, closed-loop recycling). In addition, for cases in which the product of the recycling process has levels of hazardous constituents that are not comparable to analogous products, the revised legitimacy standard includes a process that allows the facility to document and certify that the recycling is still legitimate, keep such documentation at the facility, and send a notification to the regulatory authority to that effect. Further discussion of legitimacy can be found in section VIII of this preamble.

E. Revisions to Solid Waste Variances and Non-Waste Determinations

Today's rule finalizes revisions to the solid waste variances and non-waste determinations found in 40 CFR 260.30–260.34 in order to ensure protection of human health and the environment and foster greater consistency on the part of implementing agencies. Revisions include (1) requiring facilities to send a notice to the Administrator (or State Director, if the state is authorized) and

[1] Any provisions promulgated in the 2008 DSW rule that are not addressed in this final rule remain in effect.

potentially re-apply for a variance in the event of a change in circumstances that affects how a hazardous secondary material meets the criteria upon which a solid waste variance has been based; (2) establishing a fixed term not to exceed ten years for variance and non-waste determinations, at the end of which facilities must re-apply for a variance or non-waste determination, (3) requiring facilities to re-notify every two years with updated information; (4) revising the criteria for the partial reclamation variance to clarify when the variance applies and to require, among other things, that all the criteria for this variance must be met; and (5) for the non-waste determinations in 40 CFR 260.34, requiring that petitioners demonstrate why the existing solid waste exclusions would not apply to their hazardous secondary materials. EPA is not finalizing the proposed change to designate the Regional Administrator as the EPA recipient of petitions for all variances and non-waste determinations. Further discussion of these revisions can be found in section IX of this preamble.

F. Deferral on Revisions to Pre-2008 Recycling Exclusions

EPA is not finalizing revisions to the pre-2008 recycling exclusions and exemptions to include the contained standard or to require notification.[2] EPA is instead deferring action until EPA can more adequately address commenters' concerns. For further discussion, see section X for more information.

III. History of the Definition of Solid Waste

A. Background

RCRA gives EPA the authority to regulate hazardous wastes (see RCRA sections 3001–3004). The original statutory designation of the subtitle for the hazardous waste program was Subtitle C and the national hazardous waste program is referred to as the RCRA Subtitle C program. Subtitle C is codified at 42 U.S.C. 6921 through 6939f. Subtitle C regulations are found at 40 CFR parts 260 through 279. Hazardous wastes are those that, because of their quantity, concentration, physical, or chemical characteristics, may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (see RCRA section 1004(5)). Hazardous wastes are a subset of solid wastes.

Materials that are not solid wastes are not subject to regulation as hazardous wastes under RCRA Subtitle C. Thus, the definition of solid waste plays a key role in defining the scope of EPA's authorities under Subtitle C of RCRA. The statute defines ''solid waste'' as ''. . . any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining, and agricultural operations, and from community activities . . .'' (RCRA section 1004 (27) (emphasis added)).

Since 1980, EPA has interpreted ''solid waste'' under its Subtitle C regulations to encompass both materials that are destined for final, permanent treatment and placement in disposal units, as well as certain materials that are destined for recycling (see 45 FR 33090–95, May 19, 1980; 50 FR 604–656, January 4, 1985 (see in particular pages 616–618)). EPA has offered three arguments in support of this interpretation:

- The statute and the legislative history suggest that Congress expected EPA to regulate certain materials that are destined for recycling as solid and hazardous wastes (see 45 FR 33091, citing numerous sections of the statute and *U.S. Brewers' Association* v. *EPA*, 600 F. 2d 974 (D.C. Cir. 1979); 48 FR 14502–04, April 3, 1983; and 50 FR 616–618, January 4, 1985).
- Hazardous secondary materials stored or transported prior to recycling have the potential to present the same types of threats to human health and the environment as hazardous wastes stored or transported prior to disposal. In fact, EPA has found that recycling operations have accounted for a number of significant damage incidents. For example, hazardous secondary materials destined for recycling were involved in one-third of the first 60 filings under RCRA's imminent and substantial endangerment authority and in 20 of the initial 160 hazardous material sites listed for potential clean up under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (48 FR 14474, April 4, 1983). Congress also cited some damage cases which involve recycling (H.R. Rep. 94–1491, 94th Cong., 2d Sess., at 17, 18, 22). Additional data (*i.e.*, information on damage incidents occurring after 1982) included in the rulemaking docket for today's rule corroborate the fact that recycling operations can and have resulted in significant damage incidents.
- Excluding all hazardous secondary materials destined for recycling would allow materials to move in and out of the hazardous waste management system depending on what any person handling the hazardous secondary materials intended to do with them, which is inconsistent with the RCRA mandate to track hazardous wastes and control them from ''cradle to grave.''

Hence, RCRA confers on EPA the authority to regulate discarded hazardous secondary materials even if they are destined for recycling and may be beneficially reused. The Agency has therefore developed in part 261 of 40 CFR a definition of ''solid waste'' for Subtitle C regulatory purposes. (Note: This definition is narrower than the definition of ''solid waste'' for RCRA endangerment and information-gathering authorities. (See 40 CFR 261.1(b)). Also *Connecticut Coastal Fishermen's Association* v. *Remington Arms Co.*, 989 F.2d 1305, 1315 (2d Cir. 1993) holds that EPA's use of a narrower and more specific definition of solid waste for Subtitle C purposes is a reasonable interpretation of the statute. (See also *Military Toxics Project* v. *EPA*, 146 F.3d 948 (D.C. Cir. 1998).))

EPA has consistently asserted that hazardous secondary materials are not excluded from regulation as solid wastes merely because of a claim that they will be recycled. EPA has consistently considered hazardous secondary materials intended for ''sham recycling'' (*i.e.*, disposal performed in the guise of recycling) to be discarded and, hence, to be solid wastes for Subtitle C purposes (see 45 FR 33093, May 19, 1980; 50 FR 638–639, January 4, 1985). The U.S. Court of Appeals for the D.C. Circuit has agreed that materials undergoing sham recycling are discarded and, consequently, are solid wastes under RCRA (see *American Petroleum Institute* v. *EPA*, 216 F.3d 50, 58–59 (D.C. Cir. 2000)).

B. A Series of D.C. Circuit Court Decisions on the Definition of Solid Waste

Because the interpretation of what constitutes a solid waste is the foundation of the hazardous waste regulatory program, there has been quite a bit of litigation over the meaning of ''solid waste'' under Subtitle C of RCRA. Specifically, industries representing mining and oil refining interests challenged EPA's January 1985 regulatory definition of solid waste. In 1987, the D.C. Circuit held that EPA exceeded its authority ''in seeking to bring materials that are not discarded or otherwise disposed of within the compass of 'waste' '' (*American Mining Congress* v. *EPA* (''*AMC I*''), 824 F.2d 1177, 1178 (D.C. Cir. 1987)). The Court held that certain materials EPA was seeking to regulate were not ''discarded materials'' under RCRA section

[2] EPA requested comment on adding these requirements to a list of 32 existing recycling exclusions in the 2011 proposed rule (76 FR 44139, July 22, 2011).

1004(27). The Court also held that Congress used the term ''discarded'' in its ordinary sense, to mean ''disposed of'' or ''abandoned'' (824 F.2d at 1188–89). The Court further held that the term ''discarded materials'' could not include materials ''destined for beneficial reuse or recycling in a continuous process by the generating industry itself (because they) are not yet part of the waste disposal problem'' (824 F.2d at 1190). The Court held that Congress had directly spoken to this issue, so that EPA's definition was not entitled to deference under *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984) (824 F.2d at 1183, 1189–90, 1193).

At the same time, the Court held that recycled materials could be regulated as discarded materials. The Court mentioned at least two examples of recycled materials that may be regulated as wastes, noting that used oil can be considered a solid waste (824 F.3d at 1187 (fn 14)). Also, the Court suggested that materials disposed of and recycled as part of a waste management program may be regulated as solid wastes (824 F. 2d at 1179).

Subsequent decisions by the D.C. Circuit also indicate that some materials destined for recycling may be considered ''discarded.'' In particular, the Court held that emission control dust from steelmaking operations listed as hazardous waste ''K061'' is a solid waste, even when sent to a metals reclamation facility, at least where that is the treatment method required under EPA's land disposal restrictions program (*American Petroleum Institute* v. *EPA* (''*API I*''), 906 F.2d 729 (D.C. Cir. 1990)). In addition, the Court held that it is reasonable for EPA to consider as discarded (and solid wastes) listed wastes managed in units that are in part wastewater treatment units, especially where it is not clear that the industry actually reuses the materials (*AMC II*, 907 F.2d 1179 (D.C. Cir. 1990)).

It also is worth noting that two other Circuits also have held that EPA may regulate as solid wastes under RCRA at least some materials destined for reclamation rather than final discard. The U.S. Court of Appeals for the Eleventh Circuit found that ''[i]t is unnecessary to read into the term 'discarded' a congressional intent that the waste in question must finally and forever be discarded'' (*U.S.* v. *ILCO*, 996 F.2d 1126, 1132 (Eleventh Cir. 1993) (finding that used lead batteries sent to a reclaimer have been ''discarded once'' by the entity that sent the battery to the reclaimer)). In addition, the Fourth Circuit found that slag held on the ground untouched for six months before sale for use as road bed could be a solid waste (*Owen Electric Steel Co.* v. *EPA*, 37 F.3d 146, 150 (4th Cir. 1994)).

In 1998, EPA promulgated a rule in which EPA regulated hazardous secondary materials recycled by reclamation within the mineral processing industry, the ''LDR Phase IV rule'' (63 FR 28556, May 26, 1998), under Subtitle C of RCRA. In that rule, EPA promulgated a conditional exclusion for all types of mineral processing hazardous secondary materials destined for reclamation. As a condition of the exclusion, EPA prohibited the land-based storage of these mineral processing secondary materials prior to reclamation because it considered hazardous secondary materials from the mineral processing industry that were stored on the land to be solid wastes (63 FR 28581, May 26, 1998). The conditional exclusion decreased regulation over spent materials stored prior to reclamation, but increased regulation over by-products and sludges that exhibit a hazardous characteristic and that are stored prior to reclamation. EPA noted that the statute does not authorize it to regulate ''materials that are destined for immediate reuse in another phase of the industry's ongoing production process.'' EPA, however, took the position that hazardous secondary materials that are removed from a production process for storage are not ''immediately reused,'' and therefore are ''discarded'' (63 FR 28580, May 26, 1998).

The mining industry challenged the rule, and the D.C. Circuit vacated the provisions that expanded EPA regulation over characteristic by-products and sludges destined for reclamation (*Association of Battery Recyclers* v. *EPA* (''*ABR*''), 208 F.3d 1047 (D.C. Cir. 2000)). The Court held that it had already resolved this issue in its opinion in *AMC I*, where it found that ''Congress unambiguously expressed its intent that 'solid waste' (and therefore EPA's regulatory authority) be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away'' (208 F.2d at 1051). The Court also did not find that storage before reclamation automatically makes materials discarded. Rather, it repeated that materials reused within an ongoing industrial process are neither disposed of nor abandoned (208 F.3d at 1051–52) and that ''at least some of the secondary material EPA seeks to regulate as solid waste (in the mineral processing rule) is destined for reuse as part of a continuous industrial process and thus is not abandoned or thrown away'' (208 F.3d at 1056). It explained that the intervening *API I* and *AMC II* decisions had not narrowed the holding in *AMC I* (208 F.3d at 1054–1056).

In its most recent opinion dealing with the definition of solid waste, *Safe Food and Fertilizer* v. *EPA* (''*Safe Food*''), 350 F.3d 1263 (D.C. Cir. 2003), the D.C. Circuit upheld an EPA rule that excludes from the definition of solid waste hazardous secondary materials used to make zinc fertilizers, and the fertilizers themselves, as long as the hazardous secondary materials meet certain handling, storage, and reporting conditions and the resulting fertilizers have concentration levels for lead, arsenic, mercury, cadmium, chromium, and dioxins that fall below specified thresholds (Final Rule, ''Zinc Fertilizers Made From Recycled Hazardous Secondary Materials'' (''Fertilizer Rule''), 67 FR 48393, July 24, 2002). EPA determined that if these conditions are met, the hazardous secondary materials used to make such fertilizer have not been discarded. The conditions also apply to a number of recycled materials not produced in the fertilizer production industry, including certain zinc-bearing hazardous secondary materials, such as brass foundry dusts.

EPA's reasoning was that market participants, consistent with the EPA-required conditions in the rule, would treat the excluded materials more like valuable products than like negatively-valued wastes and, thus, would manage them in ways inconsistent with discard. In addition, the fertilizers derived from these recycled feedstocks are chemically indistinguishable from analogous commercial products made from raw materials (350 F.3d at 1269). The Court held that EPA's explanation that market participants manage materials in ways inconsistent with discard, and the fact that the levels of contaminants in the recycled fertilizers were ''identical'' to the fertilizers made with virgin raw materials (also called ''the identity principle'') as reasonable. The Court also held that this interpretation of ''discard'' was reasonable and consistent with the statutory purpose. The Court noted that the identity principle was defensible because the differences in health and environmental risks between the two types of fertilizers are so slight as to be substantively meaningless.

In addition, the Court stated that it ''need not consider whether a material could be classified as a non-discard exclusively on the basis of the market-participation theory'' (350 F.3d at 1269). The Court only determined that the combination of market participants' treatment of the materials, EPA-required management standards, and the ''identity principle'' constitutes a reasonable set of tools to establish that

the recycled hazardous secondary materials and fertilizers are not discarded.

C. October 2003 Proposal To Revise the Definition of Solid Waste

Prompted by concerns articulated in various Court opinions decided up to that point, in October 2003, EPA proposed a rule which defined those circumstances under which hazardous secondary materials would be excluded from RCRA's hazardous waste regulations because they are generated and reclaimed in a continuous process within the same industry. In addition, the Agency also clarified in a regulatory context the concept of ''legitimate recycling,'' which has been a key component of RCRA's regulatory program for hazardous material recycling, but which up to that point, had been implemented without specific regulatory criteria (68 FR 61558, October 28, 2003).

In response to the October 2003 DSW proposal, a number of commenters criticized the Agency for not having conducted a study of the potential impacts of the proposed regulatory changes. These commenters expressed the general concern that deregulating hazardous secondary materials that are reclaimed in the manner proposed could result in the mismanagement of these materials and could create new cases of environmental damage that would require remedial action under federal or state authorities. Some of the commenters further cited a number of examples of environmental damage that were attributed to hazardous secondary material recycling, including sites listed on the Superfund National Priorities List (NPL).

Other commenters to the 2003 DSW proposal expressed the view that the great majority of these cases of recycling-related environmental problems occurred before RCRA, CERCLA, or other environmental programs were established in the early 1980s. These commenters argued that these environmental programs—most notably, RCRA's hazardous waste regulations and the liability provisions of CERCLA—have created strong incentives for proper management of recyclable hazardous secondary materials and recycling residuals. Several commenters further noted that, because of these developments, industrial recycling practices have changed substantially since the early 1980s and present day generators and recyclers are much better environmental stewards than in the pre-RCRA/-CERCLA era. Thus, they argued that cases of ''historical'' recycling-related environmental damage are not particularly relevant when modifying the current RCRA hazardous waste regulations for hazardous secondary materials recycling.

D. Recycling Studies

In light of these comments on the 2003 DSW proposal, and in deliberating on how to proceed with the rulemaking effort, the Agency decided that additional information on hazardous secondary material recycling would benefit its regulatory decision-making and would provide stakeholders with a clearer picture of the hazardous secondary material recycling industry in this country. Accordingly, the Agency examined three issues that we believed were of particular importance to revising the definition of solid waste:

- How do responsible generators and recyclers of hazardous secondary materials ensure that recycling is done in an environmentally safe manner?
- To what extent have hazardous secondary material recycling practices resulted in environmental problems since enactment of major waste management statutes, and why?
- Are there certain economic forces or incentives specific to hazardous secondary material recycling that can explain why environmental problems can sometimes originate from such recycling activities?

Reports documenting these studies are available in the docket for the 2008 DSW final rule under the following titles:

- *An Assessment of Good Current Practices for Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0354) (''study of successful recycling'')
- *An Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0355) (''environmental problems study'')
- *A Study of Potential Effects of Market Forces on the Management of Hazardous Secondary Materials Intended for Recycling* (EPA–HQ–RCRA–2002–0031–0358) (''market forces study'')

In the study of successful recycling, EPA found that responsible recycling practices used by generators and recyclers to manage hazardous secondary materials fall into two general categories. The first category includes the audit activities and inquiries performed by a generator of a hazardous secondary material to determine whether the entity to which it is sending such material is equipped to manage it responsibly without the risk of releases or other environmental damage. These recycling and waste audits of other companies' facilities are common to those generators that responsibly recycle in the hazardous secondary materials market. The second category of responsible recycling practices consists of the control practices that ensure responsible management of any given shipment of hazardous secondary material, such as the contracts under which the transaction takes place and the tracking systems that can inform a generator that its hazardous secondary material has been properly managed.

The goal of the environmental problems study was to identify and characterize environmental problems associated with some types of hazardous secondary material recycling that are relevant for the purpose of this rulemaking effort. To address commenters' concerns that historic damages are irrelevant to current practices because environmental programs (post-RCRA and -CERCLA implementation) have created strong incentives for proper management of recyclable hazardous secondary materials, EPA only included cases where damages occurred after 1982. The study identifies 208 cases in which environmental damages of some kind occurred from some type of recycling activity and that otherwise fit the scope of the study.[3]

The Agency has determined that the occurrence of certain types of environmental problems associated with post-1982 recycling practices shows that discard has occurred. In particular, instances where hazardous secondary materials were abandoned (*e.g.,* in warehouses) and which required removal, oversight by a government agency and the expenditure of public funds clearly demonstrate that the hazardous secondary material was discarded. Of the 208 damage cases presented in the original damage case study, 69 cases (33%) involve abandoned materials. The relatively high incidence of abandoned materials likely reflects the fact that bankruptcies or other types of business failures were associated with 138 (66%) of the cases.

In addition, the pattern of environmental damages that resulted from the mismanagement of recyclable

[3] EPA initially identified over 800 potential damage cases, most of which were not included in the analysis because (1) the damages occurred before 1982, (2) the damages were not caused by recycling, or (3) there was not enough information to determine when the damages occurred or whether recycling contributed to the damages. The cases EPA considered, but did not include, were listed in an appendix to the report to allow the public to comment on whether additional cases should be included in the analysis. As a result of public comment to the 2011 DSW proposal, EPA has updated the damage case information using the same methodology, resulting in a total of 250 damage cases as of 2012. EPA has determined that the new damage case information is consistent with the damage cases previously cited in the study.

materials (including contamination of soils, groundwater, surface water and air) is a strong indication that the hazardous secondary materials were generally not managed as valuable commodities and were discarded. Of the 208 damage cases presented in the original damage case study, 81 cases (40%) primarily resulted from the mismanagement of recyclable hazardous secondary materials, while mismanagement of recycling residuals was the primary cause in 71 cases (34%). Often, in the case of mismanagement of recycling residuals, reclamation processes generated residuals in which the toxic components of the recycled materials were separated from the non-toxic components, and these portions of the hazardous secondary material were then mismanaged and discarded. Examples of this include a number of drum reconditioning facilities, where large numbers of used drums were cleaned out to remove small amounts of remaining product, such as solvent, and these wastes were then improperly stored or disposed, while the drums were reused or recycled.

The market forces study used accepted economic theory to describe how various market incentives can influence a firm's decision-making process when recycling hazardous secondary materials. This study helps explain some of the possible fundamental economic drivers of both successful and unsuccessful recycling practices.

As pointed out by some commenters to the 2003 DSW proposed rule, the economic forces shaping the behavior of firms that recycle hazardous secondary materials are often different from those at play in manufacturing processes using virgin materials. The market forces study used economic theory to provide information on how certain characteristics can influence three different recycling models to encourage or discourage an optimal outcome. The three recycling models examined were (1) commercial recycling, where the primary business of the firm is the recycling of hazardous secondary materials that are accepted from off-site industrial sources (which usually pay a fee); (2) industrial intra-company recycling, where firms generate hazardous secondary materials as by-products of their main production processes and recycle the hazardous secondary materials for sale or for their own reuse in production; and (3) industrial inter-company recycling, where firms either use or recycle hazardous secondary materials obtained from other firms, with the objective of reducing the cost of their production inputs. The report also looked at how the outcome from each model is potentially affected by three market characteristics: (1) The value of the recycled product, (2) the price stability of recycling output or inputs, and (3) the net worth of the firm.

An individual firm's decision-making is based on many factors and extrapolating a firm's likely behavior from a few factors could be an over-simplification. However, when used in conjunction with other information, the economic theory can be quite illuminating. For example, according to the market forces study, industrial intra- and inter-company recyclers have more flexibility in adjusting to unstable recycling markets (*e.g.,* during price fluctuations, these companies can more easily switch from recycling to disposal or from recycled inputs to virgin inputs). Therefore, they would be expected to be less likely to have environmental problems from over-accumulated materials.

On the other hand, in certain types of commercial recycling, the product has low value, the prices are unstable, and/or the firm has a low net worth. Facilities in these situations can be more susceptible to environmental problems from the over-accumulation or mishandling of hazardous secondary materials, especially when compared to recycling by a well-capitalized firm that yields a product with high value. In short, commercial recyclers depend on revenue from two sources: (1) Accepting hazardous secondary materials for recycling, and (2) selling the recycled product. When recycled product prices fall, commercial recyclers rely on profits from accepting hazardous waste, which can result in over-accumulation, mismanagement, sham recycling, and abandonment of hazardous secondary materials. Further, because these facilities often have little capital at risk, they can go bankrupt leaving environmental damages behind. These predicted outcomes appear to be supported by the results of the environmental problems study, which showed the vast majority of environmental damages—approximately 94%—occur at off-site commercial recyclers.

However, as shown by the study of successful recycling, generators who could otherwise bear a large liability from poorly-managed recycling at other companies have addressed this issue by carefully examining the recyclers to which they send their hazardous secondary materials, such as through audits to ensure that they are technically and financially capable of performing the recycling. In addition, we have seen that successful recyclers (both commercial and industrial) have often taken advantage of mechanisms, such as long-term contracts to help stabilize price fluctuations, allowing recyclers to plan their operations more effectively.

Further discussion of the recycling studies, including the methodology and limitations of the studies, can be found in the March 2007 DSW supplemental proposal (72 FR 14178–83) and the October 2008 DSW final rule (73 FR 64673–74), and the studies themselves can be found in the docket for the 2008 DSW final rule (EPA–HQ–RCRA–2002–0031–0355).

E. March 2007 Supplemental Proposal To Revise the Definition of Solid Waste

In March 2007, EPA published a supplemental proposal that provided the public the opportunity to comment on these studies. The Agency also re-structured the proposed rule and proposed (1) two exclusions for hazardous secondary materials recycled under the control of the generator (one exclusion would apply to hazardous secondary materials managed in non-land-based units, and the other exclusion would apply to hazardous secondary materials managed in land-based units) and (2) an exclusion for hazardous secondary materials transferred to another party for reclamation. The Agency also proposed a non-waste determination petition process, and re-proposed the legitimacy criteria, with certain modifications (72 FR 14172, March 26, 2007).

For the exclusions of hazardous secondary materials reclaimed under the control of the generator, EPA described three circumstances under which we believed that discard does not take place and where the potential for environmental releases is low. The three situations involve hazardous secondary materials that are generated and legitimately reclaimed at the generating facility, legitimately reclaimed at a different facility within the same company, or legitimately reclaimed through a tolling arrangement. Under all three circumstances, the hazardous secondary materials must be generated and reclaimed within the United States or its territories. Because the hazardous secondary material generator in these situations still retains control of the hazardous secondary materials, finds value in them, and intends to use them, EPA proposed to exclude these materials from the definition of solid waste and, thus, from regulation under Subtitle C of RCRA, provided the reclamation is legitimate and the

hazardous secondary materials are contained and not speculatively accumulated. In addition, EPA proposed that facilities generating and reclaiming hazardous secondary materials under the control of the generator must submit notification to their regulatory authority.

For the exclusion of hazardous secondary materials transferred to another party for reclamation (referred to as the transfer-based exclusion), the Agency proposed conditions that, when met, would indicate that these hazardous secondary materials were not discarded. Specifically, the generator would need to make reasonable efforts, a form of due diligence, to determine that its hazardous secondary materials would be properly and legitimately recycled (and that the hazardous secondary material would not be discarded). Another condition would require the reclamation facility to have adequate financial assurance (thus demonstrating that the hazardous secondary material would not be abandoned). In addition, EPA proposed that both the generator and reclaimer would be required to maintain shipping records (to demonstrate that the hazardous secondary material was sent for reclamation and was received by the reclaimer). Furthermore, the reclaimer would be subject to additional storage and residual management standards (to address the instances of discard observed at off-site reclamation facilities in the damage cases). Finally, facilities operating under the transfer-based exclusion must also submit notification to their regulatory authority.

In addition, the 2007 DSW supplemental proposal included a case-by-case non-waste determination petition process that would allow applicants to receive a formal determination from EPA that their hazardous secondary materials were not discarded and therefore were not solid wastes. The case-by-case petition process would allow EPA or the authorized state to take into account the particular fact pattern of the recycling and to determine that the hazardous secondary materials in question were not solid wastes. The petition process for the non-waste determination was the same as that for the variances from the definition of solid waste found at 40 CFR 260.31.

Finally, EPA proposed a definition of legitimate recycling that restructured the legitimacy factors originally proposed in October 2003. The proposed legitimacy factors would be used to determine that the recycling of hazardous secondary materials is not a ''sham'' and thus, does not constitute discard.

F. October 2008 Final Rule To Revise the Definition of Solid Waste

In October 2008, EPA promulgated a final rule largely as proposed in March 2007, with some revisions and clarifications, including (1) clarifying that hazardous secondary materials held at a transfer facility for less than 10 days are considered to be in transport (and therefore such transfer facilities are not considered to be storing the hazardous secondary materials for the purpose of the DSW exclusion), (2) allowing the use of intermediate facilities that store hazardous secondary materials for more than 10 days under the transfer-based exclusion, provided the facilities comply with the same conditions applicable to reclamation facilities, (3) codifying financial assurance language in 40 CFR 261 subpart H for the transfer-based exclusion applicable to intermediate and reclamation facilities without RCRA permits, (4) requiring facilities operating under the generator-controlled and/or the transfer-based exclusion to notify their regulatory authority prior to operating under the exclusion and every other year thereafter, and (5) making legitimacy a condition of the exclusions and the non-waste determinations in that rule, but not finalizing the legitimacy language for all recycling activities.

G. Section 7004 Petition Submitted by the Sierra Club and Industry Response

On January 29, 2009, the Sierra Club submitted an administrative petition under RCRA section 7004(a), 42 U.S.C. 6974(a), to the Administrator of EPA requesting that the Agency repeal the October 2008 revisions to the definition of solid waste rule and stay the implementation of the rule.

The administrative petition was submitted at the same time that the American Petroleum Institute (API) and Sierra Club filed judicial Petitions for Review under RCRA section 7006(a), 42 U.S.C. 6976(a) challenging the rule in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). These cases, designated as Docket Nos. 09–1038 and 1041, respectively, are currently before the D.C. Circuit.[4]

The Sierra Club petition argued that the revised regulations are unlawful and that they increase threats to public health and the environment without producing compensatory benefits and, therefore, should be repealed. Among other things, the petition singled out the lack of regulatory definitions for key conditions of the rule and disagreed with the Agency's findings that the rule would have no adverse environmental impacts, including the finding there would be no adverse impact to environmental justice communities or children's health.

On March 6, 2009, a coalition of industry associations (''industry coalition'') submitted a letter to the Administrator of EPA in response to the Sierra Club petition. This letter requested that EPA deny Sierra Club's petition on the grounds that the 2008 DSW final rule comports with court cases construing the scope of the definition of solid waste under RCRA, and that the 2008 DSW final rule achieves significant economic and conservation benefits, while imposing significant controls on the hazardous secondary material recycling industry that are fully protective of the environment. The letter also responds to each of the specific points raised by Sierra Club in its petition.

H. June 2009 Public Meeting and the Draft DSW Environmental Justice Analysis Methodology

In response to Sierra Club's administrative petition and the industry coalition's letter to the Administrator of EPA, a May 27, 2009, **Federal Register** notice (74 FR 25200) was issued describing possible actions and optional paths forward, as well as announcing a public meeting on June 30, 2009, to allow the public and interested stakeholders the opportunity to provide input to the decision-making process.

In the May 27, 2009, **Federal Register** notice announcing the public meeting, EPA described the scope of possible actions, which is governed by the concept of ''discard.'' As stated in RCRA section 1004(27), ''solid waste'' is defined as ''any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining and agricultural

[4] In its lawsuit, API claimed that EPA had improperly decided that certain petroleum catalysts, when recycled are hazardous wastes. See 73 FR 64714 for EPA's decision to defer a decision on the eligibility of those catalysts for the 2008 DSW final rule. API argued, among other things, that these catalysts should be treated the same as other materials that were receiving the transfer-based exclusion. API's challenge proceeded to briefing and argument before the Court of Appeals. By order of June 8, 2012, the Court reconsidered and decided to hold API's challenge in abeyance until EPA issued this rule in final form. Since EPA is removing the transfer-based exclusion and making spent petroleum catalysts eligible for the generator-controlled and verified recycler exclusions, API's challenge that the Agency failed to treat the catalysts as other excluded materials is now moot. See section XI below for further discussion on the effect of this rule on spent petroleum catalysts.

activities.'' The May 2009 public meeting notice said that

> [b]ecause the final revisions to the definition of solid waste are closely tied to EPA's interpretation of the concept of ''discard,'' EPA does not plan to repeal the rule in whole or stay its implementation. Such an action could result in hazardous secondary materials that are not discarded being regulated as hazardous waste. In particular, EPA does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process. However, EPA believes there may be other opportunities to revise or clarify the definition of solid waste rule, particularly with respect to the definition of legitimacy and the transfer-based exclusion, in ways that could improve implementation and enforcement of the provisions, thus increase environmental protection, while still appropriately defining when a hazardous secondary material being reclaimed is a solid waste and subject to hazardous waste regulation. (74 FR 25203).

Thirty-three people spoke at the public meeting and approximately 4,000 written comments were received, of which the majority were from private citizens who wrote in via a mass email campaign to repeal the rule. The remaining comments came from state and local governments (17), companies that generate hazardous secondary materials that are recycled (*i.e.,* the generating industry) (28), the waste management/recycling industry (15), environmental, public health and community organizations (12), and academics (2). Comments from the generating industry were uniformly in favor of denying the Sierra Club petition to repeal the rule, citing legal issues and the protectiveness of the rule's conditions. Environmental and community organizations, on the other hand, were uniformly in favor of repealing the rule, expressing concerns over the protectiveness, enforceability, and environmental justice and children's health impacts of the rule. Waste management/recycling industry comments were split, with hazardous waste recyclers generally advocating that EPA retain and improve the rule with more stringent standards. Other waste management industry comments, particularly those from companies representing landfills and incinerators, were in favor of repealing the rule. State comments expressed concerns about implementing the rule, particularly given the economic climate, and generally were in favor of repealing or significantly revising the transfer-based exclusion. A copy of the public meeting transcript and the comments submitted in response to the public meeting notice are available in the docket for the public meeting (Docket ID number EPA–HQ–RCRA–2009–0315).

Many of the commenters (including those at the public meeting and those who responded with written comments) expressed strong concerns that the Agency did not adequately address environmental justice in the rulemaking. In response to the concerns over the environmental justice analysis, EPA committed to perform a more rigorous and thorough analysis of the environmental justice impacts of the 2008 DSW final rule. On January 15, 2010, EPA released for public input a draft methodology for conducting the DSW Environmental Justice Analysis. The draft methodology was presented to the National Environmental Justice Advisory Committee (NEJAC) and discussed at three public roundtable meetings, and was used to develop the draft environmental justice analysis for the DSW rulemaking.

I. Settlement Agreement With the Sierra Club

1. Overview of Settlement Agreement

On September 7, 2010, EPA signed a settlement agreement with the Sierra Club under which the Sierra Club agreed to withdraw their administrative petition and EPA agreed to (1) prepare a notice of proposed rulemaking to be signed no later than June 30, 2011,[5] which would address, at a minimum, the issues raised in the Sierra Club's administrative petition and (2) take final administrative action concerning the notice of proposed rulemaking to be signed no later than December 31, 2012. The settlement agreement did not specify the outcome of the final rule or what regulatory changes EPA would propose. The settlement agreement was approved by the court on January 11, 2011. Although EPA was unable to make the settlement agreement deadline for a final administrative action, today's rule does address all issues raised in Sierra Club's administrative petition, including the four issues discussed in the May 27, 2009, public meeting **Federal Register** notice (74 FR 25200). Specifically, the four issues in the settlement agreement are (1) the definition of ''contained'' (which includes the issue of defining ''significant releases'') (addressed in section V of this preamble), (2) notification before operating under the exclusion (also addressed in section V of this preamble), (3) the definition of ''legitimacy'' (addressed in section VIII of this preamble) and (4) the transfer-based exclusion (addressed in section VI of this preamble). Other issues presented in the administrative petition are discussed below.

2. Request to Immediately Stay the Implementation of and Revoke the 2008 DSW Rule

The Sierra Club's administrative petition included a request to immediately stay and revoke the 2008 DSW final rule. To support this request, the petition asserted that the damage case study demonstrates that hazardous waste recycling has caused substantial harm to health and the environment and that the 2008 DSW final rule increases the likelihood of greater future harm. The petition also asserted that the 2008 DSW final rule does not account for the possibility that unstable recycling markets or financial conditions increase the risk of hazardous waste abandonment. In addition, the petition asserted that the 2008 DSW final rule will not substantially increase recycling and that the economic benefits are few and will only accrue to deregulated industries. Furthermore, the petition claimed that there would be job losses in the hazardous waste treatment industry and increased worker health problems as a result of the rule.

EPA addressed Sierra Club's request to revoke the 2008 DSW final rule in whole and stay its implementation in the May 27, 2009, public meeting notice, which continues to reflect EPA's current thinking. In that notice, EPA stated at 74 FR 25202:

> The scope of possible changes to the definition of solid waste is governed by the concept of ''discard.'' As discussed in the preamble to the DSW final rule, EPA used the concept of discard as the central organizing idea behind the October 2008 revisions to the definition of solid waste. As stated in RCRA section 1004(27), ''solid waste'' is defined as ''. . . any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining and agricultural activities'' (emphasis added). Therefore, in the context of the DSW final rule, a key issue relates to the circumstances under which a hazardous secondary material that is recycled by reclamation is or is not discarded (73 FR 64675). In exercising its discretion in the DSW final rule to define what constitutes ''discard'' for hazardous secondary materials reclamation, EPA included an explanation of how each provision of the final rule relates to discard (73 FR 64676–64679).
>
> For example, in the DSW final rule, EPA determined that if the generator maintains control over the recycled hazardous secondary material and if the material is legitimately recycled under the standards established in the final rule and not

[5] The proposed rulemaking was signed by the Administrator of EPA on June 30, 2011.

speculatively accumulated within the meaning of EPA's regulations, then the hazardous secondary material is not discarded. This is because the hazardous secondary material is being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the reclamation process, the generator ensures that the hazardous secondary materials are not discarded. (See 73 FR 64676.)

Because the final revisions to the definition of solid waste are closely tied to EPA's interpretation of the concept of ''discard,'' EPA does not plan to repeal the rule in whole or stay its implementation. Such an action could result in hazardous secondary materials that are not discarded being regulated as hazardous wastes. In particular, EPA does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process.

Today's final rule includes several changes to the generator-controlled exclusion and to the non-waste determination petition process, but, for the reasons stated above, EPA did not stay the rule and is not withdrawing either provision.

3. Adequacy of EPA's Analyses

Finally, the Sierra Club's petition asserted that EPA's conclusion that the 2008 DSW final rule would have no adverse environmental impacts, and therefore would have no disproportional adverse impacts to minority and low-income communities, is unsupported by the administrative record. In response to these comments and similar comments by other stakeholders at the June 2009 public meeting, EPA committed to producing an expanded analysis of the potential disproportionate impacts of the 2008 DSW final rule. A draft methodology for the analysis was shared with the public in January 2010, and three public roundtable discussions were held to discuss the draft methodology and were addressed in the development of the draft DSW environmental justice analysis.[6]

J. Draft DSW Environmental Justice Analysis

As part of the development of the 2011 DSW proposal, EPA conducted a revised environmental justice analysis, following the methodology discussed with stakeholders during the 2010 roundtable discussions. The purpose of the draft DSW environmental justice analysis was two-fold. First, the analysis represents a systematic examination of the potential for an increase in adverse impacts under the 2008 DSW final rule (considered independently from which communities might be impacted). Second, the analysis includes a demographic assessment, characterizing the extent any potential adverse impacts are likely to affect minority and/or low-income communities. The results of this analysis were intended to inform EPA's decision-making on which regulatory options to pursue, within the scope of the Agency's authority to regulate hazardous waste.

The results of the draft DSW environmental justice analysis demonstrate that hazardous secondary material recycling can pose significant potential hazards to human health and the environment, and that it is reasonable to conclude that the potential for hazards from hazardous secondary materials recycling adversely impacting human health and the environment could increase under the 2008 DSW final rule. Of particular concern are (1) the absence of required measures (*e.g.,* weekly inspections, training, contingency plans) at hazardous secondary materials reclaimers to prevent problems (*e.g.,* spills, fires, explosions), (2) the incentives to accumulate larger volumes of hazardous secondary materials due to longer storage time limits, and (3) the reduction in access to information and opportunity for public participation.

Moreover, the analysis demonstrates that some of the communities potentially impacted are minority and low-income communities, and in most cases, the populations potentially impacted are disproportionately minority and/or low income. In particular, the population-level analysis shows a statistically significant potential disproportionate impact to minority and low-income populations. In addition, underlying vulnerabilities traditionally associated with minority and low-income communities can pose the potential to exacerbate potential adverse impacts of the 2008 DSW final rule. The ability of communities to participate in the decision-making process and the potential for multiple and cumulative effects are of particular concern.

The analysis has undergone peer review, and the draft environmental justice analysis and peer review comments were presented for public comment as part of the supporting documentation for the 2011 DSW proposal.

K. July 2011 Proposal To Revise the Definition of Solid Waste

On July 22, 2011, EPA published a proposal to revise the definition of solid waste. Comments were requested, and the comment period was extended until October 20, 2011. In September 2011, EPA held two public meetings to accept public comment on the proposal in Philadelphia, PA and in Chicago, IL. The goal of the 2011 DSW proposal was to re-examine the 2008 DSW final rule to determine if any changes are needed to ensure that the rule, as implemented, protects human health and the environment from the mismanagement of hazardous secondary materials, while at the same time promote sustainability by encouraging the reclamation of such materials. The proposed rule consisted of six possible actions, which are summarized below.

1. Revisions to the Exclusion for Hazardous Secondary Materials Reclaimed Under the Control of the Generator

In the 2011 DSW proposal, EPA proposed to retain the exclusion for hazardous secondary materials reclaimed under the control of the generator found at 40 CFR 261.4(a)(23), with certain revisions. Proposed revisions to the 2008 DSW rule generator-controlled exclusion include (1) adding a regulatory definition of ''contained,'' (2) making notification a condition of the exclusion, (3) adding a recordkeeping requirement for speculative accumulation, and (4) adding a recordkeeping requirement for reclamation under toll manufacturing agreements. In addition, EPA requested comment on other ways to strengthen the generator-controlled exclusion in order to protect human health and the environment.

2. Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation

EPA proposed to replace the exclusion for hazardous secondary materials that are transferred from the generator to other persons for the purpose of reclamation found at 40 CFR 261.4(a)(24) and(25) with an alternative Subtitle C regulatory scheme. EPA's analyses of potential hazards posed by the 2008 DSW rule indicate that, when implemented, the transfer-based exclusion may adversely impact human health and the environment from hazardous secondary materials that may become discarded, and that minority and low-income populations may be disproportionately affected by these impacts.

Under the proposed alternative Subtitle C requirements, the hazardous recyclable materials would be managed in accordance with the current RCRA Subtitle C requirements, including

[6] U.S. EPA. *Draft Environmental Justice Methodology for the Definition of Solid Waste Rule,* January 2010, *http://www.epa.gov/epawaste/hazard/dsw/ej.htm.*

manifesting and hazardous waste permits for storage. However, an exception to these proposed requirements would allow generators to accumulate hazardous recyclable materials for up to a year without a RCRA permit if they make advance arrangements for legitimate reclamation and document those arrangements in a reclamation plan.

EPA also requested comment on alternative approaches that would address the concerns regarding the potential risk under the transfer-based exclusion to human health and the environment from discarded hazardous secondary material, such as including additional conditions.

3. Remanufacturing Exclusion

In addition, EPA requested comment on an exclusion from the definition of solid waste for certain types of higher-value solvents sent for remanufacturing into similarly higher-value products. Further, the action requested comment on a petition process for adding other higher-value hazardous secondary materials that are destined to be remanufactured into similarly higher-value products.

4. Proposed Revisions to the Definition of Legitimacy

EPA also proposed revisions to the definition of legitimacy found at 40 CFR 260.43 for the purpose of distinguishing genuine recycling from ''sham recycling.'' Proposed revisions to the 2008 DSW final rule legitimacy definition include (1) applying the codified ''legitimacy'' definition to all hazardous secondary material recycling activities; (2) making all legitimacy factors mandatory, with a petition process for those instances that a factor is not met even when the recycling is legitimate; and (3) requiring documentation of legitimacy.

5. Proposed Revisions to Solid Waste Variances and Non-Waste Determinations

EPA also proposed revisions to the case-by-case solid waste variances and non-waste determinations found at 40 CFR 260.30–260.34 in order to ensure protection of human health and the environment and foster greater consistency among the implementing agencies. Proposed revisions affect both the non-waste determinations from the 2008 DSW final rule and pre-2008 existing variances. Specific proposed revisions include (1) requiring facilities which were granted a variance to re-apply for the variance in the event of a change in circumstances that affects how that hazardous secondary material meets the criteria for the variance; (2) requiring facilities to re-notify every two years with updated information; (3) revising the criteria for the partial reclamation variance to clarify when the variance applies and to require, among other things, that all the criteria for this variance must be met; (4) revising the criteria for the non-waste determination in 40 CFR 260.34 to require that petitioners demonstrate why the existing solid waste exclusions would not apply to their hazardous secondary materials; and (5) designating the Regional Administrator as the EPA recipient of petitions for variances and non-waste determinations.

6. Request for Comment on Revisions to Other Recycling Exclusions and Exemptions

Finally, EPA requested comment on revisions that would affect other (pre-2008) solid waste exclusions and hazardous waste exemptions for recyclable materials. These possible revisions include (1) recordkeeping for speculative accumulation as applicable; (2) requiring facilities to re-notify every two years with updated information on their operating status under the various exclusions and exemptions; and (3) containment standards for excluded hazardous secondary materials.

IV. When will the final rule become effective?

This final rule is effective on July 13, 2015.

V. Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator

In today's final rule, EPA is retaining and revising the conditional exclusion from the definition of solid waste at 40 CFR 261.4(a)(23) for those hazardous secondary materials that are legitimately reclaimed within the United States or its territories under the control of the generator. Revisions to the generator-controlled exclusion include (1) adding a codified definition of ''contained;'' (2) adding recordkeeping requirements for same company and toll manufacturing reclamation; (3) making notification a condition of the exclusion; (4) adding a requirement to document that recycling under the exclusion is legitimate; and (5) adding emergency preparedness and response conditions. In addition, we have amended the speculative accumulation provisions to add a recordkeeping requirement. A discussion of the public comments on the July 2011 DSW proposal and the Agency's responses can be found in section XIV of this preamble and the full response to comment document in the docket for this rulemaking.

A. Scope of the Exclusion

The definition of ''hazardous secondary material generated and reclaimed under the control of the generator'' is found at 40 CFR 261.4(a)(23) for both land-based and non-land-based units, since the requirements for both types of units are the same. A land-based unit is defined in 40 CFR 260.10 as an area where hazardous secondary materials are placed in or on the land before recycling, but this definition does not include land-based production units. Examples of land-based units include surface impoundments and piles. Examples of non-land-based units include tanks, containers, and containment buildings.

Hazardous secondary materials are considered ''under the control of the generator'' under the following circumstances:

- They are generated and then reclaimed at the generating facility; or
- they are generated and reclaimed at different facilities, if the generator certifies that the hazardous secondary materials are sent either to a facility controlled by the generator or to a facility under common control with the generator, and that either the generator or the reclaimer has acknowledged responsibility for the safe management of the hazardous secondary materials. In addition, the generating and receiving facilities must maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. The records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received. The requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or
- they are generated and reclaimed pursuant to a written agreement between a tolling contractor and toll manufacturer, if the tolling contractor certifies that it has entered into a tolling contract with a toll manufacturer and that the tolling contractor retains ownership of, and responsibility for, the hazardous secondary materials generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process. The tolling contractor and the toll manufacturer must maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. The records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received. The requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations).

Materials subject to material-specific management conditions under the other exclusions of 40 CFR 261.4(a) when reclaimed and spent lead-acid batteries are not eligible for the generator-controlled exclusion at 40 CFR 261.4(a)(23).

In addition, materials managed under the generator-controlled exclusion at 40 CFR 261.4(a)(23) must be contained, may not be speculatively accumulated, and are subject to a notification provision and documentation of legitimacy determinations, which must be maintained on site. Furthermore, the generator must satisfy certain emergency preparedness and response conditions. These conditions and any changes from the 2008 DSW final rule are explained below.

B. EPA's Rationale for Retaining and Revising the Generator-Controlled Exclusion

In the 2008 DSW final rule, EPA determined that if the generator maintains control over the recycled hazardous secondary material, the material is legitimately recycled under the conditions of the exclusion, and the material is not speculatively accumulated within the meaning of EPA's regulations, then the hazardous secondary material is not discarded. Under these circumstances, the hazardous secondary material is being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the recycling process, the generator ensures that the hazardous secondary materials are not discarded (*see ABR* 208 F.3d 1051 (''Rather than throwing these materials [destined for recycling] away, the producers saves them; rather than abandoning them, the producer reuses them.'')) (73 FR 64676–7).

In today's final rule, EPA reaffirms its determination that when a generator legitimately recycles hazardous secondary materials under its control under the conditions of the exclusion, the generator has not abandoned the material and has every opportunity and incentive to maintain oversight of, and responsibility for, the hazardous secondary material that is reclaimed.

EPA is however making several revisions to the generator-controlled exclusion, the rationale for each of which is explained below.

1. Contained Definition

Under the generator-controlled exclusion, hazardous secondary materials must be contained pursuant to the definition in 40 CFR 260.10, regardless of whether they are stored in land-based units or non-land-based units. Under that definition, a hazardous secondary material is contained if it is managed in a unit that meets the following criteria: (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary material, to prevent releases of the hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions. Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

The codification of these regulatory criteria will help regulatory authorities and facilities operating under the exclusion to determine whether a unit adequately controls the movement of hazardous secondary materials. The contained standard is a key provision for determining that a hazardous secondary material is not discarded. Hazardous secondary materials that are not contained and are instead released to the environment are not destined for recycling and are clearly discarded.

In today's final rule, EPA is retaining the ''contained'' condition based on the rationale that hazardous secondary materials released to the environment are not destined for recycling and are clearly discarded, but is adding a regulatory definition of contained to make it easier for implementing agencies and the regulatory community to determine that a material is contained. In the preamble to the 2008 DSW final rule (73 FR 64681), the Agency stated that a hazardous secondary material is ''contained'' if it is placed in a unit that controls the movement of the hazardous secondary materials out of the unit and into the environment. However, EPA did not provide more specific guidance on how an implementing agency or the regulated community would determine if a unit did adequately control the movement of hazardous secondary materials and meet the contained standard.

As EPA noted in the 2011 DSW proposal and as reflected in many of the public comments, of particular concern is the lack of preventative measures in the contained standard in the 2008 DSW final rule. This is noted as a major regulatory gap in EPA's assessment of the potential for adverse impacts from the 2008 DSW final rule, including adverse impacts to minority and low income communities. Given that the contained standard is one of the major requirements for determining that hazardous secondary materials reclaimed under the generator-controlled exclusion are not discarded, this lack of specificity could undermine the exclusion. That is, if the primary or only way to determine that the hazardous secondary material is not contained is to wait until it is released to the environment, then the 2008 DSW final rule increases the likelihood of discard for these materials.

The Agency therefore is adding a regulatory definition of ''contained'' that resolves this uncertainty without sacrificing the flexibility that would allow the implementing authority to take into account a wide variety of case-specific circumstances when necessary. This definition specifies factors which, if met, demonstrate that the hazardous secondary materials in a unit are handled as valuable raw materials, intermediates, or products and thus are not being discarded. We note that the elements of the contained definition are all measures that are used to prevent releases and ensure operation and maintenance of the storage unit in the same manner as a production unit.

If these criteria were not met, the materials remaining in the unit would be considered solid and hazardous wastes and the unit would be subject to the appropriate hazardous waste regulations.

Also, to clarify the regulatory status of units from which releases have occurred, the Agency is also adding to 40 CFR 261.4(a)(23) the following language: (1) A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation; and (2) hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases of the hazardous secondary material to the environment is discarded and a solid waste.

2. Notification as a Condition

Under today's rule, generators, reclaimers, tolling contractors, and toll manufacturers operating under the generator-controlled exclusion at 40 CFR 261.4(a)(23) are required to submit a notification prior to operating under these exclusions and by March 1 of each even-numbered year thereafter to their regulatory authority. Facilities must also notify their regulatory authority within 30 days of stopping management of hazardous secondary materials under the rule. The notification provisions are found at 40 CFR 260.42.

The substance of the notification provisions is essentially the same as that under the 2008 DSW final rule. However, under today's rule, such notification is a condition of the exclusion rather than a requirement. At issue here are not the specifics of the notification in 40 CFR 260.42, but rather the consequences an entity would face for failing to notify. Thus, if notification is a requirement under the authority of RCRA section 3007 (as specified under the 2008 DSW final rule), it means that failure to notify would constitute a violation of the notification regulations. On the other hand, if notification is a condition of the exclusion, it means failure to notify would potentially result in the loss of the exclusion for the hazardous secondary materials (*i.e.,* the hazardous secondary materials may become solid and hazardous wastes and subject to full Subtitle C regulation).

EPA is finalizing the notification provision as a condition of the generator-controlled exclusion because it is the only formal indication of a facility's intent to reclaim a hazardous secondary material under the conditional exclusion rather than to discard it. For example, if during an inspection of a large quantity generator of hazardous waste, EPA were to discover a hazardous secondary material that had been stored on-site for more than 90 days without a RCRA permit (an act that would typically be a violation of the hazardous waste regulations), a previously filed notification would be an indication that the facility was planning to reclaim the hazardous secondary material under the conditions of the exclusion. Absent such a notification, it would be difficult for the facility to justify its true intentions for the hazardous secondary material. Failure to meet the notification provision would be a strong indication that the facility either did not intend to comply with or was unaware of the provisions of the exclusion, since it failed to comply with the first step for claiming the exclusion. In both cases, the lack of notification shows that the hazardous secondary material may be discarded. Making notification a condition of the rule would further discourage facilities from trying to evade enforcement by not notifying because the costs of not notifying could be significantly higher than if notification remains a requirement. Finally, notification is important for informing regulators and the public about hazardous secondary materials activity and, without such notification, regulators are unable to effectively monitor compliance. This notification condition will keep regulators and the public informed about hazardous secondary materials activity and will enable effective compliance monitoring.

3. Recordkeeping for Speculative Accumulation

Under today's rule, all persons subject to the speculative accumulation requirements at 40 CFR 261.1(c)(8) (including, but not limited to, persons operating under the generator-controlled exclusion at § 261.4(a)(23)) must place materials subject to those requirements in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. This provision will allow inspectors and other regulatory authorities to quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and, therefore, whether that facility is in compliance with the accumulation time limits of § 261.1(c)(8).

EPA notes that the speculative accumulation provision only applies to persons who are accumulating hazardous secondary materials. Processes involving hazardous secondary materials being returned to the original process via pipes are not considered to accumulate hazardous secondary materials and thus the speculative accumulation provision (and recordkeeping therein) would not apply to these scenarios.

4. Other Recordkeeping

Today's exclusion for tolling and ''same-company'' recycling requires recordkeeping for shipments sent and received under the exclusion. The records must contain the name of the transporter, the date of the shipment, and the type and quantity of hazardous secondary material shipped or received. These records may consist of normal business records. Such recordkeeping will facilitate enforcement of the exclusion and will allow tracking of hazardous secondary materials to ensure that these materials remain under the control of the generator and are not discarded.

5. Documentation of Legitimacy Determinations

Persons performing the recycling of hazardous secondary materials under the generator-controlled exclusion of 40 CFR 261.4(a)(23) must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in 40 CFR 260.43(a), except as otherwise noted in 40 CFR 260.43(d). Documentation must be maintained for three years after the recycling operation has ceased.

The Agency has determined that requiring documentation under the generator-controlled exclusion to demonstrate that the hazardous secondary materials are legitimately recycled and not discarded is appropriate because this exclusion is generic and can be used by a wide variety of industries recycling any of a number of hazardous secondary materials.

6. Emergency Preparedness and Response

Many of the environmental and human health damages identified by the environmental problems study were caused by fires and explosions and the lack of specific requirements to prevent and respond to such problems is a significant gap in the 2008 DSW exclusion.[7] Fires and explosions at industrial recyclers can threaten the lives and health of both facility employees and the general public and can cause lasting damage to the local environment. Recent catastrophic chemical accidents in the United States, such as the 2013 fire and explosion in West, Texas, that killed 15 people, the 2010 explosion and fire at Tesoro Refinery in Anacortes, Washington, that killed seven employees, and the 2012 Chevron Refinery hydrocarbon fire in Richmond, California, that affected 15,000 people in the surrounding area, highlight the need for continued improvement in a number of areas related to chemical facility safety. To address these concerns, the President issued Executive Order 13650—Improving Chemical Facility Safety and

[7] Taken together, leaks, spills, fires, explosions, or other accidents caused environmental damage at 19% of the 250 environmental damage sites. U.S. EPA ''*An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials* (Updated)'' December 2014.

Security (EO) on August 1, 2013. The EO directed the Department of Homeland Security, EPA, the Department of Labor, the Department of Justice, the Department of Agriculture, and the Department of Transportation to identify ways to improve operational coordination with state, local, tribal, and territorial partners; enhance federal agency coordination and information sharing; modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

EPA finds that planning and preparing for an emergency demonstrates a generator's intent to not only protect human health and the environment but to reduce potential loss of valuable hazardous secondary materials. In the absence of such requirements, hazardous secondary materials pose a greater risk of being released and discarded to the environment.

Therefore, EPA is adding a condition to the generator-controlled exclusion that generators must follow certain emergency preparedness and response regulations, found in 40 CFR part 261 subpart M, which are dependent on the amount of hazardous secondary material the generator accumulates on site at any time. Under the final rule, generators that accumulate less than or equal to 6,000 kg of hazardous secondary material on site must meet regulations like the emergency preparedness and response regulations currently required for small quantity generators of hazardous waste. Generators that accumulate more than 6,000 kg of hazardous secondary material on site must meet regulations like the emergency preparedness regulations currently required for large quantity generators of hazardous waste. EPA chose to set the threshold at 6,000 kg based on the current hazardous waste generator regulations, which require generators that accumulate greater than 6,000 kg of hazardous waste on site to comply with large quantity generator regulations, including emergency preparedness and response regulations. EPA finds that generators that accumulate greater amounts of hazardous secondary material on site inherently pose greater risk to human health and the environment from a potential release caused by a fire or explosion and thus it is more appropriate for these generators to take additional steps to prepare for such events.

Specifically, EPA is requiring that generators that accumulate less than or equal to 6,000 kg of hazardous secondary material on site comply with the emergency preparedness and response requirements equivalent to those in part 265 subpart C, which discuss maintaining appropriate emergency equipment on site, having access to alarm systems, maintaining needed aisle space, and making arrangements with local emergency authorities. A generator must also have a designated emergency coordinator who must respond to emergencies and must post certain information next to the telephone in the event of an emergency.

For generators that accumulate more than 6,000 kg of hazardous secondary material on site, EPA is requiring that generators comply with requirements equivalent to those in part 265 subparts C and D, which includes all the requirements already discussed above for those accumulating less than or equal to 6,000 kg, as well as requiring a contingency plan and sharing the plan with local emergency responders. EPA recommends that the contingency plan be based on the National Response Team's Integrated Contingency Plan Guidance (One Plan), discussed in the **Federal Register** on June 5, 1996 (61 FR 28642). Under the One Plan Guidance, the generator can develop one contingency plan that meets all the regulatory standards for the various statutory and regulatory provisions for contingency planning, such as EPA's Oil Pollution Prevention Regulation or Risk Management Programs regulations, the U.S. Coast Guard's (USCG) Facility Response Plan regulations, OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) regulations, and several others.

EPA has determined that adding these emergency preparedness and response conditions to the generator-controlled exclusion meets the goals of the Chemical Safety EO and also will ensure that those facilities managing hazardous secondary material under the exclusion will be doing so in a manner that allows them to safely recycle the hazardous secondary material and limit loss of materials that are supposed to be recycled into the environment. These provisions are the common-sense steps that a facility that manages hazardous materials should take to reduce risk to their workers and the public. Additionally, EPA has determined that structuring the emergency preparedness and response conditions of the generator-controlled exclusion after the existing hazardous waste requirements serves to reduce burden on generators, as generators are likely already familiar and complying with this regulations.

VI. Verified Recycler Exclusion Replacing the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation

Based on comments received and further assessment, EPA has decided to replace the 2008 DSW exclusion for hazardous secondary materials that are transferred for the purpose of legitimate reclamation (*i.e.,* the transfer-based exclusion) with an exclusion for hazardous secondary materials sent for reclamation at a verified recycler (*i.e.,* the verified recycler exclusion). The verified recycler exclusion is being finalized instead of the proposed Subtitle C alternative recycling standards because EPA has determined that such an exclusion will address the regulatory gaps identified in the 2008 DSW rule in a way that appropriately identifies hazardous secondary materials that will be legitimately recycled and not discarded. Based on the evidence from states currently implementing the transfer-based exclusion, hazardous secondary materials transferred to another party for recycling can be legitimately recycled and not discarded, provided that there is a mechanism for adequate oversight at the recycling facility. Subtitle C regulation of this activity is unnecessary and would result in EPA regulating as hazardous waste some materials that have not been discarded. By adding the condition of requiring the recycler to obtain a solid waste variance or have a RCRA permit, EPA is addressing the potential for future discard while allowing the legitimate recycling activities that are already occurring to continue. (A discussion of the public comments on the July 2011 proposal and the Agency's responses can be found in section XV of this preamble and the full response to comment document is in the docket for this rulemaking.)

A. Summary of Transfer-Based Exclusion

The 2008 exclusion for hazardous secondary materials that are transferred for the purpose of legitimate reclamation, which EPA is withdrawing today and replacing with the verified recycler exclusion, applied to hazardous secondary materials (*i.e.,* spent materials, listed sludges, and listed by-products) that are generated and subsequently transferred to a different person or company for the purpose of

reclamation. This exclusion was found at 40 CFR 261.4(a)(24) and (25).[8]

General conditions for hazardous secondary material generators, reclaimers, and intermediate facilities[9] under this exclusion included the following:

- Entities must submit a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter reporting types and quantities of hazardous secondary materials being reclaimed, and
- hazardous secondary materials managed at such facilities must not be speculatively accumulated as defined in § 261.1(c)(8) and must be legitimately reclaimed as specified in § 260.43.

Conditions applicable to generators of hazardous secondary materials included the following:

- Containment of such hazardous secondary materials,
- reasonable efforts, a form of due diligence, to ensure that the intermediate facility or reclaimer intends to properly manage and legitimately recycle the hazardous secondary material, and
- retention of records of off-site shipments for three years.

Conditions applicable to intermediate facilities and reclaimers included the following:

- Containment of hazardous secondary materials,
- transmittal of confirmations of receipt to generators,
- retention of records for hazardous secondary materials received and sent off-site,
- financial assurance equivalent to that required of hazardous waste facilities, and
- (for reclaimers) proper management of any residuals generated from the reclamation activities.

In addition, for any hazardous secondary materials excluded under 40 CFR 261.4(a)(24) generated and then exported to another country for reclamation, the exporter must notify and obtain consent from the receiving country and file an annual report per 40 CFR 261.4(a)(25).

B. EPA's Rationale for Requiring Conditions for Transfers of Hazardous Secondary Materials Sent for Reclamation

In the 2008 DSW rule, EPA determined that, absent specific conditions, it is reasonable to conclude that transfers of hazardous secondary materials to third-party recyclers generally involve discard except for instances where EPA has evaluated and promulgated a case-specific exclusion that a hazardous secondary material is not a solid waste. Generators of hazardous secondary materials who do not reclaim these materials themselves often ship these materials to a commercial facility or another manufacturer for reclamation in order to avoid the costs of disposing of the material. Because of the low commercial value and the high potential liability associated with most types of hazardous secondary materials (*i.e.,* spent materials and listed hazardous waste by-products and sludges), generators will typically pay the reclamation facility to accept these hazardous secondary materials or receive a salvage fee that only partially offsets the cost of transporting and managing them. In such situations, the generator has relinquished control of the hazardous secondary materials and the entity receiving such materials may not have the same incentives to manage them as a useful product. (Note that this determination is unchanged from the 2008 DSW final rule; see 73 FR 64675.)

Evidence of hazardous secondary materials not being managed as a valuable product is shown in the results of the environmental problems study, found in the docket of the 2008 DSW final rule. Of the 208 damage cases discussed in the 2008 DSW final rule, 195 (or approximately 94%) were from reclamation activities of off-site third-party recyclers, with clear instances of discard resulting in risk to human health and the environment, including cases of large-scale soil and ground water contamination with remediation costs in some instances in the tens of millions of dollars (73 FR 64673).

In addition, the market forces study in the docket for the 2008 DSW final rule supports the conclusion that the pattern of discard at off-site third-party reclaimers is a result of inherent differences between commercial recycling and normal manufacturing. As opposed to manufacturing, where the cost of raw materials or intermediates (or inputs) is greater than zero and revenue is generated primarily from the sale of the output, hazardous secondary materials recycling can involve generating revenue primarily from the receipt of the hazardous secondary materials. Recyclers of hazardous secondary materials in this situation thus respond differently than traditional manufacturers to economic forces and incentives, accumulating more inputs (hazardous secondary materials) than can be processed (reclaimed). In addition, commercial recyclers have less flexibility than in-house recyclers in changing how they manage their hazardous secondary materials (*e.g.,* during price fluctuations, in-house recyclers can more easily switch from recycling to disposal or from recycled inputs to virgin inputs, while commercial recyclers cannot switch to disposal without obtaining a RCRA permit) (73 FR 64674). In other words, third-party recyclers have economic incentives to accumulate waste beyond their ability to deal with it.

C. Regulatory Gaps in the 2008 DSW Rule

The 2008 DSW final rule attempted to address this pattern of adverse impacts to human health and the environment from hazardous secondary materials transferred to a third party for recycling by setting conditions for the transfer-based exclusion. The intent of these conditions was to define when transfers to third-party recyclers would not result in discard. The link between each of the conditions and their ability to prevent discard is discussed in detail in the 2008 DSW final rule preamble at 73 FR 64675–79.

However, EPA failed to take into account how the conditions of the 2008 transfer-based exclusion would work when actually implemented. EPA's analysis of the 2008 DSW final rule was based on the assumption that DSW conditions would be implemented to the same degree as Subtitle C hazardous waste regulations, without taking into consideration whether the 2008 DSW rule would provide EPA and the authorized states the ability for the same level of oversight as the fully applicable Subtitle C hazardous waste regulations, which leads to the second part of EPA's rationale for its 2011 proposal to replace the transfer-based exclusion with an alternative Subtitle C regulatory scheme.

Before excluding hazardous secondary materials that have already been determined to be hazardous wastes when discarded, the Agency needs adequate assurance that the conditional exclusion will not result in discarded hazardous materials posing significant risks to human health and the environment (*e.g.,* fires/explosion, soil and water contamination, air emissions, and abandoned hazardous secondary materials). Because EPA has already evaluated these hazardous secondary materials (for example, during a hazardous waste listing determination) and determined them to be solid and hazardous wastes when discarded, the Agency must be able to reasonably expect that hazardous secondary materials managed under a conditional exclusion will not be discarded.

[8] 40 CFR 261.4(a)(24) is the primary transfer-based exclusion and 40 CFR 261.4(a)(25) contains the export requirements for the transfer-based exclusion.

[9] Intermediate facilities are those facilities that do not reclaim hazardous secondary materials, but store them for more than 10 days.

Over the years, EPA has developed many such conditional exclusions (found in 40 CFR 261.4(a)). In each of these cases, EPA did so by examining the specific hazardous secondary material or the specific recycling practice, or both, before making a determination that the hazardous secondary material is not solid waste. However, unlike these types of specific transfer-based exclusions from the definition of solid waste, the 2008 transfer-based exclusion in 40 CFR 261.4(a)(24) and (25) did not focus on the chemical or physical properties of any particular type of hazardous secondary material or on how it is typically managed. Instead, the transfer-based exclusion is broadly applicable to a wide range of hazardous spent materials and listed by-products and sludges. Thus, while other solid waste exclusions were developed based on EPA's knowledge of the specific hazardous secondary materials, the industries generating them, or the current recycling management practice for those hazardous secondary materials, the 2008 DSW transfer-based exclusion relied entirely on the conditions that were developed by EPA operating as the Agency anticipates they should. The conditions themselves were developed in a reasoned manner,[10] but without evidence that they would work as intended (*i.e.,* would not result in significant risk to human health and the environment from discarded materials).

However, the conditions for the transfer-based exclusion in the 2008 DSW final rule lack several important implementation provisions that the Subtitle C requirements for treatment, storage, and disposal facilities provide. These provisions ensure a greater level of oversight, which ensures that EPA or the state has reviewed a facility's planned operations before management begins and which allows public participation in the environmental decision-making process, thereby increasing the likelihood of compliance and decreasing the potential for risk to human health and the environment from discarded hazardous secondary material. EPA has performed a detailed regulatory comparison of the 2008 DSW final rule with the fully applicable Subtitle C hazardous waste regulations, identifying significant differences that could lead to the potential for an increased likelihood of environmental and public health hazards, including fires/explosion, soil and water contamination, air emissions, and abandoned hazardous secondary materials.[11]

D. Rationale for the Verified Recycler Exclusion

Based on this reconsideration of the DSW transfer-based exclusion conditions, EPA has determined that hazardous secondary materials transferred off-site to third party reclaimers for the purpose of legitimate reclamation are most appropriately covered under a system that allows for oversight and public participation prior to the start of operations to help ensure that (1) the hazardous secondary material will be legitimately reclaimed and not discarded and (2) the potential risk of releases from the facility impacting the surrounding community will be minimized. The need for such additional oversight and public participation is demonstrated by (1) evidence of past damage cases leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and (2) the underlying perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material. In other words, the transfer-based exclusion can exacerbate financial incentives for small and/or inexperienced businesses to take in more hazardous secondary materials than they actually can use, mishandle it, and even go out of business, as shown by the fact that bankruptcies or other types of business failures were associated with 66% of the recycling damage cases, resulting in multi-million dollar cleanups.

At the same time, as EPA noted in the 2011 DSW proposal and as was echoed in the public comments, EPA has also carefully monitored the implementation of the 2008 DSW final rule since it came into effect in December 2008, and to date, no environmental problems have been reported by states related to 2008 transfer-based exclusion. As of April 2014, a total of 65 facilities are operating under the transfer-based exclusion, 56 of which are generators transferring off-site and 7 which are reclamation facilities.[12] All seven reclamation facilities are RCRA permitted. Of the 56 generators operating under the transfer-based exclusion, 32 generators appear to have either started or substantially increased their recycling as a result of the 2008 DSW exclusions. These include generators that had previously reported in their 2007, 2009, or 2011 biennial report that they sent their solvents off site for fuel blending, and then notified that they are sending their spent solvents for reclamation under the 2008 DSW final rule. In addition, in at least five cases, facilities have switched from sending spent pickle liquor to landfilling or deep well injection to recycling under the 2008 DSW rule. In total, the 2008 DSW notifications document that over 57,000 tons of hazardous secondary material were reclaimed under the 2008 DSW rule during 2011.[13]

In addition, it should be noted that the Department of Environmental Protection for the State of Pennsylvania (PA DEP), where 27 of the 65 facilities operating under the transfer-based exclusion are located, commented strongly in favor of keeping the transfer-based exclusion: ''PA DEP has experienced no compliance problems or issues of any nature with those generators or reclamation facilities operating under this conditional exclusion, known as the transfer-based exclusion. In addition, under the transfer-based exclusion, large quantities of hazardous solvents have been diverted to reclamation and reuse rather than being burned for energy recovery, resulting in greater resource conservation.'' [14]

Given that the transfer-based exclusion has been achieving its intended purpose of encourage safe, legitimate recycling, withdrawing the transfer-based exclusion and replacing it with RCRA Subtitle C hazardous waste requirements is unnecessary and would result in hazardous secondary material that is currently being legitimately recycled and not discarded being regulated as hazardous waste. Because Subtitle C regulation would be more stringent that the current exclusion, if EPA were to finalize the alternative Subtitle C standards, Pennsylvania (and other states that have adopted the 2008 DSW rule) would have to regulate this material as hazardous waste, despite the

[10] See Chapter 11, *Regulatory Impact Analysis: EPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste,* EPA–HQ–RCRA–2002–0031–0602.

[11] See Chapter 2 and Appendix A of *Potential Adverse Impacts Under the Definition of Solid Waste Exclusions (Including Potential Disproportionate Adverse Impacts to Minority and Low-Income Populations): Volume 1—Hazard Characterization,* available in the docket for today's rule.

[12] Some of these facilities are also managing hazardous secondary materials under the generator-controlled exclusion.

[13] U.S. EPA, *EPA's Evaluation of Data Collected From Notifications Submitted Under the 2008 Definition of Solid Waste Exclusions,* April 11, 2014.

[14] Comment to the docket from Vincent J. Brisini, Acting Deputy Secretary for Waste, Air, Radiation and Remediation, Pennsylvania Department of Environmental Protection, October 20, 2011 (EPA–HQ–RCRA–2010–0742–0271).

fact that according to the state it is currently being legitimately recycled and not discarded.

However, it is important to note that the comments from PA DEP went on to recommend that the transfer-based exclusion be limited to RCRA-permitted facilities. Because all recycling under the transfer-based exclusion has been (to date) performed at RCRA-permitted facilities, EPA is unable to extrapolate what would happen at facilities without RCRA Subtitle C permits if the transfer-based exclusion were fully implemented. Given the evidence of past damage cases leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and the underlying perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material, additional oversight of recycling beyond the self-implementing measures of the transfer-based exclusion is needed to ensure that the hazardous secondary material is legitimately recycled and not discarded.

To address this issue, EPA is requiring as a condition of the new verified recycler exclusion that generators must send their hazardous secondary materials to a RCRA-permitted recycler or intermediate facility [15] or to a verified hazardous secondary materials recycler or intermediate facility who has obtained a solid waste variance from EPA or the authorized state using the procedures found in 40 CFR 260.33. The verified recycler exclusion uses the solid waste variance procedure to determine if a facility will properly manage the hazardous secondary materials as commodities and legitimately recycle rather than discard them. The variance addresses the same criteria currently required for the reasonable efforts environmental audit under the 2008 transfer-based exclusion (see discussion below). However, the variance process would allow EPA or the authorized state to evaluate the facility before it begins recycling hazardous secondary materials and would also give the affected community the opportunity to provide input prior to a decision as to whether the variance should be granted, thus addressing a major regulatory gap in the transfer-based exclusion that could result in significant risk to human health and the environment from discarded hazardous secondary material.

In addition, as described below, the verified recycler exclusion retains those conditions from the 2008 transfer-based exclusion that EPA determined are necessary to properly identify hazardous secondary material that is legitimately recycled and not discarded, and also includes the new conditions that apply to the generator-controlled exclusion being finalized today.

EPA expects that all facilities that are currently recycling hazardous secondary materials under the 2008 transfer-based exclusion will be able to continue to recycle these materials under the verified recycler exclusion, because all recycling under the transfer-based exclusion is being done at RCRA-permitted facilities, which also qualify for the verified recycler exclusion. Moreover, the additional conditions of the verified recycler exclusion address the regulatory gaps EPA identified in the 2011 DSW proposal that could have resulted in significant risk to human health and the environment from discarded material, if the 2008 DSW had been fully implemented to include facilities without RCRA permits or other regulatory oversight prior to beginning recycling.

Finally, EPA notes that facilities managing excluded hazardous secondary materials under the verified recycling exclusion are still potentially subject to RCRA enforcement actions if they fail to meet the conditions of the exclusion. Persons that handle these hazardous secondary materials are responsible for maintaining the exclusion by ensuring that the conditions are met. If the hazardous secondary materials are not managed pursuant to these restrictions, they are not excluded. They would then be considered solid and hazardous wastes if they were listed or they exhibited a hazardous waste characteristic for RCRA Subtitle C purposes.

E. Conditions of the Verified Recycler Exclusion

The conditions discussed below describe EPA's evaluation of each of the conditions under the 2008 transfer-based exclusion that EPA is retaining in the verified recycler exclusion, as well as the additional conditions EPA has determined are necessary to address the regulatory gaps identified in the transfer-based exclusion in order to ensure that the verified recycler exclusion identifies hazardous secondary materials that are legitimately recycled and not discarded. By including these conditions, EPA is identifying those hazardous secondary materials that will be legitimately recycled and not discarded.

1. Provisions Applicable to the Hazardous Secondary Materials Generator, the Reclamation Facility, and any Intermediate Facility

Prohibition on speculative accumulation. As a condition of the verified recycler exclusion, hazardous secondary materials cannot be speculatively accumulated (40 CFR 261.1(c)(8)) at the hazardous secondary material generator, reclamation facility, or intermediate facility. Restrictions on speculative accumulation have been an important element of the RCRA hazardous waste recycling regulations since they were promulgated on January 4, 1985. According to this regulatory provision, hazardous secondary materials are accumulated speculatively if the person accumulating them cannot show that the material is potentially recyclable. Further, the person accumulating the hazardous secondary material must show that during a calendar year (beginning January 1) the amount of such material that is recycled or transferred to a different site for recycling is at least 75% by weight or volume of the amount of the hazardous secondary material present at the beginning of the period. It is also the same prohibition that is being promulgated today for the generator-controlled exclusions.

Furthermore, under today's rule, all persons subject to the speculative accumulation requirements at 40 CFR 261.1(c)(8) (including, but not limited to, persons operating under the verified recycler exclusion at § 261.4(a)(24)) must place materials subject to those requirements in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

This provision will allow inspectors and other regulatory authorities to quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and, therefore, whether that facility is in compliance with the accumulation time limits of § 261.1(c)(8).This provision is being retained in the verified recycler exclusion to ensure that the hazardous secondary materials will be recycled rather than discarded through speculative accumulation and abandonment.

Notification. Under today's verified recycler exclusion, as a condition of the exclusion, hazardous secondary

[15] Intermediate facilities are those facilities that do not reclaim hazardous secondary materials, but store them for more than 10 days.

material generators, reclaimers, and intermediate facilities must send a notification prior to operating under this exclusion and by March 1 of each even-numbered year thereafter to the EPA Regional Administrator using EPA form 8700–12. In states authorized by EPA to administer the RCRA Subtitle C hazardous waste program, notifications may be sent to the State Director. The notice must include the following:

- The name, address, and EPA ID number (if applicable) of the facility;
- The name and telephone number of a contact person;
- The NAICS code of the facility;
- The exclusion under which the hazardous secondary materials will be managed;
- When the facility expects to begin managing the hazardous secondary materials in accordance with the exclusion;
- A list of hazardous secondary materials that will be managed according to the exclusion (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous waste);
- For each hazardous secondary material, whether the material, or any portion thereof, will be managed in a land-based unit;
- The quantity of each hazardous secondary material to be managed annually; and
- The certification (included in EPA form 8700–12) signed and dated by an authorized representative of the facility.

If a facility has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the exclusion, the facility must re-notify the Regional Administrator within 30 days using the same EPA Form 8700–12. We consider a facility to have 'stopped' managing hazardous secondary materials when a facility no longer generates, manages and/or reclaims hazardous secondary materials under the exclusion and does not expect to manage any amount of hazardous secondary material under the exclusion for at least one year. Of course, a facility could certainly choose to begin managing hazardous secondary materials again and would simply have to submit a notification in compliance with 40 CFR 260.42.

This notification condition is the same as the notification condition for the generator-controlled exclusion and is an indication that the facility is planning to legitimately recycle the hazardous secondary materials and not discard them. As with the generator-controlled exclusion, EPA is finalizing the notification provision as a condition of the transfer-based exclusion because it is the only formal indication of a facility's intent to reclaim a hazardous secondary material under the conditional exclusion rather than to discard it. For further discussion on the notification, including examples of when a facility must re-notify that it has stopped managing hazardous secondary materials, see section V.B.2 of today's preamble.

Hazardous secondary materials must be contained. Another condition of the verified recycler exclusion applicable to hazardous secondary material generators, reclamation facilities, and intermediate facilities is that the hazardous secondary materials must be contained in their management units. This provision is the same as the restriction that is being promulgated for the generator-controlled exclusion and helps ensure that the hazardous secondary material remains in the management unit until it is ready to be recycled and is not discarded. Hazardous secondary materials released to the environment from any unit are discarded and would be subject to the hazardous waste regulations, unless they are immediately cleaned up. Hazardous secondary materials remaining in a unit that experiences a release may also be considered discarded in certain cases. For further discussion on the containment provisions, see section V.B.1 of today's preamble.

Emergency preparedness and response. As discussed above under the generator-controlled exclusion, one important cause of environmental and human health damages identified by the environmental problems study is fires, explosions, and accidents, with 19% of the environmental damage cases being associated with leaks, spills, fires, explosions, or other accidents, and the lack of conditions to address these problems is a significant regulatory gap in the 2008 DSW exclusions. In addition, the President recently released an Executive Order to address these types of concerns (EO 13650—Improving Chemical Facility Safety and Security). EPA finds that planning and preparing for an emergency demonstrates a generator's intent to not only protect human health and the environment, but also to reduce potential loss of valuable hazardous secondary materials. In the absence of such requirements, hazardous secondary materials pose a greater risk of being released and discarded to the environment.

Therefore, EPA is requiring that generators must follow certain emergency preparedness and response regulations under the verified recycler exclusion. These regulations are found in 40 CFR part 261 subpart M and are dependent on the amount of hazardous secondary material the generator accumulates on site at any time.[16] Under the final rule, generators that accumulate less than or equal to 6,000 kg of hazardous secondary material on site must meet regulations like the emergency preparedness and response regulations currently required for small quantity generators of hazardous waste. Generators that accumulate more than 6,000 kg of hazardous secondary material on site must meet regulations like the emergency preparedness and response regulations currently required for large quantity generators of hazardous waste. EPA chose to set the threshold at 6,000 kg based on the current hazardous waste generator regulations, which require generators that accumulate greater than 6,000 kg of hazardous waste on site to comply with large quantity generator regulations, including emergency preparedness and response regulations. EPA finds that generators that accumulate greater amounts of hazardous secondary material on site inherently pose greater risk to human health and the environment from a potential release caused by a fire or explosion and thus it is more appropriate for these generators to take additional steps to prepare for such events.

Specifically, EPA is requiring that generators that accumulate less than or equal to 6,000 kg of hazardous secondary material on site comply with the emergency preparedness and response requirements equivalent to those in part 265 subpart C, which discuss maintaining appropriate emergency equipment on site, having access to alarm systems, maintaining needed aisle space, and making arrangements with local emergency authorities. A generator must also have a designated emergency coordinator who must respond to emergencies and must post certain information next to the telephone in the event of an emergency.

For generators that accumulate more than 6,000 kg of hazardous secondary material on site, EPA is requiring that they comply with requirements equivalent to those in part 265 subparts C and D, which includes all the requirements already discussed above for those accumulating less than or equal to 6,000 kg, as well as requiring a contingency plan and sharing the plan with local emergency responders. EPA

[16] Intermediate facilities and reclamation facilities must also follow emergency prepared and response regulations, either through the requirement of their RCRA permit or through the criteria that must be met to obtain a verified recycler variance under 40 CFR 260.31(d).

recommends that the contingency plan be based on the National Response Team's Integrated Contingency Plan Guidance (One Plan), discussed in the **Federal Register** on June 5, 1996 (61 FR 28642). Under the One Plan Guidance, the generator can develop one contingency plan that meets all the regulatory standards for the various statutory and regulatory provisions for contingency planning, such as EPA's Oil Pollution Prevention Regulation or Risk Management Programs regulations, the U.S. Coast Guard's (USCG) Facility Response Plan regulations, OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) regulations, and several others.

EPA has determined that adding these emergency preparedness and response conditions meets the goals of the Chemical Safety EO and also will ensure that those facilities managing hazardous secondary material under the exclusion will be doing so in a manner that allows them to safely recycle the hazardous secondary material and limit loss into the environment of materials that are supposed to be recycled. These provisions are the common-sense steps that a facility that manages hazardous materials should take to reduce risk to their workers and the public. Additionally, structuring the emergency preparedness and response conditions of the verified recycler exclusion after the existing hazardous waste requirements serves to reduce burden on generators, as generators are already familiar and complying with this regulations.

Exclusion is limited to recycling performed within the United States. Because the verified recycler exclusion requires that hazardous secondary materials are sent to a verified reclamation facility (or facilities) that has been granted either a RCRA permit or interim status that addresses the hazardous secondary material or has received a variance from EPA or the authorized state, this exclusion is limited to recycling performed within the United States or its territories. Because hazardous secondary materials that are exported for recycling passes out of the regulatory control of the federal government, it is not possible to verify whether the foreign reclaimer will safely and legitimately recycle the hazardous secondary material and not discard it.

2. Provisions Applicable to the Hazardous Secondary Material Generator

Transport to a Verified Recycler. The hazardous secondary material generator must transport hazardous secondary materials to a verified reclamation facility (or facilities) within the United States or its territories. A verified reclamation facility is a facility that has been granted a variance by EPA or an authorized state under § 260.31(d) or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under § 260.31(d) or the management of the hazardous secondary materials at that facility must be addressed under a RCRA Part B permit or interim status standards. The hazardous secondary material generator must also make contractual arrangements with the intermediate facility to ensure that the intermediate facility sends the hazardous secondary material to the verified reclamation facility identified by the hazardous secondary material generator.

Note that in the case of a permitted facility the management of the hazardous secondary materials must be addressed under the RCRA part B permit or interim status standards. In other words, if the permit standards do not extend to the hazardous secondary materials being reclaimed, then the reclamation or intermediate facility is required to either modify the permit to cover those materials or obtain a solid waste variance from EPA or the authorized state before operating under the exclusion.

This condition addresses the major regulatory gap in the transfer-based exclusion of lack of oversight and public participation for hazardous secondary material recycling facilities that do not have RCRA permits. Given the evidence of past damage cases leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and the underlying perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material, additional oversight of recycling beyond the self-implementing measures of the transfer-based exclusion are needed to ensure that the hazardous secondary material is legitimately recycled and not discarded.

This condition replaces the self-implementing ''reasonable efforts'' environmental audits of the recycling facility required under the 2008 transfer-based exclusion. EPA has determined that it more appropriate for the state or EPA to make the determination that a facility can safely and legitimately recycle hazardous secondary material. While EPA has found that many large companies do conduct environmental audits of recycling facilities, many smaller generators would not have the technical expertise or resources to conduct such an effort.[17] In addition, it is more efficient for the EPA or the authorized state to perform one evaluation of a recycler via the permit or variance process rather than have multiple evaluations of a recycler conducted by each generator using that recycler.

Recordkeeping. EPA is requiring hazardous secondary material generators to maintain at the generating facility certain records that document off-site shipments of hazardous secondary materials for a period of three years. Specifically, for each shipment of hazardous secondary material, the generator must maintain documentation of when the shipment occurred, who the transporter was, the name and address of the reclaimer(s) and, if applicable, each intermediate facility, and the type and quantity of the hazardous secondary materials in the shipment. This recordkeeping requirement may be fulfilled by ordinary business records, such as bills of lading.

In addition, hazardous secondary material generators are required to maintain confirmations of receipt from each reclaimer and intermediate facility for all off-site shipments of hazardous secondary materials in order to verify that the hazardous secondary materials reached their intended destination and were not discarded. These receipts must be maintained at the generating facility for a period of three years. Specifically, the hazardous secondary material generator must maintain documentation of receipt that includes the name and address of the reclaimer or intermediate facility, the type and quantity of hazardous secondary materials received, and the date which the hazardous secondary materials were received. The Agency is not requiring a specific template or format for confirmations of receipt and anticipates that routine business records (*e.g.,* financial records, bills of lading, copies of Department of Transportation (DOT) shipping papers, electronic confirmations of receipt) could contain the appropriate information sufficient for meeting this requirement.

We recognize that, in some cases, reclamation of a hazardous secondary material may involve more than one

[17] *An Assessment of Good Current Practices for Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0354).

reclamation step. In these cases, the recordkeeping condition under the terms of the exclusion applies for each reclaimer and intermediate facility, regardless of how many reclamation steps were involved. For example, if a hazardous secondary material generator shipped hazardous secondary materials to one reclaimer for partial reclamation and then arranged for the partially-reclaimed material to be subsequently sent to another reclaimer for ''final'' reclamation, the generator must maintain confirmations of receipt from each reclaimer involved in the reclamation process.

The recordkeeping requirements are the same as those in the 2008 transfer-based exclusion and Agency continues to believe that the recordkeeping requirements in today's rule comprise the minimum information needed to enable effective oversight to ensure the hazardous secondary materials were sent for reclamation and were not discarded.

3. Provisions Applicable to the Transportation of Hazardous Secondary Materials

Hazardous secondary materials may be stored for up to 10 days at a transfer facility and still be considered in transit. However, if the facility stores the hazardous secondary materials for more than 10 days, then it would be considered an intermediate facility and subject to the conditions in 40 CFR 261.4(a)(24)(vi). While at the transfer facility, the hazardous secondary materials must continue to meet all applicable DOT standards. Hazardous secondary materials may be consolidated for shipping, but cannot be intermingled in a way that would constitute waste management. This provision is unchanged from the 2008 transfer-based exclusion and describes the intersection of the RCRA and DOT requirements for these shipments.

4. Provisions Applicable to the Reclamation Facility and any Intermediate Facilities

Recordkeeping. Reclaimers and intermediate facilities who operate under the verified recycler exclusion must maintain certain records, similar to the records we are requiring for hazardous secondary material generators. Specifically, reclaimers and intermediate facilities must maintain at their facilities for a period of three years records of all shipments of hazardous secondary materials that were received at the facility and, if applicable, records of all shipments of hazardous secondary materials sent off-site from the facility. For hazardous secondary materials received at the reclamation and intermediate facility, such records must document the name and address of the hazardous secondary material generator, the type and quantity of hazardous secondary materials received at the facility, any intermediate facilities that managed the hazardous secondary materials, the name of the transporter that brought the hazardous secondary materials to the facility, and the date such materials were received at the facility.

For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, are subsequently sent off-site for further reclamation, reclaimers and intermediate facilities must document the name and address of the hazardous secondary material generator, when the shipment occurred, who the transporter was, the name and address of the subsequent reclaimer and, if applicable, each subsequent intermediate facility, and the type and quantity of hazardous secondary materials in the shipment. This recordkeeping requirement may be fulfilled by ordinary business records, such as bills of lading.

Reclaimers and intermediate facilities must also send confirmations of receipt to the hazardous secondary material generator for all off-site shipments of hazardous secondary materials received at the facility in order to verify for the hazardous secondary material generator that their materials reached the intended destination and were not discarded. Specifically, the reclaimer (or each reclaimer, when more than one reclamation step is required) and, if applicable, each intermediate facility, must send documentation of receipt to the hazardous secondary material generator that includes the name and address of the reclaimer or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. The Agency is not requiring a specific template or format for confirmations of receipt and anticipates that routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, electronic confirmations of receipt) could contain the appropriate information sufficient for meeting this requirement.

In addition, reclaimers and intermediate facilities must also meet the recordkeeping requirements under financial assurance discussed below in this section.

Storage of Hazardous Secondary Materials. In addition to the condition that the hazardous secondary materials must be contained (40 CFR 261.4(a)(24)(v)(A)), reclamation facilities and intermediate facilities must also manage the hazardous secondary materials in a manner that is at least as protective as that employed for the analogous raw material, where there is an analogous raw material. Where there is no analogous raw material, the hazardous secondary material must be contained.

An ''analogous raw material'' is a material for which a hazardous secondary material substitutes and which serves the same function and has similar physical and chemical properties as the hazardous secondary material. A raw material that has significantly different physical or chemical properties would not be considered analogous even if it serves the same function. For example, a metal-bearing ore might serve the same function as a metal-bearing air pollution control dust, but because the physical properties of the dust would make it more susceptible to wind dispersal, the two would not be considered analogous. Similarly, hazardous secondary materials with high levels of toxic volatile chemicals would not be considered analogous to a raw material that does not have these volatile chemicals or that has only minimal levels of volatile chemicals. Storage conditions for reclamation facilities and intermediate facilities that operate under today's exclusion demonstrate that the materials are not discarded, but instead are treated valuable commodities which would be used and not lost to the environment.

This condition is the same as the parallel condition in the 2008 transfer-based exclusion and is based on the fact that the great majority of damage cases documented in the environmental problems study occurred at commercial reclamation and intermediate storage facilities, and mismanagement of hazardous secondary materials was found to be a cause of environmental problems in approximately 40% of the incidents. Accordingly, EPA has determined that this condition for storage is necessary and appropriate for reclamation facilities and intermediate facilities that take advantage of this exclusion to show that storage of these materials is not just another way of disposing of them. In addition, it will establish an expectation for the owner/operators of such facilities that they must manage hazardous secondary materials in a manner at least as protective as they would an analogous raw material and in such a way that materials would not be released into the environment.

Management of recycling residuals. Another condition of the verified recycler exclusion is that any residuals that are generated from the reclamation processes must be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or themselves are listed hazardous wastes, they are hazardous wastes (if discarded) and must be managed according to the applicable requirements of 40 CFR parts 260 through 273.

This condition is the same as the parallel condition in the 2008 transfer-based exclusion and the purpose of this condition is to clarify the regulatory status of these waste materials and to emphasize in explicit terms that residuals that are generated from the reclamation of hazardous secondary materials must be managed properly so that the reclamation operation does not become another way of avoiding waste management and simply becomes another way of discarding unwanted material. The study of recent (*i.e.*, post-CERCLA and post-RCRA) recycling-related environmental problems revealed that mismanagement of residuals was the cause of such problems in one-third of the incidents that were documented. Some common examples of these mismanaged residuals were acids and casings from the processing of lead-acid batteries, solvents and other liquids generated from cleaning drums at drum reconditioning facilities, and PCBs and other oils generated from disassembled transformers. In many of these damage incidents, the residuals were simply disposed of on-site with little regard for the environmental consequences of such mismanagement or possible CERCLA liabilities associated with cleanup of these releases. By making proper management of the recycling residuals a condition of the exclusion, EPA ensures that the reclamation operation is not just another way of discarding hazardous constituents. This has the added benefit of ensuring that the reclamation operation does not pose a significant risk to human health and the environment.

Financial Assurance. The financial assurance condition is another condition that is the same as the parallel condition in the transfer-based exclusion. By obtaining financial assurance, the reclamation or intermediate facility is making a direct demonstration that it will not abandon the hazardous secondary materials, it will properly decontaminate equipment, and it will clean up any unacceptable releases, even if events beyond its control make its operations uneconomical. Moreover, financial assurance also addresses the correlation of the financial health of a reclamation or intermediate facility with the absence of discard. In essence, financial assurance will help demonstrate that the reclamation facility or intermediate facility owner/operators who would operate under the terms of this exclusion are financially sound and will not discard the hazardous secondary materials, or if the facility faces financial difficulties, that funds would have been set aside to address any issues and, therefore, these costs will not be imposed on the U.S. taxpayer.

The financial assurance requirement has been retained in 40 CFR part 261 subpart H because the substance of the requirement is unchanged from the financial assurance requirement for the 2008 DSW transfer-based exclusion. However, the financial assurance condition is now one of the criteria that is evaluated under the verified recycler solid waste variance, allowing the state or EPA to verify that the financial assurance obtained by the reclamation facility or intermediate facility is sufficient and accessible (in contrast, the financial assurance condition in the 2008 DSW transfer-based exclusion was self-implementing and not subject to review by EPA or the authorized state prior to the facility beginning operation).

A detailed discussion of the 40 CFR part 261 subpart H financial assurance provisions can be found in the 2008 DSW final rule at 73 FR 64692–8, October 30, 2008.

Verification of the Recycler. As discussed earlier, the condition requiring verification of the recycler is the one of the major differences between the transfer-based exclusion and the verified recycler exclusion and addresses the major regulatory gap in the transfer-based exclusion of lack of oversight and public participation for hazardous secondary material recycling facilities that do not have RCRA permits. The reclaimer and intermediate facility must have been granted a solid waste variance by EPA or an authorized state under § 260.31(d) or must have a RCRA Part B permit or interim status standards that address the management of the hazardous secondary materials. An intermediate or reclamation facility may apply for a solid waste variance to accept hazardous secondary materials by addressing the substantive criteria of the ''reasonable efforts'' condition that had previously applied to the hazardous secondary material generator under 40 CFR 261.4(a)(24)(B). In addition, the variance must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment.

Specifically, to qualify for the solid waste variance, the facility must address the following criteria:

(1) The intermediate or reclamation facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to § 260.43;

(2) The intermediate or reclamation facility must satisfy the financial assurance condition in § 261.4(a)(24)(vi)(F);

(3) The intermediate or reclamation facility must not be subject to a formal enforcement action in the previous three years and must not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

(4) The intermediate or reclamation facility must have the equipment and trained personnel to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements;

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals, or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

(6) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (including releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

The rationale for each of these criteria is discussed below.

Criterion (1) is based on the first reasonable efforts question in the 2008

transfer-based exclusion and focuses on whether the reclamation facility receiving hazardous secondary materials from a generator legitimately recycles such materials. Determining whether a recycling operation is legitimate is a fundamental basis for establishing that a generator's hazardous secondary materials will not be discarded. For further discussion of legitimate recycling, see section VIII.

Criterion (2) is based on the second reasonable efforts question in the 2008 transfer-based exclusion and addresses whether the facility has the necessary financial assurance to cover the costs of managing any hazardous secondary materials that remain if the facility closes. If a facility was found to have failed to meet the condition to have financial assurance, then it also would have failed to show a good faith effort towards demonstrating that it intends to recycle the hazardous secondary materials (or, in the case of the intermediate facility, properly store the hazardous secondary material) and not discard them. Note that the second reasonable efforts question also required the generator to verify that the regulatory authority had been notified by the recycler under the 2008 transfer-based exclusion, but under the verified recycler exclusion, the state or EPA can verify that directly, thus, it is not included here.

Criterion (3) is based on the third reasonable efforts question in the transfer-based exclusion and focuses on the compliance history of the recycler or the intermediate facility (to the extent that the hazardous secondary material generator uses an intermediate facility). The language of this requirement has been simplified from the corresponding reasonable efforts question because the information is submitted to the regulatory agency who already has access to the pertinent enforcement information, rather than obtained by the generator who would need to rely on publicly-available data. This criterion requires that the facility must either not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly.

''Formal enforcement'' is a written document that mandates compliance and/or initiates a criminal, civil or administrative process, with or without appeal rights before a trial of fact that results in an enforceable agreement or order and an appropriate sanction. For EPA, formal enforcement action is a referral to the U.S. Department of Justice for the commencement of a criminal or civil action in the appropriate U.S. District Court, or the filing of an administrative complaint, or the issuance of an order, requiring compliance and a sanction. For states, formal enforcement action is a referral to the state's Attorney General for the commencement of a criminal, civil or administrative action in the appropriate forum, or the filing of an administrative complaint, or the issuance of an order, requiring compliance and a sanction. ''Significant non-complier'' is a defined term in EPA's Hazardous Waste Civil Enforcement Response Policy and means the violators have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement, or from the RCRA statutory or regulatory requirements. In evaluating whether there has been actual or likely exposure to hazardous waste or hazardous waste constituents, EPA and the states consider both the environmental and human health concerns, including the potential exposure of workers to hazardous waste or hazardous waste constituents. For both terms, see EPA's Hazardous Waste Civil Enforcement Response Policy (Dec. 2003) at *http://www.epa.gov/compliance/resources/policies/civil/rcra/finalerp1203.pdf*.

While a facility being designated as a significant non-complier and/or the subject of a formal enforcement action does not automatically mean that the facility would not reclaim the hazardous secondary materials properly, it does raise questions that we believe the facility requesting the variance should address. That is, if any formal enforcement actions were taken against the facility in the previous three years for such non-compliance and the facility was alleged to be a significant non-complier, the facility must adequately explain how it has resolved any issues or how the reclamation facility will properly manage the hazardous secondary materials to avoid future violations and/or enforcement actions.

Criterion (4) is based on the fourth reasonable efforts question from the 2008 transfer-based exclusion and addresses the technical capability of the recycler or intermediate facility, the most basic requirement for ensuring proper and legitimate recycling of hazardous secondary materials. If a reclamation or intermediate facility was found to have no equipment or inadequate equipment for storing the hazardous secondary material or was found to have personnel who have not been trained for reclaiming the hazardous secondary materials, it raises serious questions as to whether the facility would properly manage such materials and avoid discarding them to the environment. This criterion also includes the addition of verifying that the facility meets the new emergency preparedness and response condition discussed earlier.

Criterion (5) is based on the fifth reasonable efforts question in the 2008 transfer-based exclusion and addresses another major cause of environmental problems from recycling hazardous secondary materials: the management of residuals. This criterion relates to discard through the concept that a generator or reclaimer may actually be discarding hazardous secondary materials through the release of residuals from the recycling process. While the product made from recycling may be a legitimate product, the whole recycling process could be considered discard if hazardous constituents from the recycled hazardous secondary materials are released to the environment. Roughly one-third of the damage cases documented in EPA's environmental problems study were caused by mismanagement of the residuals from recycling. To address criterion (5), the petitioner would need to demonstrate that the reclamation facility has practices in place to ensure that residuals are managed in a manner that is protective of human health and the environment and according to applicable federal or state standards.

Criterion (6) is a new standard not included in the 2008 transfer-based exclusion and is a case-specific performance-based criterion that addresses the risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (including releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors. The purpose of this criterion is to specifically address the differences in the preventative measures between a RCRA-permitted facility as compared to a facility managing excluded hazardous secondary material, including the lack of prescriptive standards for storage and containment (including air emissions standards). In addition, this criterion would address the finding that many of the populations

likely to be proximate to hazardous secondary materials recycling facilities are subject to multiple environmental stressors, including other industrial facilities, landfills, transportation-related air emissions, poor housing conditions (*e.g.*, lead-based paint), leaking underground tanks, pesticides, and incompatible land uses.

The steps the petitioner would take to address this criterion would depend on case-specific circumstances. For example, a facility that is recycling a hazardous secondary material that is not particularly mobile in the environment (*e.g.*, a non-liquid material that does not pose a risk of wind-blown dust) and is not located near population centers would simply need to document these facts in order to meet this criterion. On the other hand, a facility recycling a hazardous secondary material that is volatile, ignitable, or otherwise has a high potential to adversely impact nearby populations in case of a release would need to document the specific steps taken to prevent releases. EPA recommends that the petitioner engage the potentially affected community in developing this document to ensure that they have addressed the concerns expressed by the community.

E. Procedure for Obtaining a Verified Recycler Solid Waste Variance

The process for obtaining a verified recycler solid waste variance is the same as that for the other solid waste variances found in 40 CFR 260.30. In order to obtain a variance, a facility that manages hazardous secondary materials that would otherwise be regulated under 40 CFR part 261 as either a solid waste or a hazardous waste must apply to the Administrator or the authorized state per the procedures described in 40 CFR 260.33, which EPA is amending today to apply to verified recyclers and intermediate facilities. The application must address the relevant criteria discussed in detail above. The Administrator or authorized state will evaluate the submission and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the facility is located. The Administrator or authorized state will accept comment on the tentative decision for 30 days and may also hold a public hearing. The Administrator or authorized state will issue a final decision after receipt of comments and after the hearing (if held). If the application is denied, the facility may still pursue a solid waste variance or exclusion (for example, one of the solid waste variances under 40 CFR 260.30 or solid waste exclusions under 40 CFR 261.4). (Note that today's rule includes several modifications to the variances procedure in 40 CFR 260.33, which would also apply in this case. For further discussion see Section IX of today's preamble).

F. Termination of the Exclusion

As with the generator-controlled exclusion (and the 2008 transfer-based exclusion), units managing hazardous secondary materials excluded under the verified recycler exclusion are not subject to the closure regulations in 40 CFR parts 264 and 265 subpart G. However, when the use of these units is ultimately discontinued, owners and operators of reclamation facilities and intermediate facilities must manage any remaining hazardous secondary materials, including any residues that are not reclaimed, as hazardous waste and remove or decontaminate contaminated containment system components, equipment structures, and soils. These hazardous secondary materials and residues, if no longer intended for reclamation, would also no longer be eligible for the exclusion (which only applies to hazardous secondary materials that are reclaimed). Failure to remove these materials within a reasonable time frame after operations cease could cause the facility to become subject to the full Subtitle C requirements if the Agency determines that reclamation is no longer feasible. While this final rule does not set a specific time frame for these activities, they typically should be completed within the time frames established for analogous activities. For example, the requirements for product tanks under 40 CFR 261.4(c) allow 90 days for removal of hazardous material after the unit ceases to be operated for manufacturing. This time frame should serve as a guideline for regulators in determining, on a case-by-case basis, whether owners and operators of reclamation facilities and intermediate facilities have completed these activities within a reasonable time frame. In any event, these hazardous secondary materials remain subject to the speculative accumulation restrictions in 40 CFR 261.4(a)(8), which includes both a time limitation of recycling 75% of the hazardous secondary material within a year and a requirement that the facility be able to show there is a feasible means of recycling the hazardous secondary material.

VII. Remanufacturing Exclusion

Today, EPA is also finalizing an exclusion from the definition of solid waste for higher-value solvents transferred from one manufacturer to another for the purpose of extending the useful life of the original solvent product by keeping such materials in commerce to reproduce a commercial grade of the original solvent product provided that certain conditions are met. For the purpose of this preamble discussion, EPA is defining this process as ''remanufacturing.'' Remanufacturing that conforms to these conditions would not involve discard, and therefore the hazardous secondary materials would not be regulated as solid waste. As with all recycling-related exclusions and exemptions, such excluded hazardous secondary materials would also need to be recycled legitimately. (A discussion of the public comments on the July 2011 proposal and the Agency's responses can be found in section XVI of this preamble and the full response to comment document is in the docket for the rulemaking.)

A. Purpose of the Remanufacturing Exclusion

In finalizing this conditional exclusion, EPA's objective is to encourage sustainable materials management by identifying specific types of transfers of hazardous secondary materials to third parties, that under appropriate conditions, do not involve discard and can result in extending the useful life of a commercial-grade chemical. Remanufacturing these higher-value hazardous secondary materials can have a significantly lower environmental impact than manufacturing these chemicals for a one-time use and then transferring them for disposal. Thus, remanufacturing allows the hazardous secondary material product to be used again, lowering their life-cycle environmental impacts significantly.

Specifically, EPA has determined that, under appropriate conditions, the potential for discard in inter-company remanufacturing transfers for certain higher-value spent solvents would be low because they will be incorporated into the manufacturing process rather than accumulated or disposed of. Once these solvents are remanufactured to commercial grade, they can be used as replacements for virgin commercial grade solvents. The economic incentive for a company receiving the spent solvents would be to sell or directly use (avoiding purchase of virgin product) the remanufactured solvent products to realize an economic value. The company sending these higher-value spent solvents for remanufacturing is expected to have little economic incentive to pay the receiving company more than a nominal amount of money,

since it would already be transferring something of intrinsic market value (materials that can be easily remanufactured for profit). So, unlike the RCRA-permitted waste handler which can charge a considerable fee for receiving discarded waste, the company receiving these higher-value spent solvents for remanufacturing is expected to realize most of its profit from the sale or use of the remanufactured solvents.

Once remanufacturing processes are in place, EPA expects that solvent remanufacturers would be competitive with other solvent manufacturers even in the event of a downturn in the sizable chemical market. Companies would also have the flexibility to redirect remanufacturing capacity to manufacturing should it ever make economic sense to do so, leaving little economic reason to accumulate unsold or unused remanufactured solvents.

B. Scope and Applicability

1. Designated Solvents

The conditional exclusion for remanufacturing applies to hazardous spent solvents that are currently regulated as hazardous wastes because their recycling involves reclamation. Only the following 18 spent solvents are eligible for the remanufacturing exclusion: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol.

These 18 solvents are used in large volumes as chemical manufacturing aids, chemical processing aids, and chemical formulation aids (generally referred to as ''processing aids'' for the purpose of this rule). The processing aid solvents assist in the reaction, extraction, purification, and blending of ingredients and reactive products, but are not themselves reacted. These processing aid solvents, once used, can then be remanufactured to commercial grade again. These higher-value solvents were selected because there are existing markets for all these solvents to be remanufactured to serve similar purposes to those of the original commercial-grade materials.

Note that, as explained below, these hazardous spent solvents are only eligible if they are remanufactured to serve certain types of chemical functions, and if their originating use was of a specific type. This restriction limits the exclusion to higher-value materials and processes that resemble manufacturing rather than waste management.

Hazardous spent solvents are particularly appropriate for the remanufacturing exclusion because they are derived from a non-renewable resource (petroleum), and they are manufactured in the industrial chemicals sector, which, according to EPA's report on sustainable materials management, ranks third overall as far as direct adverse overall impact to the environment.[18]

In addition, remanufacturing these spent solvents represents an opportunity for risk reduction. Risk is a function of hazard and exposure, and, from a hazard perspective, all of these chemicals have suspected or recognized hazardous health effects associated with their manufacture, processing, and use.[19] Although EPA and industry have been working to find substitutes for the more hazardous of these solvents, or find ways to use less of them, this has not yet been fully achieved.[20] [21] With respect to the pharmaceutical sector in particular, complex chemical processes already registered with the Food and Drug Administration are involved, and EPA has found this a very challenging area to address.

In addition, some of these solvents are building block and primary intermediate chemicals, making them difficult to replace. Until lower-risk substitutes for these solvents are found, it is appropriate from a health risk standpoint to minimize the volume of solvents manufactured and to limit exposure to those already manufactured. This is the intention of the remanufacturing exclusion.

The exclusion can reduce exposure to these solvents in three ways. First, the exclusion would extend the useful life of existing solvents, which would reduce the health risks associated with their manufacture by slowing the rate at which they are manufactured. Second, the exclusion would reduce exposure to solvents already manufactured by reducing the fuel blending of spent solvents. That is, remanufacturing a spent solvent will eliminate the need for blending it with another spent solvent to satisfy the fuel-ratio requirements of incinerators and cement kilns. This, in turn, will reduce the fugitive emissions associated with unloading and loading containers of volatile solvents at fuel-blending facilities.[22] Third and finally, the exclusion can reduce the potential exposure from any transportation incidents, since it is likely that spent solvents can be transported shorter distances for remanufacturing purposes than they can for disposal purposes.[23]

2. Chemical Functions

After remanufacturing, the continuing use of the solvent is limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions), or using them as ingredients in a product in the pharmaceutical, organic chemical, plastics and resins manufacturing sectors, or the paint and coatings sector. Furthermore, the continuing use of the solvent, after remanufacturing, cannot involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles.

EPA has selected these chemical functions because the remanufactured chemical product should serve a similar functional purpose as the original commercial-grade material so that it can substitute for virgin product, since it is this substitution that displaces some manufacturing of virgin product and fosters a system where the original solvent remains in commerce and is not discarded. In these functions, the solvents do not get contaminated by substances, such as inks and greases that are difficult to separate, but only get mixed with pure product ingredients, from which they can be separated readily in a commercially feasible manner.

Furthermore, manufacturing and processing operations can be more easily controlled in terms of exposure and releases, whereas the spent solvents from downstream uses, such as degreasing and cleaning operations are of inherently lower-value and these downstream operations result in more widespread exposure and releases and a higher potential for discard.

In addition, more environmental benefits will be obtained by maximizing the number of times a chemical product can be used at high-purity grade as an

[18] U.S. EPA. *2020 Vision Report: Sustainable Materials Management: The Road Ahead*, Table 1, page 25. *.www.epa.gov/waste/inforesources/pubs/vision.htm*. The other top ranked sectors are electric services (#1) and cotton production (#2).

[19] Allen, D., Shonnard, D, *Green Engineering: Environmentally Conscious Design of Chemical Processes, Risk Concepts*, chapter 2, pgs 35–62, Austin, S., US EPA Editor, Published by Prentice-Hall, 2001.

[20] For information on U.S. EPA's Green Chemistry Program, see *http://www.epa.gov/gcc/*.

[21] Information on the American Chemical Society's Green Chemistry Institute's Pharmaceutical Roundtable is available via the ACS Web site *http://portal.acs.org/portal/acs/corg/content*.

[22] All solvents are volatile, and virtually all spent solvents must go through the fuel-blending process prior to disposal (U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Remanufacturing Exclusion*, June 2011).

[23] Id.

aid to chemical manufacturing and processing, before it is used for at lower-purity as a cleaner or degreaser. While it is possible to extend the product life of a used chemical as a cleaner/degreaser, it takes significantly less energy to bring solvents used as chemical manufacturing aids back to commercial grade than to bring solvents used as cleaners and degreasers back to lower grade functionality, making remanufacturing of the higher-value solvents more economically feasible.

3. Manufacturing Sectors

The remanufacturing exclusion is limited to companies whose primary business is manufacturing, rather than waste management, as indicated by particular NAICS codes. Four manufacturing sectors are eligible for the remanufacturing exclusion: Pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510). Manufacturers within these four sectors all use one or more of the 18 identified solvents as chemical manufacturing, processing, and formulation aids in high volumes. Based on the Toxics Release Inventory information, these four sectors are also closely associated with the chemical functions identified in the exclusion and currently use a high volume of the solvents for the functional purposes included in this exclusion.[24]

EPA is limiting the remanufacturing exclusion to companies whose business is primarily manufacturing because the nature of the exclusion relies on the fact that the eligible spent solvents are indistinguishable from a risk perspective from the virgin chemicals that manufacturers in these sectors are already accustomed to handling—no special equipment and personal training beyond what the facility already has would be needed. Chemical manufacturers in these sectors are also subject to the Occupational Safety and Health Act (OSHA) and Clean Air Act (CAA) standards that cover the management of these chemicals.

C. Conditions

Facilities operating under the remanufacturing exclusions must meet the following conditions.

1. Notification

Hazardous secondary material generators and remanufacturers must submit a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter using EPA form 8700–12 to the EPA Regional Administrator or the State Director, in an authorized state. Additionally, these facilities would have to notify within 30 days of stopping management of hazardous secondary materials under the exclusion.

The intent of the notification condition is to provide basic information to the regulatory agencies about who will be managing the hazardous secondary spent solvents under the remanufacturing exclusion. The specific information included in the notification—that is, the information on EPA form 8700–12—enables regulatory agencies to monitor compliance and to ensure that the hazardous secondary spent solvents are managed in accordance with the exclusion and not discarded.[25]

2. Remanufacturing Plan

A key issue for the remanufacturing exclusion is how the facilities operating under the exclusion would demonstrate that they meet the requirements (*e.g.,* that the hazardous spent solvents, functions, and manufacturing sectors are those identified in the exclusion). A straightforward solution is requiring a remanufacturing plan to be prepared and maintained by both the hazardous secondary material generator and remanufacturer that includes information on the types and expected annual quantities of excluded spent solvents, the processes and industry sectors that generate the spent solvents, and the specific uses and industry sectors—for the remanufactured solvents.

The hazardous secondary material generator is also required to make arrangements with the remanufacturer to jointly develop this plan and to verify the appropriateness of the hazardous spent solvents for the remanufacturing process before claiming the exclusion, thus helping ensure that the hazardous spent solvents will be remanufactured and not discarded.

Finally, to help ensure that the remanufacturer is a legitimate remanufacturer, the plan must include a certification from the remanufacturer stating ''on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredients. I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with CAA regulations under 40 CFR part 60, part 61 or part 63,[26] or, absent such CAA standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 40 CFR part 261 subparts AA (vents), BB (equipment) and CC (tank storage).''

One of the issues raised in the comments was concern that the remanufacturing plan would stifle competitiveness by locking the generator into a single remanufacturer for their hazardous spent solvents. That was not the Agency's intention, and EPA would like to clarify that the remanufacturing plan can be updated any time to reflect a new remanufacturer without triggering a re-notification requirement on the part of the generator. (If the new remanufacturer has not notified before, then he would need to do so under the exclusion.) As long as the remanufacturing plan that is kept on-site reflects the current practices, including making sure that there is a remanufacturer that will accept the hazardous spent solvents, the generator would be in compliance with this condition.

3. Record of Shipments and Confirmation of Receipts

Under the remanufacturing exclusion, generators and remanufacturers need to maintain at the facility records of shipments of hazardous spent solvents for a period of three years. Specifically, for each shipment of hazardous spent solvent, the generator and remanufacturer need to maintain documentation of when the shipment occurred, who the transporter was, and the type and quantity of the hazardous spent solvent in the shipment. This recordkeeping requirement may be

[24] U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Remanufacturing Exclusion,* June 2011.

[25] As with the generator-controlled exclusion in 40 CFR 261.4(a)(23), notification is a condition of the remanufacturing exclusion. See section XIV.F for further discussion.

[26] This condition is parallel to the provisions found at 40 CFR 264.1030(e) for AA, 40 CFR 264.1064(m) for BB, and 40 CFR 264.1080(7) for CC.

fulfilled by ordinary business records, such as bills of lading.

In addition, generators must maintain confirmations of receipt for all off-site shipments of hazardous spent solvent in order to verify that the hazardous spent solvent reached their intended destination and were not discarded. These receipts must be maintained at the facility for a period of three years from when they were created. Specifically, the documentation of receipt would include the name and address of the remanufacturer, and the type and quantity of hazardous spent solvents and date that the hazardous spent solvents were received. The Agency is not requiring a specific template or format for confirmation of receipt since routine business records (*e.g.,* financial records, bills of lading, and electronic confirmation of receipt) would contain the appropriate information sufficient for meeting this requirement.

This provision is necessary so all parties responsible for the excluded hazardous spent solvent would be able to demonstrate that the materials were in fact sent for remanufacturing and arrived at the intended facility and were not discarded in transit.

4. Management in Tanks and Containers

Basic good management practices dictate that solvents, whether virgin or spent, are best stored in tanks or containers that possess inherent controls to address issues, such as volatile air emissions, leaks, and fires or explosions. Solvents present particular management challenges associated with the storage of liquids containing volatile organic chemicals and include both halogenated and non-halogenated organic chemicals, which represent a broad range of chemicals and associated hazards.

By focusing on higher-value spent solvents going to remanufacturing, the remanufacturing exclusion reduces the chance of mismanagement of the spent solvents. However, given the history of spent solvent mismanagement, as demonstrated in the damage cases found in environmental problems study, EPA has determined that it is appropriate to make an explicit condition that spent solvents excluded under the remanufacturing exclusion be stored prior to remanufacturing in tanks or containers that are labeled and that meet technical standards that will ensure the hazardous spent solvents will go to remanufacturing and will not be discarded via leaks, spills or explosions.[27]

For ease of implementation, EPA is establishing explicit tank and container standards in 40 CFR part 261 subparts I and J. These technical standards are the same as those found in 40 CFR part 264 subparts I and J, except that the part 261 subparts I and J specify that the material is ''hazardous secondary material'' rather than hazardous waste, omit references to RCRA permitting requirements, and include other minor conforming changes, as discussed below. Although the 40 CFR part 264 tank and container standards were developed for hazardous wastes, an analysis of the full set of technical requirements under subparts I and J shows that they are comparable to product storage standards, including regulations promulgated under OSHA, DOT, and industry standards.[28] In addition to being comparable to product storage standards, technical standards that mirror subparts I and J of 40 CFR part 264 have the benefit of being technical standards that the regulated community is familiar with, and are designed to prevent the spent solvents from being discarded through leaks or explosions.

During remanufacturing and storage prior to remanufacturing, good management practices also include effective controls of hazardous air emissions. Under the remanufacturing exclusion, this is ensured by requiring that the remanufacturer certifies, as part of the remanufacturing plan, that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with CAA regulations under 40 CFR part 60, part 61 or part 63.[29] Absent such CAA standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, then the appropriate standards in 40 CFR part 261 subparts AA (vents), BB (equipment) and CC (tank storage), which are equivalent to the technical standards found in 40 CFR part 264 and 265 subparts AA, BB, and CC, would apply.

The air emission requirements on remanufacturing equipment, vents, and tanks will ensure that the remanufactured solvents do not become discarded through fires and explosions, guard against the volatilization of hazardous spent solvents, and protect workers, handlers and transporters from spent solvent emissions. EPA notes that most manufacturers in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) will already have their solvent management practices covered under the CAA regulations, but for any remanufacturer that is not covered under CAA, 40 CFR part 261 subparts AA, BB, and CC will ensure that they meet good management practices appropriate for solvent management.

In modifying the tank and container standards and the air emission standards to apply specifically to solvents being remanufactured under the remanufacturing exclusion, EPA has made other minor conforming regulatory changes to 40 CFR part 261. These changes include (1) reserving certain subparts, such as subparts K through L and N though Z, in order to maintain the same numbering as is found in part 264 for the tank and container standards and the air emission standards, (2) codifying 40 CFR 261.197 to address termination of the remanufacturing exclusion (rather than closure, as is required in part 264), and (3) deleting references to the uniform hazardous waste manifest in 40 CFR 261.1086 because manifest requirements are not applicable under the remanufacturing exclusion.

5. Prohibition on Speculative Accumulation

In addition to the other conditions, hazardous spent solvents under the remanufacturing exclusion are subject to the speculative accumulation restrictions in 40 CFR 261.1(c)(8). Speculative accumulation ensures that the hazardous spent solvents are remanufactured and not discarded.

D. Closure of Tank Units

Units managing excluded hazardous spent solvent are not subject to the closure regulations in 40 CFR parts 264 and 265 subpart G. However, when the use of these units is ultimately discontinued, all owners and operators must manage any remaining hazardous spent solvents that are not remanufactured as hazardous waste and remove or decontaminate all hazardous residues and contaminated containment system components, equipment structures, and soils. These hazardous spent solvents and residues, if no longer

[27] U.S. EPA, *An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials (Updated),* December 2014.

[28] U.S. EPA *Equivalent Containment Standards for the Remanufacturing Exclusion,* June 2011.

[29] This condition is parallel to the provisions found at 40 CFR 264.1030(e) for subpart AA, 40 CFR 264.1064(m) for subpart BB, and 40 CFR 264.1080(7) for subpart CC.

intended for remanufacturing, would also no longer be eligible for the exclusion (which only applies to materials that will be remanufactured) and would therefore be hazardous waste. These systems would be subject to the requirements for product tanks under 40 CFR 261.4(c), which allow 90 days for removal of hazardous material after the unit ceases to be operated for manufacturing.

E. Petition Process for Additional Remanufacturing Exclusions

As EPA noted in the 2011 DSW proposal, it is possible that other hazardous secondary materials, industry sectors, and/or functional uses beyond those being finalized today may also be suitable candidates for the remanufacturing exclusion if they involve the transfer of a higher-value hazardous secondary material from one manufacturer to another, for the purpose of remanufacturing a material with significant commercial value. In the 2011 DSW proposal, EPA requested comment on whether to also include a specific petition process, similar to 40 CFR 260.20, where petitioners may apply to EPA to request a hazardous secondary material, industry sector, and/or functional use be added to the exclusion.

After reviewing the comments, EPA has determined that a separate rulemaking petition process is not necessary and that the current process in 40 CFR 260.20, including the administrative procedure for processing the petition would be the best vehicle for addressing additional hazardous secondary materials, industry sectors, and/or functional uses to the remanufacturing exclusion. Given the variety of hazardous secondary materials, manufacturing processes, and markets for potential remanufactured materials, a general process gives the most flexibility for petitioners to submit information on potential excluded materials.

In addition, the Agency would like to encourage the research, development, and demonstration of innovative recycling processes that could be used to recover higher-value hazardous secondary materials. Therefore EPA encourages companies to explore using the existing regulatory flexibilities, such as treatability study exemptions in 40 CFR 261.4(e) and (f) and research development and demonstration permits allowed under 40 CFR 270.65, to assess and develop recycling technologies to facilitate remanufacturing of higher-value materials.

In submitting a rulemaking petition under 40 CFR 260.20, petitioners must include (1) the petitioner's name and address, (2) a statement of the petitioner's interest in the proposed action, (3) a description of the proposed action, including (where appropriate) suggested regulatory language, and (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, and other information. With respect to the fourth factor, EPA would encourage petitioners to provide any information they believe demonstrates that their hazardous secondary material is suited for a solid waste exclusion under the remanufacturing exclusion. Below are some considerations that may assist petitioners in developing their petitions; however, these are guidelines only and should not constrain suggested rulemaking revisions if the petitioner otherwise has information that the hazardous secondary material should be excluded from regulation.

(1) Is the hazardous secondary material generated from a manufacturing process that results in minimal contamination, and does the hazardous nature of the hazardous secondary material stem chiefly from the inherent nature of the commercial product that is to be recovered, and not from any contamination?

For example, the remanufacturing exclusion being promulgated today is focused on materials that originated from using commercial grade solvents for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing, organic chemical manufacturing, plastics and resins manufacturing, or paint and coatings sector. As a result, the solvents in question are only lightly contaminated, chiefly with other commercial-grade chemicals or minor impurities. Moreover, because the hazardous nature of the material stems from the recycled product (or at least a significant portion of the recycled product) and not from the contamination, the remanufacturing exclusion helps reduce overall risk by keeping hazardous chemicals in commerce, rather than discarding them.

(2) Does the hazardous secondary material present a similar risk profile as an analogous raw material or product and require no special storage or handling beyond what is normally used for the analogous raw material or product?

For example, the spent solvents eligible for the remanufacturing exclusion present the same risk profile as solvent products. The same tanks, containers, and transportation standards that are used for solvent products also work for the spent solvents intended for remanufacturing.

(3) Is there any special equipment or personnel training required for the remanufacturing of the material or for the management of the residuals?

For example, under the remanufacturing exclusion being promulgated today, the same distillation columns used to manufacture solvents from raw materials can be used to remanufacture spent solvents. The still bottoms generated from both processes can be managed in a similar fashion.

(4) Is the market for the remanufactured product stable enough to ensure that neither the hazardous secondary material nor the remanufactured products are over-accumulated?

For example, the remanufacturing exclusion being promulgated today focuses on solvents that are known to be widely used in a variety of industries for the purposes described.

VIII. Revisions to the Definition of Legitimacy and Prohibition of Sham Recycling

EPA has a long-standing policy that all recycling of hazardous secondary materials must be legitimate, including both excluded recycling and the recycling of regulated hazardous wastes. The legitimacy provision in today's final rule is designed to distinguish between real recycling activities—legitimate recycling—and ''sham'' recycling, an activity undertaken by an entity to avoid the requirements of managing a hazardous secondary material as a hazardous waste. Because of the economic advantages in managing hazardous secondary materials as recycled materials rather than as hazardous wastes, there is an incentive for some handlers to claim they are recycling when, in fact, they are conducting waste treatment and/or disposal.

In this final rulemaking, EPA is codifying in its regulations the requirement that all recycling must be legitimate by adding a prohibition on sham recycling to 40 CFR 261.2(g). In addition, EPA has changed the definition of legitimate recycling in § 260.43. The new definition specifies four factors that must be met for recycling to be legitimate. However, it also provides new ways that a facility can show that it meets factors 3 and 4 of the legitimacy standard.

The four legitimacy factors are as follows:

- Factor 1: Legitimate recycling must involve a hazardous secondary material that

provides a useful contribution to the recycling process or to a product or intermediate of the recycling process.

- Factor 2: The recycling process must produce a valuable product or intermediate.
- Factor 3: The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control.
- Factor 4: The product of the recycling process must be comparable to a legitimate product or intermediate.

A. Background

Under the RCRA Subtitle C definition of solid waste, many existing hazardous secondary materials are not solid wastes and, thus, are not subject to RCRA's cradle to grave management system if they are recycled. The basic idea behind this construct is that recycling of such materials often more closely resembles normal industrial manufacturing than waste management. However, since there can be significant cost savings from managing hazardous secondary materials outside the RCRA Subtitle C regulatory system, some handlers may claim that they are recycling, when, in fact, they are conducting waste treatment and/or disposal in the guise of recycling. For example, a facility whose primary business was mixing electric arc furnace dust (K061) with agricultural lime for sale as a micronutrient lost its customers and could not sell its product, but continued to accept K061 even though there was no prospect of it being used to produce a product. To guard against practices like these, EPA has long articulated the need to distinguish between ''legitimate'' (*i.e.,* true) recycling and ''sham'' (*i.e.,* fake) recycling, beginning with the preamble to the 1985 regulations that established the definition of solid waste (50 FR 638, January 4, 1985).

The prohibition on sham recycling being finalized in this rulemaking is consistent with the Agency's longstanding policy and interpretation of legitimate recycling that has been expressed in those earlier preamble discussions and policy statements. The January 4, 1985, preamble to the definition of solid waste regulations established EPA's concept of legitimacy and described several indicators of sham recycling.

On April 26, 1989, the Office of Solid Waste (OSW) issued a memorandum that consolidated preamble statements concerning legitimate recycling that had been articulated previously into a list of criteria to be considered in evaluating legitimacy [OSWER directive 9441.1989(19)]. This memorandum, known to many as the ''Lowrance Memo,'' has been a primary source of guidance for the regulated community and for implementing agencies in distinguishing between legitimate and sham recycling for many years. The October 2003 and March 2007 DSW proposals and the October 2008 DSW final rule also all include extensive discussions of EPA's legitimacy policy.

In the 2008 DSW final rule, EPA promulgated a codified legitimacy requirement for the specific exclusions in that rulemaking. Today's final rule expands that legitimacy requirement to all hazardous secondary material recycling, as the Agency proposed to do in the July 22, 2011, proposal (76 FR 44094). Section VIII.B discusses these final legitimacy provisions and describes the requirements. Section VIII.C discusses the changes EPA made from the proposed regulations. A discussion of the public comments on the July 2011 proposal and Agency responses can be found in section XVII of this preamble and the full response to comment document is in the docket for the rulemaking.

B. Legitimate Recycling Provisions Being Finalized

This section discusses the rationale and the requirements being finalized in this rulemaking for ensuring that all recycling of hazardous secondary material is legitimate.

1. Legitimacy for All Recycling

In today's final rule, EPA is retaining its long-standing policy that all recycling of hazardous secondary materials must be legitimate. If a facility is engaged in sham recycling, this, by definition, is not real recycling and that hazardous secondary material is being discarded and is a solid waste. Today, we are codifying that the legitimate recycling provision applies to all hazardous secondary materials that are excluded or exempted from Subtitle C regulation because they are recycled and that it also applies to recyclable hazardous wastes that remain subject to the hazardous waste regulations. However, instead of changing the language of each recycling exclusion or exemption to include the requirement as we proposed in the 2011 DSW proposal, we have instead added language in § 261.2(g) that specifically prohibits sham recycling to ensure that all recycling, including recycling under the pre-2008 exclusions is legitimate (*i.e.,* real recycling). We have also determined that documentation of legitimacy is not necessary or required for the pre-2008 recycling exclusions and exemptions, except in the rare case where the recycling is legitimate, but does not meet factor 4.

EPA has determined that the four legitimacy factors being codified in 40 CFR 260.43 are substantively the same as the existing legitimacy policy. These factors are a simplification and clarification of the policy statements in the 1989 Lowrance Memo and in various DSW **Federal Register** notices. This policy is well understood throughout the regulated community and among the state implementing agencies. By providing one standard of legitimacy for all recycling, the Agency expects there will be more clarity, consistency, and predictability for making legitimate recycling determinations. Having one standard in the regulations will also lead to increased knowledge and understanding of the basic requirement that any recycling must be legitimate, leading to better implementation and enforcement of the RCRA hazardous waste regulations.

In developing the codified legitimacy language, we did not intend to raise questions about the status of general legitimacy determinations that underlie existing exclusions from the definition of solid waste (*e.g.,* the solid waste exclusions in 40 CFR 261.4(a)), or about case-specific determinations that have already been made by EPA or the states. Current exclusions and other prior solid waste determinations or variances that are based on the hazardous secondary material being legitimately recycled, including determinations made in letters of interpretation and inspection reports, remain in effect.

Some stakeholders have raised concerns with the application of the codified legitimacy factors to these existing waste-specific and industry specific exclusions. In particular, as we noted in the October 2003 DSW proposal and the March 2007 DSW supplemental proposal, EPA has examined in depth a number of waste-specific and industry-specific recycling activities and has promulgated specific regulatory exclusions or provisions that address the legitimacy of these practices in much more specific terms than the general legitimacy factors as described in 40 CFR 260.43.

EPA expects that the vast majority of recycling being performed under these existing exclusions is currently being undertaken conscientiously and would be considered legitimate under the new legitimacy provision with no further action required on the part of the company. If a company is meeting the conditions of its exclusion while managing the hazardous secondary material responsibly and using it to make a legitimate product, that company would not have to change any

of its existing business practices or otherwise take action to show that its recycling meets the legitimacy factors. EPA is not requiring documentation of compliance with the four legitimacy factors, except in the case where the recycling does not meet factor 4 on its face, but the facility believes that its recycling operation is nonetheless legitimate. Many of the measures the companies take in order to meet the terms of the conditional exclusions or to follow best management practices are the same actions that indicate that a recycling process is legitimate. These measures and business practices were generally evaluated as part of the original legitimacy determination by the agency, and therefore employment of those or similar practices indicated legitimate recycling as addressed by the original legitimacy determinations.

One example is the regulation for zinc fertilizers made from recycled hazardous secondary materials. If the hazardous secondary material recycled under the exclusion contains recoverable amounts of zinc, which provides a useful contribution to the recycled product (factor 1) and results in a valuable product, *i.e.,* zinc micronutrient fertilizer (factor 2), EPA would consider these legitimacy factors to be met. In addition, under the exclusion, the generator and recycler must manage the zinc-containing hazardous secondary material as a valuable commodity (factor 3), that is, in compliance with 261.4(a)(20)(ii)(B): Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that: (*1*) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and (*2*) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and (*3*) prevent run-on into the containment system. Finally, in the zinc fertilizer regulation, among the requirements established by EPA are specific numerical limits on five heavy metal contaminants and dioxins in the zinc fertilizer product at 40 CFR 261.4(a)(21). If the zinc fertilizer product meets these concentrations, the product would meet factor 4 (assuming other hazardous secondary contaminants have not been added to the product).

Another example is shredded circuit boards excluded under 40 CFR 261.4(a)(14). Shredded circuit boards that contain recoverable metals that provide a useful contribution to the product of the recycling process (factor 1) and go to a recycling process that produces a valuable metal product (factor 2) would meet these legitimacy factors. In addition, under the exclusion, the shredded circuit boards must be stored in containers sufficient to prevent a release to the environment prior to recovery (factor 3) and must be free of mercury switches, mercury relays and nickel-cadmium and lithium batteries (factor 4).

Another example is hazardous secondary materials recycled in a ''closed-loop'' production process under 40 CFR 261.4(a)(8). Under this exclusion, the hazardous secondary material is reused within the production process from which it came, thus providing a useful contribution to the product (factor 1) and also producing a valuable product or intermediate (factor 2) (assuming that the production process is, by definition, producing a product). Since the closed-loop exclusion requires tank storage and that the entire process through completion of reclamation is closed by being entirely connected with pipes and other comparable enclosed means of conveyance, this management would be considered to meet factor 3, management of the hazardous secondary material as a valuable commodity. The product of this type of recycling process would be comparable to a legitimate product or intermediate because the hazardous secondary materials being recycled are returned to the original process from which they were generated to be reused (factor 4).

Another example is spent wood preserving solutions and wastewaters that have been reclaimed and reused onsite in the production process for their original intended purpose under § 261.4(a)(9). Reclaimed wood preservatives that are used to treat wood would be making a useful contribution to the product (factor 1) and would produce a valuable product (factor 2). The conditions of the exclusion include a requirement that they are managed to prevent releases, and include specific standards for drip pads that manage the material (factor 3). The product of this type of recycling process would be comparable to a legitimate product or intermediate because the hazardous secondary materials being recycled are returned to the original process from which they were generated to be reused (factor 4).

Another example is the long-standing exclusion for excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled (40 CFR 261.4(a)(13)). Excluded scrap metal that contains recoverable metals would provide a useful contribution to the product of the recycling process (factor 1) and, as long as the recycling process produces a valuable metal product (factor 2), the recycling would meet the first two legitimacy factors. If the recycler uses appropriate handling and good management practices to store and manage the excluded scrap metal to prevent releases of hazardous secondary materials to the environment, the recycler would generally meet factor 3 for managing the scrap metal as a valuable commodity.

EPA notes that managing scrap metal as a valuable commodity can include situations where it is stored on the ground. Scrap metal stored on the ground is subject to occasional precipitation runoff that consists essentially of water, with trace amounts of hazardous constituents. As long as the hazardous secondary material itself is not swept away by the runoff, this transport via precipitation runoff would not generally be a concern. However, if metal dust, debris and pieces of scrap metal were released into the environment, for example, by metal falling into a waterway (as has happened in one damage case documented by EPA), this would not be considered managed as a valuable commodity. Finally, as long as the recovered metal meets widely-recognized commodity standards/specifications for the metal product, factor 4 would be satisfied.

The conditions developed for the recycling exclusions in § 261.4(a) were found to be necessary under material-specific rulemakings that determined when the particular hazardous secondary material in question is not a solid waste. When EPA originally made the decision that these materials are not solid waste, the Agency took into account the relevant factors about the hazardous secondary materials, including how the material was managed and what toxic chemicals were present.

In the 2011 DSW proposal, EPA explicitly did not reopen comment on any substantive provisions of the previous recycling exclusions or exemptions and facilities with pre-2008 exclusions can generally follow the normal good business practices that were considered when the exclusions were granted and still be considered to be legitimate recycling. If the facility is complying with the terms of the exclusion and following industry best practices to engage in legitimate recycling activity, this would generally not raise questions as to its legitimacy. All these examples support EPA's determination that most current recycling under existing exclusions is legitimate, and that companies complying with the conditions of exclusions would generally not need to take action to show that their recycling meets the legitimacy factors.

However, at the same time, these material-specific exclusions from the definition of solid waste do not negate the basic requirement that the hazardous secondary material must be legitimately recycled. Recycling that is not legitimate is not recycling at all, but rather ''sham recycling''—discard in the guise of recycling. Regarding the existing exclusions in the regulations, EPA acknowledges that, in establishing a specific exclusion, we have already determined in the rulemaking record that the specific recycling practice is excluded from the definition of solid waste provided all the conditions of the rule are met. However, the Agency has always enforced its rules on the basis that any recycling must be legitimate (See *U.S.* v. *Self,* 2 F. 3d 1071, 1079 (10th Cir. 1993); *U.S.* v. *Marine Shale Processors,* 81 F. 3d 1361, 1366 (5th Cir. 1996): *Marine Shale Processors* v. *EPA,* 81 F. 3d 1371, 1381–83 (5th Cir. 1996)). This is meant to prevent a company from claiming to be operating under an existing exclusion and simply using that as a way to avoid full RCRA Subtitle C regulation.

For example, under EPA's historic guidance, a facility could not plausibly claim the zinc fertilizer product exclusion at 40 CFR 261.4(a)(21) for a hazardous secondary material that contained absolutely no or minimal levels of zinc, even if all the conditions of the zinc fertilizer exclusion were met. The exclusion was developed to encourage legitimate recycling of zinc-containing hazardous secondary materials and the legitimacy provision prevents hazardous waste from being discarded into purported fertilizer in the name of recycling when the hazardous secondary material provides no recognizable benefit to the product.

Similarly, if a facility accepted zinc-containing hazardous waste, claiming to make zinc fertilizer, but failed to produce a product that was actually sold or was otherwise valuable, such a process would not be legitimate recycling in the historic legitimacy guidance, even if the management conditions and the constituent levels in the zinc fertilizer exclusion were met. The consequences of the latter example are illustrated in one of the damage cases in the environmental problems study. A facility whose primary business was mixing electric arc furnace dust (K061) with agricultural lime for sale as a micronutrient lost its customers and could not sell its product. However, the facility continued to accept K061, and, after approximately seven months, the facility had accepted over 60,000 tons of this hazardous waste and stored it on the ground in piles up to 30 feet high, with no prospect of it being used to produce a product and, thus, legitimately recycled. While the initial recycling of the K061 hazardous waste was legitimate, when the facility failed to produce a product that was actually sold, the K061 could no longer be considered legitimately recycled. Even if the recycler were to claim that the material may be recycled at some point in the future, the material was being speculatively accumulated and thus, a solid and hazardous waste at that point.

In summary, all hazardous secondary materials recycling and hazardous waste recycling, whether such recycling remains under hazardous waste regulations or is excluded from the definition of solid waste, must be legitimate. This has been our long-standing policy and it is well known throughout the regulated community and the implementing state regulatory agencies. To reinforce that concept and make it clear in the regulations, we are today codifying our policy that hazardous secondary materials being sham recycled are discarded and thus, are solid waste. To do this, EPA has decided to codify the following statement in § 261.2 (the definition of solid waste) instead of adding a reference to legitimacy in each of the recycling exclusions and exemptions (as was suggested in the proposed rule): ''A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43.''

For persons interested in an in-depth analysis of the evolution of EPA's concept of legitimate recycling from policy and preamble statements to regulations, EPA provided this analysis in the 2008 DSW final rule that described how the promulgated legitimacy factors compare to the previous primary guidance on legitimacy and the Lowrance Memo. EPA continues to maintain that the legitimate recycling provision is substantively the same as existing policy because we developed the legitimacy factors in 40 CFR 260.43 by closely examining the questions and sub-questions in the Lowrance Memo and in the **Federal Register** preambles and converting them into four more direct factors. For a detailed explanation of how each of the four factors is derived from the Lowrance Memo and other existing policy statements, see 73 FR 64708 –64710, October 30, 2008.

2. All Factors Mandatory

The structure of the legitimacy standard codified in the 2008 DSW final rule (specifically for the exclusions promulgated in that rulemaking) had two parts. The first part included a requirement that hazardous secondary materials being recycled must provide a useful contribution to the recycling process or to the product of the recycling process and a requirement that the product of the recycling process must be valuable. At the time, EPA considered those two factors to make up the core of legitimacy and, therefore, a process that did not conform to them could not be a legitimate recycling process, but would be considered sham recycling. The second part of legitimacy in the 2008 DSW final rule included two factors that must be considered, but not necessarily met, when a recycler is making a legitimacy determination. In this final rule, the Agency is changing the structure and the application of the legitimate recycling provision so that all four factors are written as mandatory requirements that must be met, except as otherwise noted. The Agency has determined that this action will improve the effectiveness and protectiveness of the legitimacy provision. The Agency's experience with implementing the legitimate recycling structure finalized in the 2008 DSW final rule has led us to this realization. Even though we stressed the importance of considering each factor in the 2008 DSW final rule, some stakeholders continue to be under the mistaken impression that the factors defined as ''to be considered'' were actually optional and could be ignored. We made it clear in the 2008 DSW final rule that failing to meet a ''non-mandatory'' factor could, in some cases, be enough to determine that a recycling process is not legitimate. We did not intend for the ''to-be-considered'' factors

to be less important and thus, have determined that the only way to correct this perception and give these factors the proper weight is to make them requirements that must be met, except as otherwise noted, on equal footing with the other legitimacy factors.

However, to address concerns raised, both factor 3 (managed as a valuable commodity) and factor 4 (products must have comparable levels of hazardous constituents) have been revised from the 2008 DSW final rule to add flexibility to address situations where the recycling is legitimate, but the specific situation might not meet the legitimacy factor . For example, under factor 3, we proposed and are finalizing the following language to more closely reflect the intent of the provision: ''Where there is an analogous raw material, the hazardous secondary material, must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner.'' Thus, a generator or recycler would meet this factor if their hazardous secondary material is stored in a different manner than the analogous raw material, as long as that storage is as protective as the way the analogous raw material is stored.

Under factor 4, we have also added more explanation and flexibility for situations where there is no analogous product to compare to the product made from hazardous secondary materials. For example, in some cases, the Agency will consider a product of a recycling process that meets widely-recognized commodity standards/specifications, such as scrap metal, to meet factor 4. Within factor 4, the Agency is also creating a provision for hazardous secondary materials that are recycled by being returned to the original process from which they were generated, such as in a closed-loop recycling process, to meet the factor. The specific changes to factor 3 and factor 4 are described in greater detail below.

In making all legitimacy factors mandatory requirements, the first sentence of the regulatory language of both factors was revised to indicate that these factors must be met. For factor 3, the first sentence now reads as follows: ''The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control.'' For factor 4, the first sentence now reads as follows: ''The product of the recycling process must be comparable to a legitimate product or intermediate.''

In the 2011 DSW proposal, we proposed a petition process for facilities that believe their recycling is legitimate despite not meeting one or both of these two factors. After review and consideration of the public comment on this issue, the Agency has decided that instead of a petition process, facilities that do not meet factor 4 and yet are still legitimately recycling must notify the Regional Administrator (or State Director, if the state is authorized) and keep documentation and a certification in their files explaining how the recycling is still legitimate.[30] See section VIII.B.6 below for a full discussion of the documentation and notification process under factor 4.

3. Factor 1: Useful Contribution—§ 260.43(a)(1)

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

This factor expresses the principle that hazardous secondary materials must contribute value to the recycling process. Providing a useful contribution is an essential element to legitimate recycling because real or legitimate recycling is not occurring if the hazardous secondary material being added or recovered does not add to the process. This factor is intended to prevent the practice of adding a hazardous secondary material to a recycling process simply as a means of disposing of it, or recovering only small amounts of a constituent, which EPA would consider sham recycling.

Paragraphs (i) through (v) of § 260.43(a)(1) list five ways that a hazardous secondary material can provide a useful contribution: (i) Contributing valuable ingredients to a product or intermediate; (ii) replacing a catalyst or carrier in the recycling process; (iii) providing a valuable constituent to be recovered; (iv) being regenerated; or (v) being used as an effective substitute for a commercial product. Any one of these can demonstrate that the hazardous secondary material provides a useful contribution.

An important note in applying this factor is that not every constituent or component of the hazardous secondary material has to make a contribution to the recycling activity to meet the useful contribution factor. For example, a legitimate recycling operation involving precious metals might not recover all of the components of the hazardous secondary material, but would recover precious metals with sufficient value to consider the recycling process legitimate. In addition, the recycling activity does not have to involve the hazardous component of the hazardous secondary materials if the value of the contribution of the non-hazardous component justifies the recycling activity. One example of this factor from an existing exemption is where hazardous secondary materials containing large amounts of zinc, a non-hazardous component, are recycled into zinc micronutrient fertilizers. However, in cases where the hazardous component is not being used or recycled, the Agency stresses that the recycler is responsible for the proper management of any hazardous residuals of the recycling process.

In a situation where more than one hazardous secondary material is used in a single recycling process and the hazardous secondary materials are mixed or blended as a part of the process, each hazardous secondary material would need to satisfy the useful contribution factor. This requirement prevents situations where a worthless hazardous secondary material could be mixed with valuable and useful hazardous secondary materials in an attempt to disguise and dispose of it. In addition, a situation in which hazardous secondary materials that can be useful to a process, but are added to that process in much greater amounts than needed to make the end-product or to otherwise provide its useful contribution, would also be sham recycling.

Another way the usefulness of the hazardous secondary material's contribution could be demonstrated is by looking at the efficiency of the material's use in the recycling process—that is, how much of the constituent in a hazardous secondary material is actually being used. As an example, if there is a constituent in the hazardous secondary material that could add value to the recycling process, but, due to process design, most of it is not being

[30] As noted above, and as described in more detail in Section VIII.B.6, products of a recycling process that meet widely-recognized commodity standards/specifications and hazardous secondary materials that are recycled by being returned to the original process from which they were generated are considered to meet factor 4 of the legitimacy standard.

recovered, but is being disposed of in the residuals, this would be a possible indicator of not meeting this factor and thus, could be sham recycling. However, this consideration must take the actual process being considered into account as there are certainly recycling scenarios where a low recovery rate could still be legitimate. For example, under an existing exclusion, if the concentration in a metal-bearing hazardous secondary material is low (*e.g.,* 2–4%) and a recycling process was able to recover a large percentage of the target metal, this factor could be met and the recycling may be legitimate (depending on the outcome of the analysis of the other legitimacy factors).

When evaluating a hazardous secondary material's useful contribution, the process can be compared to typical industry recovery rates from raw materials to determine if the recycling process is reasonably efficient. This method should involve an examination of the overall process, not just a single step of the process. For example, if one step in the process recovers a small percentage of the constituent, but the overall process recovers a much larger percentage, the Agency would consider the overall efficiency of the recycling process in determining whether hazardous secondary materials are providing a useful contribution.

4. Factor 2: Valuable Product or Intermediate—§ 260.43(a)(2)

The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is: (i) Sold to a third party or (ii) used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

This factor expresses the principle that the product or intermediate coming out of the recycling process should be a material of value, either to a third party who buys it from the recycler, or to the generator or recycler itself, who can use it as a substitute for another material that it would otherwise have to buy or obtain for its industrial process. Legitimate recycling is not occurring if the product or intermediate from the process is not of use to anyone and, therefore, is not a real product. This factor is intended to prevent the practice of running a hazardous secondary material through an industrial production process to make something just for the purpose of avoiding the costs of hazardous waste management, rather than for the purpose of using the product or intermediate of the recycling activity. Such a practice would be sham recycling.

For the purpose of this factor, a recyclable product may be considered ''valuable'' if it can be shown to have either economic value or intrinsic value to the end user. Evaluations of ''valuable'' for the purpose of this factor should be done on a case-by-case basis, but one way to determine that the recycling process yields a valuable product would be if the product of the recycling process is sold to a third party. This transaction could include money changing hands or, in other circumstances, may involve trade or barter. A recycler that has not yet arranged for the sale of its product to a third party could establish value by demonstrating that it can replace another product or intermediate that is available in the marketplace. A product of the recycling process may be sold at a loss in some circumstances, but the recycler should be able to demonstrate how the product is clearly valuable to the purchaser.

EPA also knows that many recycling processes produce outputs that are not sold or traded to another party, but are instead used by the generator or recycler. A product of the recycling process may be used as a feedstock in a manufacturing process, but have no established monetary value in the marketplace. Such recycled products or intermediates would be considered to have intrinsic value, though it might be less straightforward in this situation to demonstrate value if it is necessary to do so. Demonstrations of intrinsic value could involve showing that the product of the recycling process or intermediate replaces an alternative product that would otherwise have to be purchased or could involve a showing that the product of the recycling process or intermediate meets specific product specifications or specific industry standards. Another approach could be to compare the product or intermediate's physical and chemical properties or efficacy for certain uses with those of comparable products or intermediates made from raw materials.

Some recycling processes may consist of multiple steps that may occur at separate facilities. In some cases, each processing step will yield a valuable product or intermediate, such as when a metal-bearing hazardous secondary material is processed to reclaim a precious metal and is then put through another process to reclaim a different mineral. When each step in the process yields a valuable product or intermediate that is salable or usable in that form, the recycling activity would conform to this factor.

Like the other factors, this factor should be examined and evaluated on a case-by-case basis looking at the specific facts of a recycling activity. If, for instance, a recycling activity produces a product or intermediate that is used by the recycler itself, but does not serve any purpose and is just being used so that the product or intermediate appears valuable, that would be an indicator of sham recycling. An example of this would be a recycler that reclaims a hazardous secondary material and then uses that material to make blocks or building materials for which it has no market and then ''uses'' those building materials to make a warehouse in which it stores the remainder of the building materials that it is unable to sell.

5. Factor 3: Managed as a Valuable Commodity—§ 260.43(a)(3)

The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

This factor expresses the principle that hazardous secondary materials being recycled should be managed in the same manner as other valuable materials. This factor requires those making a legitimacy determination to look at how the hazardous secondary material is managed before it enters the recycling process. In EPA's view, a recycler will value hazardous secondary materials that provide an important contribution to its process or product and, therefore, will manage those hazardous secondary materials in a manner consistent with how it manages a valuable feedstock. If, on the other hand, the recycler does not manage the hazardous secondary materials as it would a valuable feedstock, the hazardous secondary materials might not be recycled, but rather released into the environment and discarded, thereby indicating sham recycling.

This factor may be particularly important in the case where a recycler has been paid by a generator to take its materials as a result of the economic incentives in the hazardous secondary materials market. By looking at the management of the hazardous secondary material before it enters the recycler's process, the entity making the

legitimacy determination can tell that a material being managed like an analogous raw material is, in fact, valued by the recycler. If the hazardous secondary material is not being managed like a valuable raw material because it is uncontrolled or is being released, that indicates that the fee the recycler obtains for taking the hazardous secondary material may be its only value to that recycler. If the fee received were the only value to the recycler, it could mean that discard was taking place.

This factor addresses the management of hazardous secondary materials in two distinct situations. The first situation is when a hazardous secondary material is analogous to a raw material which it is replacing in the process. In this case, the hazardous secondary material should be managed prior to recycling similarly to the way the analogous raw materials are managed in the course of normal manufacturing, or in an equally protective manner.

EPA expects that all parties handling hazardous secondary materials destined for recycling—generators, transporters, intermediate facilities and reclamation facilities—will handle them in generally the same manner in which valuable raw materials would otherwise be handled if used in the process. ''Analogous raw material'' is a raw material for which the hazardous secondary material substitutes and which serves the same function and has similar physical and chemical properties as the hazardous secondary material.

EPA proposed and is finalizing an addition to the language of this factor as compared to the 2008 DSW final rule to include the words ''or in an equally protective manner.'' This change means that a recycling process would meet this factor if the hazardous secondary material is stored in a different manner than the analogous raw material as long as that storage was as protective as the way the analogous raw material was stored.

For example, a hazardous secondary material in powder form that is shipped in a woven super sack in good condition (*i.e.,* that does not leak or spill) and stored in an indoor containment area would be considered managed ''in an equally protective manner'' as an analogous raw material that is shipped and stored in drums.

In addition, managing a hazardous secondary material in a manner consistent with the management of an analogous raw material can include situations where the raw material and the hazardous secondary material (*e.g.,* scrap metal) are both stored on the ground.

The second situation the factor addresses is the case where there is no analogous raw material that the hazardous secondary material is replacing. This could be either because the process is designed around a particular hazardous secondary material—that is, the hazardous secondary material is not replacing anything—or it could be because of physical or chemical differences between the hazardous secondary material and the raw material that are too significant for them to be considered ''analogous.''

Hazardous secondary materials that have significantly different physical or chemical properties when compared to the raw material would not be considered analogous even if they serve the same function because it may not be appropriate to manage them in the same way. In this situation, the hazardous secondary material would have to be contained for this factor to be met. The term ''contained'' as discussed in section V of this preamble, means that the unit in which the material is stored is in good condition, with no leaks or releases to the environment, and that the unit is designed to prevent such releases. In addition, to meet the contained standard, the unit must be labeled or have a system to identify the hazardous secondary material in it and must not hold incompatible materials or pose a risk of fires. Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumed to be contained. Land-based units can meet the definition of contained.

The requirement that a hazardous secondary material be contained when there is no analogous raw material to compare it to is consistent with the idea that normal manufacturing would ensure that the valuable material inputs are managed properly, rather than allow them to be released into the environment.

An example of when this provision would be used would be if a manufacturer decided to replace a dry raw material in its process with a liquid having the same constituents. It would not be sufficient, nor would it make sense, for the liquid to be managed in supersacks, like a dry material might. Instead, the liquid would have to be contained (for example, in a tank or container).

An important part of this factor is the statement in the regulatory text clarifying that hazardous secondary materials that are released to the environment and are not recovered immediately are discarded. Valuable feedstocks or products should not be allowed to escape into the environment through poor management and this factor clarifies that those hazardous secondary materials that are released (and are not immediately recovered) are clearly discarded and a solid waste. Either a large release or ongoing releases of smaller amounts could indicate that, in general, the hazardous secondary material is not being managed as a valuable product, which could indicate sham recycling. Hazardous secondary materials that are immediately recovered before they disperse into the environment—air, soil, or water—and are reintroduced in the recycling process are not discarded. This determination on factor 3 must be made on a case-by-case basis, however.

In EPA's 2008 DSW final rule, this factor was one of the two factors that was ''to be considered'' rather than one of the two mandatory factors because EPA believed that there may be some situations in which this factor was not met, but the recycling was still legitimate. With the addition of the language clarifying that the materials can be managed in a different way than the analogous raw material as long as that management system is equally protective, EPA has determined that there is no reason that a facility that is legitimately using a hazardous secondary material that has value to them in a recycling process would not meet this factor. EPA's intent with this factor is that hazardous secondary materials are managed in the same manner as materials that have been purchased or obtained at some cost, as raw materials are. Just as it is good business practice to ensure that raw materials enter the manufacturing process rather than being spilled or released, we would expect hazardous secondary materials to be managed effectively and efficiently in order that their full value to the manufacturing process would be realized.

6. Factor 4: Comparison of Toxics in the Product—§ 260.43(a)(4)

The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in Appendix VIII of part 261 of this chapter that are in the product or

intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (*e.g.,* commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (*e.g.,* closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per subparagraphs (i) or (ii) of this paragraph, the recycling still may be shown to be legitimate, if it meets the requirements specified below. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700–12.

This factor requires that those making a legitimacy determination look at the concentrations of the hazardous constituents found in the product made from hazardous secondary materials and, except where otherwise specified, compare them to the concentrations of hazardous constituents in analogous products. A product that contains high levels of hazardous constituents that originate in a hazardous secondary material feedstock could indicate that the recycler incorporated hazardous constituents into the final product when they were not needed to make that product effective as a way to avoid proper disposal of that material, which would be sham recycling. This factor, therefore, is designed to determine when toxics that are ''along for the ride'' are discarded in a final product and the hazardous secondary material is not being legitimately recycled.

As proposed, factor 4 was unsatisfactory to many of the stakeholders of this rulemaking. Many representatives from the industrial sector argued that they would not be able to meet factor 4 or would not be able to easily know if they met factor 4. EPA had expected that a small number of facilities would have this concern and had proposed a petition process to address this problem, but many commenters argued that petitions would take a long time to be processed, creating uncertainty in the industrial sector, and that a petition process would be a drain on state and industry resources.

As a result of comments received on the proposal, EPA has made some revisions to this factor to ensure that long-standing legitimate recycling processes will still be considered legitimate under this factor. The requirements that are being promulgated today are described in full below and include different requirements for when there is an analogous product and when there is not, provisions for using widely-recognized commodity standards and specifications to meet this factor, a provision to address recycling that includes hazardous secondary materials being put back into the process from which they came, and a documentation, certification and notification process for facilities that cannot meet these requirements, but still believe their recycling is legitimate. A full description of how the requirement being finalized differs from what was proposed in the 2011 DSW proposal can be found in section VIII.C.3 of the preamble.

In addition to these changes, EPA has also retained the proposed language of this factor that states that the concentrations of hazardous constituents in the product of the recycling process must be ''comparable to'' or lower than those found in analogous products. This is a change from the 2008 DSW final rule, which used language stating that the concentrations of hazardous constituents should not be ''significantly higher'' than concentrations in analogous products.

Factor 4 starts with the statement that the product of the recycling process made from hazardous secondary materials must be comparable to a legitimate product or intermediate. It is important to note that the comparison that EPA is requiring here involves the product that comes out of a recycling process. That is, a recycler will ordinarily compare the product of the recycling process to an analogous product made of raw materials. For example, if a recycling process produces paint, the levels of hazardous constituents in the paint will be compared with the levels of the same constituents found in similar paint made from virgin raw materials.

However, a recycler is also allowed to perform this evaluation by comparing the hazardous constituents in the hazardous secondary material feedstock with those in an analogous raw material feedstock. If the hazardous secondary material feedstock contains concentrations of hazardous constituents that are comparable to or lower than the concentrations in the raw material feedstock, then the end product of the recycling process would not contain excess hazardous constituents ''along for the ride'' either. This method of showing that the product meets factor 4 is acceptable. There may be cases in which it is easier to compare feedstocks than it is to compare products because the recycler knows that the hazardous secondary material is very similar in profile to the raw material. A comparison of feedstocks may also be easier in cases where the recycler creates an intermediate which is later processed again and may end up in two or more products, when there is no analogous product, or when production of the product of the recycling process has not yet begun. Note, however, that EPA is allowing other ways to make the comparable demonstration in cases where there is no analogous product, as described below in section VIII.B.6.b.

a. Factor 4 when there is an analogous product. Paragraph 260.43(a)(4)(i) describes how a facility can meet factor 4 when the recycled product can be compared to an analogous product that is made without the use of hazardous secondary material as a feedstock. First, the product of the recycling process cannot exhibit any of the hazardous characteristics that analogous products do not exhibit. Most issues associated with ''toxics along for the ride'' involve the presence of hazardous constituents rather than the characteristics of hazardous waste. It is possible, however, that the use of hazardous secondary materials as an ingredient could cause a product to exhibit a hazardous characteristic, such as corrosivity, that is not exhibited by analogous products.

The hazardous characteristics are found in 40 CFR part 261 subpart C and are used to identify those materials that are hazardous wastes, but that EPA has not specifically listed in part 261 subpart D. The characteristics are ignitability, corrosivity, reactivity, and toxicity. The toxicity characteristic includes a list of 40 contaminants and the levels at which the material would be considered hazardous waste when tested using the Toxicity Characteristic Leaching Procedure. If a product produced with hazardous secondary material exhibited a characteristic of hazardous waste that an analogous product did not exhibit, this would be an indication that sham recycling could be occurring as a significant hazardous constituent or characteristic would be in the product only as a result of the recycling of the hazardous secondary material. This requirement is in § 260.43(a)(4)(i)(A). In most cases, a recycler will be familiar enough with the material it is producing to be able to easily determine whether it would meet any of these characteristics, but if there are any questions, the methods for testing for the characteristics are found in 40 CFR part 261 subpart C.

In addition to this requirement, the product of the recycling process must also meet § 260.43(a)(4)(i)(B). This paragraph can be met in two ways. The first way is if the concentrations of any hazardous constituent (as defined by Appendix VIII to part 261) that is in the recycled product is comparable to or lower than those found in analogous products. This provision is what EPA proposed in the 2011 DSW proposal, which included a discussion of how meeting product specifications could indicate that a recycling process is legitimate, as well as a request for comments on how EPA should determine what ''comparable'' levels of hazardous constituents are when determining the legitimacy of a recycling process. In response to comments received on this point, EPA has added to this paragraph that the product of the recycling process would be comparable if it meets widely-recognized commodity standards that include levels that specifically address the hazardous constituents that are in the product.

As stated above, the first part of § 260.43(a)(4)(i)(B) is similar to the provision that EPA proposed in the 2011 DSW proposal. In this provision, EPA has decided to finalize language replacing the terms ''significant'' and ''significantly elevated,'' which were promulgated in the 2008 DSW final rule, with the phrase ''comparable to or lower'' because it more clearly reflects the intent of this factor. ''Comparable to or lower than'' means that any contaminants present in the product made from hazardous secondary materials are present at levels at or lower than the levels contained in an analogous product, or if higher, would be within a small acceptable range. This language is consistent with the Identification of Non-Hazardous Secondary Materials that are Solid Wastes final rule (76 FR 15456, March 21, 2011). However, we are not changing the basic meaning of this factor. Operationally, the terms ''comparable'' and ''not significant'' or ''not significantly elevated'' are the same for hazardous secondary materials recycling and the examples the Agency provided in the 2008 DSW final rule preamble that explained how the Agency envisions this factor working are still appropriate. Those examples are repeated here.

- If paint made from reclaimed solvent contains significant amounts of cadmium, but the same type of paint made from virgin raw materials does not contain cadmium, it could indicate that the cadmium serves no useful purpose and is being passed though the recycling process and discarded in the product. Thus, the levels of cadmium would not be considered ''comparable'' and the paint would fail this legitimacy factor, unless the recycler can conduct the necessary analysis and prepare documentation stating why the recycling is still legitimate. In addition, the recycler would need to certify and provide notice to the implementing agency of this activity.
- If a lead-bearing hazardous secondary material was reclaimed and then that material was used as an ingredient in making ceramic tiles and the amount of lead in the tiles was significantly higher than the amount of lead found in similar tiles made from virgin raw materials, the recycler should look more closely at the factors to determine the overall legitimacy of the process. The significantly higher levels of lead may indicate that the recycled product is not comparable to an analogous product and, thus, the recycling process is really a sham. Alternatively, the recycler may be able to demonstrate the recycling is still legitimate even though it does not contain lead at comparable levels by, for example, showing the toxics are not bioavailable. If this is the case, the recycler would need to document the analysis and certify the legitimacy of the recycling practice, as well as provide notice to the implementing agency.
- If zinc galvanizing metal made from hazardous secondary materials that are reclaimed contains 500 parts per million (ppm) of lead, while the same zinc product made from raw materials typically contains 475 ppm, the levels would be considered comparable since they are within a small acceptable range and, thus, the product would meet this factor. If, on the other hand, the lead levels in the zinc product made from reclaimed hazardous secondary materials were considerably higher, these levels may not be comparable, and would require the recycler to look more closely at this factor since it may indicate that the product was being used to illegally dispose of the lead and that the activity is sham recycling, unless the recycler can conduct the necessary assessment and prepare documentation stating why the recycling is still legitimate. In addition, the recycler would need to certify and provide notice to the implementing agency of this activity.
- If a ''virgin'' solvent contains no detectable amounts of barium, while spent solvent that has been reclaimed contains a minimal amount of barium (*e.g.,* 1 ppm), this difference would likely be considered comparable.

The second part of § 260.43(a)(4)(i)(B) relies not on a comparison of levels of hazardous constituents between a product of the recycling process and an analogous product, but on the product of the recycling process meeting widely-recognized commodity standards and specifications. In this case, meeting a widely-recognized standard and specification would indicate that the recycling is legitimate if that standard and specification includes levels for the hazardous constituents that are found in the product of the recycling process.

EPA decided that using a product's ability to meet product specifications as an indicator of legitimate recycling would make the determination of legitimate recycling straight-forward in many cases where the product of the recycling is clearly a commodity in wide use in commerce. Although not spelled out in the regulatory language used in the 2008 DSW final rule, consideration of whether the product of a recycling process meets quality specifications has been part of the legitimacy determination since the Lowrance Memo in 1989, which included several questions to this effect as part of its determination of whether there is a guaranteed market for the product (*i.e.,* Are there industry recognized product specifications for the product? Is it listed in industry news letters? Is the reclaimed product a recognized commodity?). Including this provision on product specifications as part of this final rulemaking will limit uncertainty from recyclers about whether their processes are legitimate.

However, despite the value of product standards, EPA did not want to state that meeting any product specification was an indicator of legitimacy because any recycler could design its own specification and point to that as a way to circumvent the requirement. Therefore, this requirement requires that the commodity standards being met be widely-recognized. By ''widely-recognized commodity standard,'' EPA

means a standard that is used throughout an industry to describe a certain product and that is widely-available to anyone producing the product. A specific example of such a widely-recognized standard agency would be ASTM International, which has standards covering a wide variety of manufactured goods.[31] However, for specialty batch chemical manufacturers or other types of specialty manufacturing where widely-recognized commodity standards are not available, customer specifications would be sufficient.

In addition, for this part of factor 4, the commodity standards and specifications being referenced must specifically address those hazardous constituents that may be different between the analogous product and the product generated from using the hazardous secondary material in the recycling process. EPA is making this explicit in the regulations to avoid a situation in which a product from a process that is recycling hazardous secondary materials meets a widely-recognized product specification, but does not include any levels for the hazardous constituents that are in the hazardous secondary material. A product specification could have been developed without any thought that the feedstock for that product might include some hazardous constituents that could be toxic to human health and the environment and, therefore, not include them. We are concerned with the potential that the analogous product could be substituted with the recycled product without full disclosure of potential toxics that may be in the recycled product. Using a standard or specification that does not address the hazardous constituents of concern to demonstrate meeting factor 4 of the legitimacy requirements where there is an analogous product would ignore the primary concern of this factor and would allow elevated levels of toxics from the hazardous secondary material into the final product.

b. Factor 4 when there is no analogous product. Commenters on EPA's 2011 DSW proposal expressed concern that, in many cases of hazardous secondary materials recycling, there may not be an analogous product with which a facility can compare the product of the recycling process. Commenters described recycling processes that were designed to use a specific hazardous secondary material to make a useful product and processes that always incorporated a hazardous secondary material back into the generating process during manufacturing. Paragraph 260.43(a)(4)(ii) describes how a facility can meet factor 4 in these situations.

EPA had not previously identified a separate methodology for meeting factor 4 in the situation where there is no analogous product, but the support in the comments in response to EPA's request for input on the use of product specifications made it clear that this approach could be effective in the case where there is no analogous product. Therefore, EPA is stating in § 260.43(a)(4)(ii)(A) that a product of the recycling process is comparable to a legitimate product or intermediate when ''the product of the recycling process is a commodity that meets widely-recognized commodity standards and specifications.'' EPA gives the example in the regulatory text of commodity specification grades for common metals, which would be relevant to scrap metal recyclers, among other metal recyclers.

As stated above for paragraph (A), EPA decided that using a product's ability to meet product standards and specifications as an indicator of legitimate recycling would make the determination of legitimate recycling more straight-forward in many cases where the product of the recycling is clearly a commodity in wide use in commerce. This would limit uncertainty from recyclers about whether their processes are legitimate.

However, despite the value of product standards and specifications, EPA did not want to state that meeting any product standard or specification was an indicator of legitimacy because any recycler could design its own specification and point to that as a way to circumvent the requirement. Therefore, this requirement requires that the commodity standards and specifications being met be widely-recognized. By ''widely-recognized commodity standard and specification,'' EPA means a standard or specification that is used throughout an industry to describe a certain product and that is widely-available to anyone producing the product. A specific example of such a widely-recognized standard agency would be ASTM International, which has standards covering a wide variety of manufactured goods. Note, for this part of factor 4, the commodity standard or specification must be widely recognized, but would not necessarily address a specific hazardous constituent, since there is no analogous product to compare it to. EPA has determined that recycled products that do not have analogous products can ''stand alone'' in that they are not substitutes for virgin products and thus, either succeed or fail based on their inherent characteristics, including any hazardous constituents contained therein. Therefore, EPA has determined that market forces appropriately dictate whether these types of recycled products meet the technical provisions of factor 4.

EPA also wanted to address the situation in which a manufacturing process produces a hazardous secondary material that is then recycled back into the process from which they were generated. In some cases, the product is always manufactured using this kind of feedback loop and, therefore, there is no analogous product with which it can be compared. EPA has included in today's final rule a provision that states that when ''hazardous secondary materials being recycled are returned to the original process or processes from which there were generated to be reused, the product of the recycling process is comparable to a legitimate product or intermediate.'' That is, in those situations, the recycling process meets factor 4.

Recycling that takes place under EPA's closed loop recycling exclusion at § 261.4(a)(8) would be an example of manufacturing that would consistently include the hazardous secondary material being returned to the original process from which it was generated and that would meet the legitimacy factors being discussed here. Another situation about which commenters expressed concern was mineral processing to produce primary metals, because these processes always include materials looping back into the process to ensure that all the valuable metals that can be extracted from the ore are being collected for use. For example, in precious metals production, hazardous secondary materials from various stages in the process contain concentrations of both precious metals and hazardous constituents that are higher than concentrations in ore. The concentrations of hazardous constituents and precious metals in these hazardous secondary materials vary depending on the makeup of the ore from which they came. In order to glean the most valuable product from processing the ore, these hazardous secondary materials are routinely put back into the production units that process the virgin materials and are put

[31] ASTM International, formerly known as the American Society for Testing and Materials (ASTM), develops and delivers international voluntary consensus standards. Its Web site states that 12,000 ASTM standards are used around the world to improve product quality, enhance safety, facilitate market access and trade, and build consumer confidence. *http://www.astm.org/ABOUT/aboutASTM.html.*

through the process again. Commenters from the precious metals industry argued in their comments that they consider this legitimate recycling of secondary materials (that may be hazardous) and that because of the variation in the makeup of the materials going back into the process, determining whether factor 4 has been met would be difficult. Thus, EPA has determined that the recycling process in these situations—that is, in which the hazardous secondary material is returned to the original production process, or the processes from which it was generated—would meet factor 4.

EPA has determined that recycling hazardous secondary materials in this manner is not a concern as far as ''toxics along for the ride'' are concerned because the hazardous secondary materials came out of the very same process and contain the same hazardous constituents that are already in the manufacturing process. These hazardous constituents originated in the raw materials of the process that are being used with or without the recycling loop. Prohibiting the recycling of hazardous secondary materials in these situations because of factor 4 would not be changing the amount or nature of hazardous constituents in the product that comes out of the manufacturing process. In addition, that kind of prohibition would be misguided from a resource conservation perspective because it could limit the recycling of these materials back into a process, which leads to a more efficient process and therefore conserves the use of raw materials in manufacturing.

c. Documentation, certification and notice process for factor 4. EPA designed the provisions above to make it more clear how a material can meet factor 4. In addition, they provide additional flexibility to this factor, where it makes environmental and economic sense. These added provisions address most of the comments that EPA received stating that a particular sector or industry would have trouble meeting factor 4.

EPA recognizes, however, that despite these changes, there may still be instances where recycling is legitimate, but is unable to meet the technical provisions of factor 4 as it is written because the product of the recycling process has levels that are not comparable to analogous products or because the product of the recycling process cannot be compared to an analogous product, but does not fit under § 260.43(a)(4)(ii).[32]

It is critical that the legitimacy regulations be flexible enough to allow for situations like this, particularly with the regulations applying to all recycling. In this final rulemaking, EPA has replaced the petition process that it proposed in the 2011 DSW proposal with a documentation, certification and notice process for factor 4.

Specifically, when a recycling facility has determined that it must take advantage of the documentation, certification and notice process, either because the product of the recycling process has levels that are not comparable to analogous products or because the product of the recycling process cannot be compared to an analogous product (and § 260.43(a)(4)(ii) does not apply), it must determine that its recycling process is legitimate despite the levels of hazardous constituents in the product. The regulatory text for this provision explains that in doing this analysis, the facility making the determination can consider ''lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk.''

A consideration of lack of exposure from the toxics in a product would involve an assessment of the process to determine if the hazardous constituents are likely to come into contact with humans or the environment in a way that will harm them. For example, a product that is more of an intermediate in a recycling process and stays within an industrial setting where it is contained and where everyone coming into contact with it is familiar with any hazards that it poses could be considered a candidate for this certification because there is limited exposure to human health and the environment from the product. A consumer product, on the other hand, that will be leaving an industrial setting and entering the market where certain hazardous constituents may not be expected and may not have limited exposure to human health and the environment is unlikely to be eligible for this exception to factor 4.

For example, as previously explained in the 2008 DSW final rule and the 2011 DSW proposed rule, EPA has determined that the reuse of lead contaminated foundry sands may or may not be legitimate, depending on the use. The use and reuse of foundry sands for mold making in a facility's sand loop using a non-thermal reclamation process under normal industry practices has been found to be legitimate because the sand is part of an industrial process where there is little chance of the hazardous constituents being released into the environment or causing damage to human health and the environment when it is kept inside, because there is lead throughout the foundry's process, and because there is a clear value to reusing the sand, even though the levels of hazardous constituents in the sands may not be comparable to the analogous product. However, in the case of lead contaminated foundry sand used as children's play sand, the same high levels of lead would disqualify this use from being considered legitimate recycling.

An assessment of lack of the bioavailability of toxics in the product could be a more complicated analysis that would examine whether the hazardous constituents in the final product are bound up with the other constituents in such a way that they would not be released when coming into contact with humans or the environment over the lifetime of the product. Although this would be a sophisticated assessment, a facility wishing to perform this kind of analysis to inform a legitimacy determination under this certification process can do so.

EPA has included the phrase ''other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk'' in the regulation to account for other situations that may arise. An example that was submitted in the comments to the proposal that could be an ''other relevant consideration'' in making this determination is when the reclaimed product contains compounds that are not in analogous products, but the products exhibit similar physical and chemical risk profiles and therefore are not posing an increased risk. There may be other considerations regarding factor 4 like these that could also be relevant to the legitimacy of a recycling process; however, the Agency thinks these are limited.

After determining that its process is still legitimate, the recycling facility would prepare documentation explaining its assessment. This should take the form of a description of the process in question and an explanation of the analysis performed to determine legitimacy, including any relevant diagrams and flow charts, as well as any

[32] Note that a recycling facility can also compare the hazardous constituents in the hazardous secondary material to an analogous feedstock, if that approach works better for a particular recycling process.

relevant sampling data. In addition, the documentation must include a certification statement that states that recycling is legitimate and that is signed by the responsible official at the recycling facility. The language for the certification is not mandated in the regulations, but an acceptable example would be ''I certify that the hazardous secondary recycling process described in these pages is a legitimate recycling process.''

The documentation and certification of legitimate recycling would have to be maintained or available on-site for as long as the recycling process is operating at the site and for three years after the recycling operation has ceased.

In addition to preparing and maintaining this documentation, the recycling facility would notify its Regional Administrator (or State Director, in authorized states) that it is taking advantage of this provision by reporting the type of hazardous secondary material and the recycling process being used to produce a product with elevated levels of hazardous constituents (or a product that has no widely-known commodity standards for the hazardous constituents) through EPA Form 8700–12, otherwise known as the Site ID form.[33] When a facility documents, certifies, and submits notice under factor 4, it is addressing factor 4 for the purposes of the introductory language of § 260.43, which requires that all requirements of the paragraph be addressed.

EPA has decided to finalize this self-implementing certification process rather than the proposed petition process to reduce burden on facilities who are taking advantage of this provision, as well as on the regulatory agencies implementing the regulations. Because this requirement for documentation and a certification that must be maintained on-site does not include an approval process, facilities do not have to wait for any decisions from their implementing agencies about whether their recycling is legitimate.

However, the notification aspect of the legitimacy regulations being finalized today adds some limited, but important, oversight to a process that would otherwise be taking place out of sight of the regulating agencies all together, that is, the decision that a recycling process that does not meet factor 4 is still legitimate. The notification gives EPA and the authorized states information about which recycling facilities are producing products from recycled hazardous secondary materials that have elevated levels of hazardous constituents when compared to non-recycled products (or are producing recycled products that have no non-recycled analogue and no widely recognized commodity specifications). This notification facilitates oversight and inspections of the recycling facility concerning the legitimacy of the recycling process, allowing EPA and authorized states to continue to use existing authorities to determine whether the recycling is legitimate.

EPA has chosen this approach because it maintains the self-implementing nature of the regulations, while providing enough information to EPA and the authorized states to gather the necessary information. In these ways, this approach addresses the main concerns raised by the stakeholders in the comments to this rulemaking.

A facility that claims to be operating a recycling process that is legitimate under this provision could be subject to an enforcement action if the Agency determines that the recycling is sham. As always, a facility with questions about the regulated status of its hazardous secondary material can contact its implementing agency for assistance in making a waste determination.

C. Changes From the Proposal

1. Prohibition of Sham Recycling

In today's final rule, EPA is codifying the requirement that all hazardous secondary material recycling must be legitimate. However, instead of amending the text of each recycling exemption and exclusion, we are instead codifying a provision in § 261.2(g) that states that any hazardous secondary material found to be sham recycled is discarded and thus, a solid waste. This more clearly reflects our intent and our long-standing policy that only those facilities truly recycling should be eligible for an exclusion based on recycling the hazardous secondary materials. We did not intend to cause facilities that are legitimately recycling to revisit their practices or for state agencies to revisit past legitimacy determinations. However, we do want to make clear that sham recycling is not real recycling and thus, any hazardous secondary material being sham recycled is a solid and potentially a hazardous waste. By making a clear statement in the definition of solid waste, the Agency is placing the appropriate emphasis on this issue, that is, that sham recycling is discard.

2. Documentation

When the Agency codified the legitimacy standard in the 2008 DSW final rule, we did not require specific documentation regarding the legitimacy determination, although the regulatory language stated that persons claiming to be excluded from hazardous waste regulation because they are engaged in reclamation must be able to demonstrate that the recycling is legitimate. In the 2011 DSW proposal, we proposed to require that persons who perform recycling include documentation in their paperwork to explain how their hazardous secondary materials are legitimately recycled.

After reviewing the public comments, we have decided that, as a general matter, documentation of legitimacy is not necessary for most hazardous secondary materials recycling. Instead, we will continue to rely on the current provision in § 261.2(f) that requires respondents to demonstrate that the material is not a waste. Section 261.2(f) requires persons claiming that materials are not solid waste or are conditionally exempt from RCRA Subtitle C regulation to provide appropriate documentation of these claims.

However, we are finalizing two exceptions to the general case where documentation of legitimate recycling is not required. The first is that we are finalizing a requirement for facilities reclaiming hazardous secondary materials under the control of the generator, that is, any facility claiming the exclusion at § 261.4(a)(23), to document the legitimacy of the reclamation process. We have determined that it is important for those facilities to document the legitimacy of their recycling process, given the wide variety of hazardous secondary materials and industrial processes that can claim to be operating under the generator-controlled exclusion with relatively few conditions. After implementing the DSW exclusions in several states since its promulgation in October 2008, we have determined that documentation of legitimacy for this particular exclusion is important in ensuring compliance and will make oversight and enforcement more effective. We are therefore requiring that persons who perform reclamation under the control of the generator to include documentation and explain how their hazardous secondary materials are legitimately reclaimed. We expect this documentation to be a narrative description, which could include photographs or other illustrations or process diagrams of how the reclamation of their hazardous

[33] EPA will revise EPA form 8700–12 to incorporate this notification. In the interim, persons may notify using the ''Comments'' box on the form.

secondary materials meets the legitimacy factors. Reclaimers of hazardous secondary materials will need to maintain this documentation on-site where the reclamation occurs for the duration of the reclamation operations and for three years after the reclamation operations cease. Written documentation will provide an easily available explanation of the facility's rationale for the legitimacy of its process that is available to the implementing agency on regular inspections or as part of compliance assistance.

The other exception where documentation is required is for those facilities whose product made from recycled hazardous secondary materials does not meet factor 4, but would still be considered a legitimately recycled product. Those facilities would need to maintain documentation as to why, in fact, the recycling is still legitimate as it relates to factor 4. For a more detailed explanation of that documentation requirement, refer to section VIII.B.6 above.

3. Factor 4

In the 2011 DSW proposal, EPA's proposed factor 4 contained two main requirements to ensure that hazardous constituents were not ''along for the ride'' and being discarded in a final product under the guise of recycling. The proposed regulation stated that the product of the recycling process would have to have concentrations of hazardous constituents that are at levels comparable to or lower than those found in analogous products. In addition, the proposal stated that the product of the recycling process could not exhibit a hazardous characteristic that analogous products did not also exhibit.[34] EPA recognized that there would be some legitimate recycling operations that may not meet this requirement, and so proposed to address this situation through a petition process in which a facility that did not meet factor 4 could petition its implementing agency, whether that be a state environmental agency or an EPA Region, and get agreement from that agency that its operations were legitimate.

Although this approach would provide a way for operations that are legitimate, but don't meet factor 4 to still operate, commenters from both the industrial sector, as well as from state regulatory agencies, commented that this approach was not ideal. Commenters from industry suggested that there would be more petitioners under this provision than EPA had anticipated because certain large sectors of industry would likely be uncertain about whether their recycling would meet the factor as written and would be compelled to petition their implementing agencies. Commenters provided some real world examples to illustrate their concerns with factor 4 that EPA closely examined when redrafting the language for this provision.

Commenters also were concerned that the petition process itself might take too long if the implementing agencies receive petitions from many facilities and that the response time might end up being very lengthy. Several of the states that could be responsible for replying to these petitions also commented that they were not in favor of a petition process because the resources that would be required to respond to the petitions are not available in the state program offices.

EPA made several changes to factor 4 in response to these comments and has determined that factor 4, as we are finalizing it today, better addresses the wide variety of industrial recycling processes. There are four main changes to the final language of factor 4 as compared to the 2011 DSW proposed regulation.

First, instead of the two basic proposed provisions that depend on a comparison with an analogous product, factor 4 as finalized acknowledges that sometimes there is no analogous product available for a comparison. Subparagraph (i) covers how a recycling process meets the factor if there is an analogous product whereas subparagraph (ii), which was not part of the proposed regulatory language, covers how a product with no analogous product can meet factor 4.

Secondly, the finalized regulatory language has provisions for how widely-recognized industry standards and specifications can be used to meet factor 4. EPA took comment on the usefulness of specifications for evaluating hazardous constituents in the product and has determined that as long as the standards and specifications being relied upon are widely recognized industry wide standards and specifications for a product (and in the case of (i), that they address the hazardous constituents in question), meeting them would be appropriate to show that hazardous constituents are not being discarded under the guise of recycling. This should make determinations regarding factor 4 simpler for a wide range of industries producing common industrial commodities. EPA did not intend to interfere with long-standing legitimate recycling in these industries and this addition to the regulatory language should clarify for those industries that when they are meeting the extensive commodity standards and specifications for their products, they meet factor 4 as well.

The third change is the addition under § 260.43(a)(4)(ii)(B) of language that states that hazardous secondary materials that are being recycled by being returned to the original process(es) from which they were generated meet factor 4. In closed loop recycling and in several other kinds of recycling, such as in mining and mineral processing, hazardous secondary materials generated from an industrial process are regularly returned to that same process to remove more of the valuable constituent from them. The hazardous constituents in the secondary material are no different than what is already in the process and returning them makes the entire manufacturing process more efficient since it requires fewer raw materials.

EPA has stated in the past that it would not consider this practice a concern from the perspective of factor 4 because the comparison in question is supposed to be between final products, but it was clear from the comments to the proposal that this question was still a concern to many facilities. When adding subparagraph (ii) for situations where there is no analogous product for a comparison, EPA also added this language to make it clear that processes in which the hazardous secondary materials are returned to the original process do meet factor 4.

Collectively, these changes to the language of factor 4 are an improvement from EPA's 2011 proposal as the changes clarify when factor 4 is met for a wide variety of industrial processes. Furthermore, a generator can use its knowledge of the materials it uses and of the recycling process to make legitimacy determinations under factor 4. Thus, testing would be rarely required for a recycler to meet this factor because it would only be necessary when the product of the recycling does not meet widely-recognized specifications, is not an in-process material, and when the recycler does not sufficiently know what is in their final product to make a determination using generator knowledge.

Finally, EPA has changed proposed factor 4 to require any facility that does not meet the technical provisions of this

[34] The language in the proposed regulatory text for this paragraph mistakenly included an ''or'' instead of an ''and'' between these two requirements of factor 4 although the preamble discussion on page 76 FR 44124, column 2, correctly used ''and.'' Several commenters pointed this error out to the Agency in their comments.

factor and yet is still legitimately recycling to document, certify, and provide notice that even though the recycling process does not meet the technical provisions of this factor, the recycling process is nevertheless legitimate. This requirement replaces the proposed petition process. The comments EPA received on the petition process expressed concern that the process would be expensive for facilities who wanted to take advantage of it and would place too much of a burden on implementing agencies. Comments also argued that EPA's estimate of the number of facilities that would be likely to submit petitions was overly conservative. Although the changes to factor 4 described here will address the concerns of many of the facilities who stated that they would have to submit a petition, the Agency also determined that a self-implementing process to allow those recyclers to address factor 4 would be more in keeping with the existing policy on legitimacy.

The certification process requires that a facility go through the same thought process and assessment about hazardous constituents that are incorporated into the final product that would have been required by the petition process (and that is currently consistent with the Agency's legitimacy policy in the Lowrance Memo). However, instead of having to submit a petition to an implementing agency when the process is legitimate despite not meeting the technical provisions of factor 4, the facility can document and certify the assessment that it has done and submit a notification on the Site ID form. This is a minimal burden, particularly as the Site ID form is a form that many of these facilities are already submitting to EPA for other reasons. In addition, these facilities are not left waiting for a response from an agency as they may have had to under the proposed petition procedure.

All in all, these changes to factor 4 will make this part of the legitimacy requirement consistent with the current policy in the Lowrance Memo and **Federal Register** preamble discussions and allow for all four legitimacy factors to be requirements that must be met without adversely affecting existing legitimate recycling.

IX. Revisions to Solid Waste Variances and Non-Waste Determinations

The Agency is finalizing today several modifications to the regulation of solid waste variances and non-waste determinations at 40 CFR 260.31(c), 40 CFR 260.33, and 40 CFR 260.34 to ensure protection of human health and the environment and foster greater consistency on the part of implementing agencies. These final revisions include:

(1) Revise 40 CFR 260.33(c) to require facilities to send a notice to the Administrator (or the State Director, if the state is authorized) in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria upon which a variance or non-waste determination has been based. The Administrator may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

(2) Include a provision at 40 CFR 260.33(d) that variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply if they want to maintain the variance or non-waste determination;

(3) Include a provision at 40 CFR 260.33(e) stating that facilities receiving a variance or non-waste determination must provide notification as required by 40 CFR 260.42;

(4) Revise the criteria for the partial reclamation variance in 40 CFR 260.31(c) to clarify when the variance applies and to require, among other things, that the all criteria for this variance must met; and

(5) Revise the criteria for the non-waste determination in 40 CFR 260.34 to require that petitioners explain or demonstrate why their hazardous secondary materials cannot meet, or should not have to meet, the existing DSW exclusions under 40 CFR 261.2 or 261.4.

A discussion of the public comments on the 2011 DSW proposal and Agency responses can be found in section XVIII of this preamble and the full response to comment document is in the docket for the rulemaking.

A. Revisions to Procedures for Variances and Non-Waste Determinations in 40 CFR 260.33

Under the current regulatory framework, 40 CFR 260.30 provides the Administrator with the authority to grant a variance from the definition of solid waste or a non-waste determination on a case-by-case basis if the hazardous secondary materials are recycled in a particular manner. The practical effect of both the solid waste variances and the non-waste determinations is the same; once a petition is granted by EPA, or the authorized state, the hazardous secondary material is not regulated as a solid or hazardous waste. The procedures for these variances and non-waste determinations are found in 40 CFR 260.33.

In today's rule, EPA is finalizing three changes to 40 CFR 260.33. First, EPA is requiring in 40 CFR 260.33(c) that facilities send a notice to the Administrator (or the State Director, if the state is authorized) in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria upon which a variance or non-waste determination has been based. Second, EPA is establishing in 40 CFR 260.33(d) an effective term limit of ten years for variances and non-waste determinations unless the petitioner re-applies to the Agency to have the variance or non-waste determination renewed. Third, EPA is requiring in 40 CFR 260.33(e) that facilities re-notify every two years under 40 CFR 260.42.

1. Requirement That an Applicant Send Notice in the Event the Material No Longer Meets the Relevant Criteria

EPA is modifying 40 CFR 260.33(c) to require, in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in 40 CFR 260.31, 260.32, or 260.34 upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Administrator (or the State Director, if the state is authorized). The Administrator then may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

The requirement that the hazardous secondary materials must continue to meet the relevant criteria of a solid waste variance or non-waste determination is inherent in the regulations. Failure to meet the criteria could indicate that the hazardous secondary materials are discarded and a solid waste and would trigger the need to re-examine the circumstances of the recycling. EPA is codifying this change to 40 CFR 260.33(c) to ensure that if there are changes that may impact how the hazardous secondary material meets the relevant criteria, that such changes be considered by the regulatory authority to ensure that those criteria continue to be met. This requirement will ensure clarity and consistency by providing an administrative procedure for reconsidering a variance or non-waste determination in the event that

the hazardous secondary material no longer meets the relative criteria.

In some cases, a full re-application for a variance or non-waste determination may not be necessary. Under today's final rule, in the event of a change, the facility must send a description of the change in circumstances to the regulatory authority and it is the regulatory authority that will determine whether the facility must re-apply for a variance or non-waste determination. This change in procedure allows the regulatory authority to avoid spending unnecessary resources re-reviewing petitions where the change in circumstances is found to be of no consequence to the original variance or non-waste determination the regulatory authority has granted.

2. Term Limit on Variances and Non-Waste Determinations

EPA is adding a provision to 40 CFR 260.33(d) that solid waste variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance or non-waste determination if they want to maintain the variance or non-waste determination. A facility may continue to operate under an expired variance or non-waste determination if they have submitted an application for a new variance or non-waste determination six months prior to the end of the term limit and have not yet received a final decision on that application from their regulatory authority.

Variances and non-waste determinations are granted based on the case-by-case circumstances of a particular hazardous secondary material being recycled. Many of the variance and non-waste determination criteria specifically consider factors such as, the manner in which the hazardous secondary material is recycled, the market factors of the recycling process, the value of the hazardous secondary material, and contractual arrangements. However, these factors do not remain static and, instead, tend to change and evolve over time. It is therefore prudent that regulatory authorities periodically review these case-by-case situations to ensure that the hazardous secondary material continues to meet the criteria of the variance or non-waste determination.

Variances and non-waste determinations are granted for a fixed term not to exceed ten years from the date the facility is granted a variance or non-waste determination. If, for example, due to a change in circumstances, a facility is required to re-apply for a variance or non-waste determination within the 10-year time limit of its initial petition, then an automatic re-application would not be initiated until ten years after its second variance or non-waste determination is granted, unless otherwise specified by the regulatory authority. Additionally, regulators may stipulate time limits of less than 10 years, if warranted.

3. Re-Notification Requirement

EPA is adding a provision to 40 CFR 260.33(e) to require facilities receiving variances or non-waste determinations to send a notification of this activity prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator (or State Director, if the state is authorized) using EPA Form 8700–12 in compliance with 40 CFR 260.42. Additionally, these facilities must notify within 30 days of stopping management of hazardous secondary materials under the variance or non-waste determination.

The intent of the notification is to enable variances and non-waste determinations to be tracked nationally and over time, which facilitates state-to-state consistency in determinations. Additionally, notifications enable effective oversight of facilities receiving variances and non-waste determinations because it provides regulatory authorities with a mechanism for receiving regularly updated information (such as information regarding quantities of hazardous secondary materials managed under the determination). Additionally, this information can be used to identify facilities which may have undergone changes to their reclamation process significant enough to trigger a review of the determination under 40 CFR 260.33(c).

EPA finds that the notification requirement under 40 CFR 260.42 has worked well in enabling regulatory authorities to monitor compliance of facilities operating under the 2008 DSW final rule. Regulatory authorities receive information on the name and location of the facilities operating under the exclusion and the types and quantities of hazardous secondary materials the facility is managing, which allows the regulatory authority to prioritize inspections, as well as create a list of facilities that would benefit from training and compliance assistance on the rule. Additionally, notification has allowed regulatory authorities to identify problems so as to intervene early to prevent potential mismanagement. EPA is convinced of the value of the notification provision in ensuring proper implementation of its rules. Therefore, notification for variances and non-waste determinations will increase transparency and oversight of facilities receiving a variance or non-waste determination.

B. Revisions to Partial Reclamation Variance in 40 CFR 260.30(c)

The ''partial reclamation'' variance in 40 CFR 260.30(c) applies to hazardous secondary materials that have been reclaimed, but must be reclaimed further before the materials are completely recovered (*i.e.,* ''partial reclamation''). In turn, 40 CFR 260.31(c) provides the specific standards that a partially-reclaimed material must meet in order to be eligible for a variance from classification from solid waste.

In this final rule, EPA is revising the partial reclamation variance provision of 40 CFR 260.31(c) to clarify when partially-reclaimed materials are not solid waste because they are commodity-like. The objectives of the revisions are to clarify the regulatory language, foster consistent application of the variance criteria, and emphasize that the variance should be granted only when partial reclamation has produced a commodity-like material. EPA's modifications to 40 CFR 260.31(c) include: (1) Revising the introductory text to clarify when the variance applies; (2) revising the introductory text to require that all of the decision criteria must be met; (3) revising the language of all of the decision criteria to provide greater clarity; and (4) eliminating the sixth criterion, ''other relevant factors.''

1. Purpose of Revisions to Partial Reclamation Variance

When the partial reclamation variance was promulgated in 1985, EPA's original intent was to provide a mechanism for determining if a hazardous secondary material had undergone sufficient reclamation (a type of processing) to produce a material that was more like a commodity than a solid waste. The variance would be applicable if the material was commodity-like, even though some further reclamation was required before the material became a commercial product. EPA intended that the variance would be applied at the point that the commodity-like material was produced. After that point, the material would be managed as a commodity rather than as a solid and hazardous waste. Prior to the point that partial reclamation produced a commodity-like material, the material would have to be managed as a hazardous waste.

However, EPA has become aware that authorized states across the country have applied the variance provision differently in similar circumstances. These differences may be due to: (1) The wide discretion allowed to the regulatory authority to weigh any or all of the decision criteria in any way it sees fit; (2) lack of clarity in the decision criteria themselves; or (3) the general sixth criterion ''other relevant factors.''

As a result, variances have been granted under 40 CFR 260.31(c) for some materials that are not commodity-like. Therefore, EPA is finalizing revisions to the variance criteria to address the inconsistency among authorized states, remove ambiguities, and clearly convey the intent of the partial reclamation variance that only partially reclaimed hazardous secondary materials that have produced commodity-like materials are eligible for a variance from classification as solid waste. Consistent and appropriate application of the partial reclamation variance is necessary so that the hazardous waste program provides the level of protection of human health and the environment required by the RCRA statute in all communities in all areas of the country.

An illustration of how the revised variance provision would be applied to a commonly reclaimed hazardous waste example is included in the ''Background Document: Providing Context—The Example of F006 Electroplating Sludges,'' [35] which is included in the docket for this rulemaking. This document includes a detailed description of how the revised variance provision would be used to make determinations about whether a variance would be appropriate for the listed hazardous waste F006 (wastewater treatment sludges from electroplating operations) at various steps in the reclamation process.

2. Revisions to Introductory Text of 40 CFR 260.31(c)

EPA revised the introductory text of 40 CFR 260.31(c) to clarify when a partial reclamation variance is applicable and to identify what factors must be used to make a determination that a partially-reclaimed material is commodity-like. The revised text states:

> The Administrator may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:

As noted above, the revised text replaces the word ''reclaimed'' with ''partially-reclaimed'' and clarifies that the variance is applicable at the point that partial reclamation ''has produced a commodity-like material.'' These changes clarify and reflect EPA's intent that the variance applies only after partial reclamation has produced a commodity-like material and does not apply prior to producing a commodity-like material.

To make a determination that a partially-reclaimed material is commodity-like, EPA revised the introductory text to require that such a determination will be based on whether the hazardous secondary material is legitimately recycled and whether all the decision criteria are satisfied.

3. Revisions to Criteria for Partial Reclamation Variance

Each criterion under 40 CFR 260.31(c) has been revised to begin with the word ''whether'' to require that the regulatory authority must make a yes or no determination as to whether the material meets each criterion. In addition, each criterion has been revised to clarify and incorporate the characteristics of a commodity-like material.

The first criterion in 40 CFR 260.31(c)(1) asks whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste. By using a partial reclamation process other than the process that generated the hazardous waste, the more likely that the material will be commodity-like. Changes from the original language of the criterion include (1) replacing the general word ''processing'' with the words ''partial reclamation''; and (2) removing from the criterion ambiguity that could lead a regulatory authority to apply the variance after the initial partial reclamation process when a commodity-like material is not produced until completion of further reclamation.

The second criterion in 40 CFR 261.31(c)(2) asks whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation. Changes from the original language of the criteria include: (1) Adding the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process; and (2) revising the wording to reflect the fundamental characteristic that a commodity-like material has sufficient economic value that it will be purchased for further reclamation. EPA notes that the value of a material produced at a later stage of reclamation cannot be used to justify a variance for the partially-reclaimed material produced earlier in the process. In other words, the criterion must be applied to the ''partially-reclaimed'' material at the specific point in the reclamation process where application of the variance is requested. Evidence to support this criterion may include sales information; demand for the materials; and business contracts, such as contracts specifying quantities of material sold, details of the transaction, and the effective price paid for the partially-reclaimed material by purchasers. The price paid for the partially-reclaimed material should be calculated after subtracting transportation costs and any other goods or services rendered in exchange for the material purchased.

The third criterion in 40 CFR 260.31(c)(3) asks whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials and which is used in subsequent production steps. Changes from the original language of the criteria include (1) adding the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process; and (2) replacing the phrase ''is like an analogous raw material'' with the phrase ''is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps.'' This revision is intended to demonstrate that a partially-reclaimed, commodity-like material is one that will be used as a viable substitute for a product or intermediate in production. Evidence to support this criterion would include a comparison of the physical and chemical characteristics of the partially-reclaimed material being considered for the variance to those of products or intermediates produced from virgin raw materials.

The fourth criterion in 40 CFR 260.31(c)(4) asks whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (*e.g.,* records of sales and/or contracts and evidence of subsequent

[35] Docket ID: EPA–HQ–RCRA–2010–0742–0016.

use, such as bills of lading). Changes from the original language of the criteria include (1) adding the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process; (2) deleting the word ''guaranteed'' since markets are often unpredictable; (3) deleting the word ''end'' prior to the word ''market'' since the partially-reclaimed material could be sold to another reclaimer before it is sold to a final manufacturer or final reclaimer; and (4) adding the phrase, ''as demonstrated by known customer(s) who are further reclaiming the material (*e.g.* record of sales and/or contracts, and evidence of subsequent use, such as bills of lading),'' to clarify how a facility may demonstrate a market for the partially-reclaimed material. Additionally, this change ensures that the partially-reclaimed material is being shipped for further reclamation rather than being potentially stockpiled by the partial reclaimer. Evidence to support this criterion may include the material's value as an input to a production process; traditional usage of quantities of the partially-reclaimed material; and the likely stability of markets for the material. A market for further reclaimed material produced at a later stage of reclamation cannot be used to justify a variance for a partially-reclaimed material. For example, if a facility requests a variance for an incoming partially-reclaimed hazardous waste, the market that would have to be evaluated is the market for the incoming partially-reclaimed hazardous waste itself, not the final product.

The fifth criterion in 40 CFR 260.31(c)(5) asks whether the partially-reclaimed material is handled to minimize loss. Changes from the original language of the criteria includes adding the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process. Specifically, this criterion requires evaluation of how the partially-reclaimed material is handled before it is further reclaimed. Handling a partially-reclaimed material to minimize loss indicates that the material is commodity-like. Generally, persons handling hazardous secondary materials with little or no economic value do not have the same incentives to minimize loss as persons handling commodities. The management of materials produced at later stages of the reclamation process is not relevant to whether the partially-reclaimed material is eligible for a variance. Evidence to support this criterion may include documentation of facility procedures used to minimize loss (*e.g.,* inspections, training) and storage and management equipment designed to minimize loss.

Finally, in today's final rule, EPA is removing the sixth criterion in 40 CFR 260.31(c)(6), which allowed the regulatory authority to consider other relevant factors when deciding whether a partially-reclaimed materials is commodity-like. When the partial reclamation variance was promulgated in 1985, EPA believed that this criterion could help determine whether a material is commodity-like. However, based on experience with the variance provision, EPA has learned that this criterion may have contributed to different determinations of whether the same partially-reclaimed material is commodity-like. Accordingly, EPA has determined that the appropriate and complete set of criteria to consider when determining whether a partially-reclaimed material is commodity-like are criteria (1)–(5).

C. Revisions to Non-Waste Determinations Found in 40 CFR 260.34

In today's final rule, EPA is adding a criterion to non-waste determinations in 40 CFR 260.34 that require facilities applying for a non-waste determination to explain or demonstrate why they cannot meet, or should not have to meet, the existing DSW exclusions under 40 CFR 261.2 or 261.4.[36] Commenters to the 2009 DSW public meeting notice have argued that the non-waste determinations may be burdensome to states, and thus, requiring applicants to formally consider and explain why they are not eligible for an existing DSW exclusion will reduce the burden on states in two ways: (1) It requires facilities to consider existing exclusions and standards first, before pursuing a non-waste determination, which can, in turn, lead to facilities discovering that their intended recycling fits under an existing exclusion and therefore a non-waste determination petition is not needed; and (2) this criterion informs the regulatory authority why a facility believes it cannot meet an existing exclusion, which is likely to be the regulatory authority's first question before evaluating a non-waste determination petition. Petitioners also would be allowed to seek a non-waste determination if they could demonstrate that they should not have to meet the conditions of another exclusion, but rather should be allowed to operate under a non-waste determination with fewer or different conditions. However, if EPA or the authorized state determines that an applicant may, in fact, use an existing solid waste exclusion under 40 CFR 261.2 or 261.4, this may be grounds for denying a non-waste determination on the basis that regulatory relief has already been provided.

[36] The two types of non-waste determinations are (1) a determination for hazardous secondary materials reclaimed in a continuous industrial process and (2) a determination for hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

X. Effect on Facilities Currently Operating Under Solid Waste Exclusions

A. Effect on Pre-2008 Solid Waste Exclusions

The final rule does not supersede any of the pre-2008 solid waste exclusions or other prior solid waste determinations or variances, including determinations made in letters of interpretation and inspection reports. If a hazardous secondary material has been determined not to be a solid waste for whatever reason, such a determination remains in effect, unless the authorized state decides to revisit the regulatory determination under their current authority. In addition, if a hazardous secondary material has been excluded from hazardous waste regulations—for example, under the Bevill exclusion in 40 CFR 261.4(b)(7)—the regulatory status of that material will not be affected by today's rule.

However, there are two revisions to the regulations that, while they do not directly affect the regulatory status of excluded hazardous secondary materials, may impact facilities' responsibilities under an existing exclusion. These two revisions are (1) a new recordkeeping requirement for speculative accumulation; and (2) a documentation, certification, and notification requirement for recycling processes which are legitimate despite having levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product. These requirements must be met by the effective date of the rule, which is July 13, 2015.

1. Revised Speculative Accumulation Requirement

Under the revised speculative accumulation requirement in § 261.1(c)(8), all persons subject to the speculative accumulation requirements (for example, persons reclaiming characteristic by-products and sludges under 40 CFR 261.2(c)(3) and persons reclaiming hazardous secondary

materials under a definition of solid waste exclusion under 40 CFR 261.4(a), such as the sulfuric acid exclusion at § 261.4(a)(7) or the generator-controlled exclusion at § 261.4(a)(23)) must label their storage unit(s) by indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

2. Prohibition of Sham Recycling and Definition of Legitimate Recycling

The codification of the prohibition of sham recycling (§ 261.2(g)), and the definition of legitimate recycling (§ 260.43) being finalized today will not impose any new requirements on persons recycling under the pre-2008 recycling exclusions, except in the case where the product of the recycling process (1) has levels of hazardous constituents that are not comparable to or lower than those in a legitimate product (*i.e.,* are significantly elevated) or (2) is unable to be compared to a legitimate product and the product of the recycling process is not a widely recognized commodity (*e.g.,* scrap metal) and is not returned to the original production process (*e.g.,* closed loop recycling).

In this case, the person performing the recycling must conduct the necessary analysis and prepare documentation stating why the recycling is still legitimate. Persons may consider exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site. The person performing the recycling must also notify his Regional Administrator (or State Director, if the state is authorized) of this activity using EPA Form 8700–12.

B. Effect on Facilities Operating Under the 2008 Solid Waste Exclusions

1. Facilities Operating Under Generator-Controlled Exclusion (40 CFR 261.2(a)(2)(ii) or 261.4(a)(23)) [37]

Because today's rule includes more stringent standards for the generator-controlled exclusion at 40 CFR 261.4(a)(23), facilities that are currently managing hazardous secondary materials under these provisions must ensure they are complying with the more stringent standards by the effective date of the rule, which is July 13, 2015 (or in an authorized state, by the effective date in that state). The new provisions include (1) complying with the regulatory definition of ''contained'' found in 40 CFR 260.10; (2) maintaining shipping records for reclamation under same-company and toll manufacturing agreements; (3) (for the person performing the recycling) documenting how the recycling meets all four factors of the legitimacy definition in 40 CFR 260.43,[38] and (4) meeting the new emergency preparedness and response conditions.

Under the new regulatory definition of contained, a hazardous secondary material is contained if it is managed in a unit (which can include a land-based unit such as a pile) that meets the following criteria: (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary material, to prevent releases of the hazardous secondary material to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions. Hazardous secondary materials in units that meet the applicable requirements of 40 CFR part 264 or 265 (*e.g.,* tanks and containers) are presumptively contained.

Under the new requirements to document shipments for reclamation performed under the same-company and toll manufacturing provisions of the generator-controlled exclusion at 40 CFR 261.4(a)(23), generating and receiving facilities must maintain records of hazardous secondary materials sent or received under this exclusion at their facilities for no less than three years. The records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received. The requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations).

Persons performing the recycling of hazardous secondary materials under the generator-controlled exclusion of 40 CFR 261.4(a)(23) must also maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in 40 CFR 260.43(a). Documentation must be maintained for three years after the recycling operation has ceased.

The Agency is not requiring any particular format for the documentation of legitimacy; however, we expect that the recycler would have written documentation describing the recycling process and how it meets each legitimacy factor. For example:

- Useful contribution legitimacy factor—the recycler would document how the hazardous secondary material(s) provides a useful contribution to the recycling process or to the product or intermediate of the recycling process. The regulatory text for this factor provides five ways in which a useful contribution can be achieved. The recycler would need to document how the hazardous secondary material(s) add value and/or are useful to the recycling process in one or more of these ways: (i) Contributing valuable ingredients to a product or intermediate; (ii) replacing a catalyst or carrier in the recycling process; (iii) providing a valuable constituent to be recovered; (iv) being regenerated; or (v) being used as an effective substitute for a commercial product. For example, if the hazardous secondary material is a source of a valuable constituent, such as a precious metal, the document would explain the specific precious metal(s) recovered and their value to the process.
- Valuable product or intermediate legitimacy factor—the recycler would explain how the product or intermediate made from hazardous secondary material is valuable, either in a monetary sense or through its intrinsic value. If the product made from hazardous secondary material is sold, the

[37] Today's rule consolidates the 2008 generator-controlled exclusion at 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23) into one exclusion at 40 CFR 261.4(a)(23).

[38] As part of the requirement of meeting 40 CFR 260.43, if the product of recycling contains levels of hazardous constituents that are not comparable to or are unable to be compared to a legitimate product, the person performing the recycling must document, certify and notify the appropriate Regional Administrator of why the recycling is still legitimate. Where there is no analogous product made from virgin materials, the product of the recycling process is comparable to a legitimate product or intermediate if the product of the recycling process is a commodity that meets widely recognized commodity standards and specifications, or the hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused.

documentation of sale could be proof of the value of the material to a third party. Such documentation could be in the form of a selection of receipts or contracts and agreements that establish the terms of the sale or transaction. A recycler that has not yet arranged for the sale also could demonstrate value by showing that the product or intermediate can replace another product or intermediate that is available in the marketplace. Demonstrating intrinsic value may be less straightforward than demonstrating the value of products that are sold in the marketplace, but could involve an explanation of the industrial process that shows how the product of the recycling process or intermediate replaces an alternative product that would otherwise have to be purchased.

• Managed as a valuable commodity legitimacy factor—the recycler would include a description of how the hazardous secondary material is managed and explain how this management is similar or provides equivalent protection to the management of an analogous raw material. That is, the documentation would describe how the hazardous secondary material is stored and handled prior to being inserted into the recycling process. Where there is no analogous raw material, the recycler would explain how the management of the hazardous secondary material ensures that the material is contained as discussed in 40 CFR 260.10.

Comparison of comparability of the product of recycling to a legitimate product factor—the recycler would include any data or information that shows that (1) the levels of hazardous constituents in the product are comparable to or lower than those found in analogous products, or are comparable to levels that meet widely-recognized commodity standards (in the case where the commodity standards include levels that specifically address those hazardous constituents), or (2) if there is no analogous product, that the product meets widely recognized commodity standards, or that hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused. If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product, but the recycling is still legitimate, the person performing the recycling must conduct the necessary analysis and prepare documentation stating why the recycling is, in fact, still legitimate. Persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site. In addition, the person performing the recycling must notify his Regional Administrator (or the State Director, if the state is authorized) of this activity using EPA Form 8700–12.

Finally, under the new standards for emergency preparedness and response found in 40 CFR part 261 subpart M, generators that accumulate less than or equal to 6,000 kg of hazardous secondary material on site must comply with the emergency preparedness and response requirements equivalent to those in part 265 subpart C, which discuss maintaining appropriate emergency equipment on site, having access to alarm systems, maintaining needed aisle space, and making arrangements with local emergency authorities. A generator must also have a designated emergency coordinator who must respond to emergencies and must post certain information next to the telephone in the event of an emergency. For generators that accumulate more than 6,000 kg of hazardous secondary material on site, EPA is requiring that generators comply with requirements equivalent to those in part 265 subparts C and D, which includes all the requirements already discussed above for those accumulating less than or equal to 6,000 kg, as well as requiring a contingency plan and sharing the plan with local emergency responders.

2. Facilities Operating Under Transfer-Based Exclusion (40 CFR 261.4(a)(24) or (25))

Because today's rule replaces the transfer-based exclusion at 40 CFR 261.4(a)(24) and (25) with a verified recycler exclusion, facilities that are currently managing hazardous secondary materials under the transfer-based exclusion at 40 CFR 261.4(a)(24) must meet the terms of the verified recycler exclusion by the effective date of the rule, which is July 13, 2015 (or in an authorized state, by the effective date in that state). That is, facilities operating under the transfer-based exclusion who wish to continue operating under the verified recycler exclusion must send in a new notification form and meet the additional conditions in the verified recycler exclusion, including the emergency preparedness and response condition. In addition, any reclamation facility or intermediate facility that does not have a RCRA permit or is not operating under interim status must stop managing the hazardous secondary material under the transfer-based exclusion until they apply for and receive a variance from either EPA or the authorized state under the verified recycling exclusion. (As of February 2014, there were no facilities without a RCRA Subtitle C permit recycling under the transfer-based exclusion, so EPA does not expect this impact to occur).

Because the verified recycler exclusion is limited to recycling in the United States, facilities exporting hazardous secondary material under 40 CFR 261.4(a)(25) must cease operating under this exclusion by the effective date of the rule. The facility must notify his Regional Administrator (or State Director, if the state is authorized) using EPA Form 8700–12 that they have stopped managing hazardous secondary materials under the exclusion in accordance with 40 CFR 260.42(b). Facilities must submit this notification within 30 days of stopping management of hazardous secondary materials under this exclusion. Note that facilities that manage hazardous secondary materials under both the export exclusion at 40 CFR 261.4(a)(25) and the transfer-based exclusion at 40 CFR 261.4(a)(24) and/or and the generator-controlled exclusion at 40 CFR 261.4(a)(23) would not notify that they have stopped managing hazardous secondary materials, but would instead update their notification to make it clear they are no longer using the export exclusion at 40 CFR 261.4(a)(25).

XI. Effect on Spent Petroleum Catalysts

In the 2008 DSW final rule, EPA deferred the question of whether spent petroleum catalysts should be eligible for the exclusions pending further consideration of the pyrophoric properties of the spent petroleum catalysts (73 FR 64714). EPA noted that the Agency was planning to propose—in a separate rulemaking from the 2008 DSW final rule—an amendment to its hazardous waste regulations to conditionally exclude from the definition of solid waste spent hydrotreating and hydrorefining catalysts generated in the petroleum refining industry when these hazardous secondary materials are reclaimed. Spent hydrotreating and hydrorefining catalysts generated in the petroleum refining industry are routinely recycled by regenerating the catalyst so that it may be used again as a catalyst. When regeneration is no longer possible, these spent catalysts are either treated and disposed of as listed hazardous wastes or sent to RCRA-permitted reclamation facilities, where metals, such as vanadium, molybdenum, cobalt, and nickel are reclaimed from the spent catalysts. EPA originally added spent

hydrotreating and hydrorefining catalysts (waste codes K171 and K172) to the list of RCRA hazardous wastes found in 40 CFR 261.31 on the basis of toxicity (*i.e.,* these materials were shown to pose unacceptable risk to human health and the environment when mismanaged) (63 FR 42110, August 6, 1998). In addition, EPA based its decision to list these materials as hazardous due to the fact that these spent catalysts can at times exhibit pyrophoric properties (*i.e.,* can ignite spontaneously in contact with air).

It was largely because of these pyrophoric properties that the spent petroleum catalysts exhibit that EPA deferred the question of whether spent petroleum catalysts should be included in the 2008 DSW final rule exclusions. While spent petroleum catalysts can be a valuable source of recoverable metals, the risk of these hazardous secondary materials spontaneously igniting when in contact with air is not a property that most metal recyclers would be expected to address, and thus, present additional risks that are not presented by other types of metal-bearing hazardous secondary materials and therefore may be most appropriately managed as hazardous waste when recycled.

Under today's final rule, EPA has added a regulatory definition of the ''contained'' standard as it applied to the generator controlled exclusion (40 CFR 261.4(a)(23)) and to the verified recycler exclusion (40 CFR 261.4(a)(24)). This new definition includes a requirement to address the risk of fires and explosions. This provision addresses the pyrophoric properties of the spent petroleum catalysts (as well as other types of ignitibility or reactivity) for the purposes of the generator-controlled exclusion and the verified recycler exclusion. Therefore, EPA has revised the generator-controlled exclusion to allow spent petroleum catalysts to be eligible for that exclusion, and is also allowing spent petroleum catalysts to be eligible for the verified recycler exclusion.

XII. Effect on CERCLA

A primary purpose of today's final rule is to encourage the safe, beneficial reclamation of hazardous secondary materials. In 1999, Congress enacted the Superfund Recycling Equity Act (SREA), explicitly defining those hazardous substance recycling activities that may be exempted from liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (CERCLA section 127). Today's final rule does not change the universe of recycling activities that could be exempted from CERCLA liability pursuant to CERCLA section 127. Today's final rule only changes the definition of solid waste for purposes of the RCRA Subtitle C requirements. The final rule also does not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

XIII. General Comments on the 2011 Proposed Revisions to the Definition of Solid Waste

EPA received hundreds of comments on the July 2011 DSW proposal, most of which were quite detailed and raised multiple issues. Below is an overview of some of the major comments on general aspects of the proposals and a summary of EPA's responses to those comments. For a complete discussion of all the comments and EPA's responses to those comments, please see *2014 Revisions to the Definition of Solid Waste Final Rule Response to Comment Document* found in the docket for today's rulemaking.

A. EPA's Legal Authority To Regulate Hazardous Waste Recycling

Comments: EPA's Authority

EPA received many comments that asserted that EPA has no authority to regulate legitimate recycling, because commenters believe that hazardous secondary materials sent for recycling are not discarded and therefore, are not solid wastes. The comments state that EPA has misread the intent of Congress, citing previous court cases, noting the ''analysis of the statute reveals clear Congressional intent to extend EPA's authority only to materials that are truly discarded, disposed of, thrown away, or abandoned'' (*AMC I,* 824 F.2d at 1190). They go on to argue that materials being recycled do not fall into one of these enumerated activities.

Specifically, many of the comments cite the *ABR* decision (which in turn cites earlier court decisions), where the court noted that EPA's authority is ''limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away'' and that ''[s]econdary materials destined for recycling are obviously not of that sort. Rather than throwing them away, the producer saves them, rather than abandoning them, the producer reuses them'' (*ABR* 208 F.3d at 1051). The court also noted that ''To say that when something is saved it is thrown away is an extraordinary distortion of the English language'' (Id. at 1053).

Many commenters took issue with EPA's decision to withdraw the transfer-based exclusion. These comments criticize EPA's rationale that ''subsequent activities are more likely to involve discard, given that the generator has relinquished control of the hazardous secondary material'' (72 FR 14178). In particular, commenters cited Safe Food and Fertilizer, stating that the D.C. Circuit addressed an argument by the petitioners in the case that ''material that is transferred to another firm or industry for subsequent recycling'' is discarded and subject to RCRA regulation. 350 F.3d 1263, 1268 (D.C. Cir. 2003). The court said:

> [W]e have never said that RCRA compels the conclusion that material destined for recycling in another industry is necessarily 'discarded.' . . . Although ordinary language seems inconsistent with treating immediate reuse within an industry's ongoing industrial process as a 'discard' . . . the converse is not true. As firms have ample reasons to avoid complete vertical integration . . . firm-to-firm transfers are hardly good indicia of a 'discard' as the term is ordinarily understood. Id.

EPA's Response: EPA's Authority

EPA disagrees with the comments that Congress did not intend to give EPA the authority to regulate hazardous waste recycling. As EPA noted in the July 2011 DSW proposal, the RCRA statute and the legislative history suggest that Congress expected EPA to regulate as solid and hazardous wastes certain materials that are destined for recycling (*see* 76 FR 44097, citing numerous sections of the statute and *U.S. Brewers' Association* v. *EPA*, 600 F. 2d 974 (D.C. Cir. 1979); 48 FR 14502–04, April 3, 1983; and 50 FR 616–618). Moreover, the case law discussed above clearly shows instances where EPA properly regulated the recycling of solid and hazardous wastes.

EPA also disagrees with comments that EPA cannot consider the fact that the generator has relinquished control of the hazardous secondary material (along with other factors that indicate discard) in deciding to withdraw the transfer-based exclusion. EPA's authority to regulate such transfers is clear: As the Court noted in *Safe Food*, ''materials destined for future recycling by another industry *may* be considered 'discarded'; the statutory definition does not preclude application of RCRA to such materials if they can reasonably be considered part of the waste disposal problem'' (350 F.3d at 1268).

EPA's record for today's rulemaking demonstrates that third-party recycling of hazardous secondary materials has been and continues to be part of the waste disposal problem. As noted in the July 2011 DSW proposal, EPA has already evaluated these hazardous

secondary materials (for example, during a hazardous waste listing determination) and determined them to be solid and hazardous wastes. (76 FR 44109) Therefore, a conditional exclusion must reasonably be expected not to result in the excluded hazardous secondary material being discarded. Of the 250 damage cases evaluated in the 2014 environmental problems study, 229 (or approximately 92%) were from reclamation activities of off-site third-party recyclers, with clear instances of discard resulting in risk to human health and the environment, including cases of large-scale soil and ground water contamination with remediation costs in some instances in the tens of millions of dollars.[39]

In addition, the market forces study in the docket for the 2008 DSW final rule supports the conclusion that the pattern of discard at off-site, third-party reclaimers is a result of inherent differences between commercial recycling and normal manufacturing. As opposed to manufacturing, where the cost of raw materials or intermediates (or inputs) is greater than zero and revenue is generated primarily from the sale of the output, hazardous secondary materials recycling can involve generating revenue primarily from the receipt of the hazardous secondary materials. Recyclers of hazardous secondary materials in this situation may thus respond differently from traditional manufacturers to economic forces and incentives, accumulating more inputs (hazardous secondary materials) than can be processed (reclaimed). In addition, commercial third-party recyclers have less flexibility than in-house recyclers in changing how they manage their hazardous secondary materials (*e.g.,* during price fluctuations, in-house recyclers can more easily switch from recycling to disposal or from recycled inputs to virgin inputs, while commercial third-party recyclers cannot switch to disposal without obtaining a RCRA permit) (73 FR 64674).

B. Supporting Record

Comments: Environmental Problems Study

Many commenters raised issues with EPA's use of the environmental problems study as part of the record for today's rule.[40] Some commenters argued that EPA should not use 1982 as the cut-off year for investigating ''relatively recent'' damage cases. These commenters said that, given that the first major set of Subtitle C regulations were promulgated in 1980, going back to 1982 unfairly and inappropriately stacks the deck in favor of finding a higher number of damage cases because it took many years for companies to figure out who was subject to the RCRA Subtitle C regulations. Additionally, these commenters noted that the vast majority of damage cases began operation prior to 1982 and thus contamination on these sites was likely the result of historic poor management during a period of little to no oversight. Commenters believed that the early 1990s would be a more appropriate cut-off date than 1982. One of the commenters also argued that the damage cases are not reliable, either from a lack of information, because they reflect outdated and inapplicable management practices, or have been greatly mischaracterized and should not be used to support any of the proposed changes to the DSW rule.

Other commenters argued that the large majority of damage cases identified by EPA were caused by either a lack of knowledge of RCRA, blatant disregard for the law, or unavoidable accidents. These commenters noted that many of the damage cases involved civil or criminal violations, indicating that the problem was non-compliance with the regulations, not from a lack of regulations.

Another commenter disagreed with EPA's negative portrayal of the waste management industry and argued that EPA should have conducted more research to obtain an understanding of the necessary and positive role of the hazardous waste management industry.

EPA's Response: Environmental Problems Study

The Agency maintains that the scope of the environmental problems study is appropriate for the purpose of the DSW rulemaking effort. Specifically, we continue to find that 1982 is an appropriate cut-off year for the damage case study as it best reflects the point where companies became aware of their responsibilities and liabilities for safe management of their hazardous secondary materials intended for recycling.[41] While the CERCLA statute and the initial RCRA hazardous waste regulations became effective in 1980, there was an initial ''phase in'' period during which industry and other affected entities began to change their practices with regard to hazardous material recycling, and during which federal and state agencies were developing guidelines and procedures for implementing these new authorities. Thus, we deliberately did not include a number of recycling damage cases that occurred during the early 1980s that appeared to have been caused by companies and individuals who were not cognizant of their new responsibilities and potential liabilities under RCRA and CERCLA.

As to the issue that there are facilities in the report that began operations prior to 1982, we agree that the facilities themselves may have begun operating earlier than the timeframe. However, the methodology for the analysis only includes facilities where the recycling operations occurred after 1982, and the environmental damages associated with those operations occurred after 1982. As a result, more than 600 damage cases were removed from consideration, leaving only those cases that EPA was confident have a clear link between post-1982 recycling practices and environmental damage.

Of the damage cases that met our criteria, we agree that for certain types of damage, such as groundwater or soil contamination, determining when exactly the damage occurred and which property owner caused the damage is difficult. However, in general, the damage cases include multiple types of damage and certain damage, such as abandonment of materials or observed violations of proper storage and containment, can be easily attributed to current facility owners and to post-1982 activities. For example, Alco Pacific, a lead recycling facility may have started operations in 1954, but it was 1990 when the company abandoned 98 drums and left over 1,300 cubic yards of lead-contaminated rubber debris and sand with no containment to prevent dispersal from wind or rainwater. Additionally, it was 1989 when Myers Drum, a drum reconditioning facility, was found to be storing 95% of their 20,000 drums on their side and that spillage, sump overflows, and structural failures were observed. In 1986, Continental Steel, which manufactured wire and rod products from scrap metal, abandoned their facility leaving 220 drums of product material and 50 containers of lead-cadmium batteries on-site. These damages occurred well after RCRA and CERCLA became effective.

Regarding the lack of information in some of its damage cases, as EPA stated in its 2007 environmental problem

[39] U.S. EPA, *An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials* (Updated) December 2014.

[40] *An Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0355).

[41] We would note, however, that even if EPA changed the date to the 1990's, EPA still identified dozens of damage cases, and thus, changing the cut-off date, as some commenters suggest, would not impact the study's overall findings.

study, many of the cases that were investigated were well documented. This was the case, for example, for many of the Superfund National Priority List (NPL) sites. However, in many other cases, it was not possible given the limitations of the study to document all facts. Often, there was considerable technical information as to the nature and extent of the contamination at the site, but relatively little information regarding the activities and circumstances that originally caused it. For some of the sites, we were able to collect only very basic information. However, for each site that was identified in the environmental problems study, we had sufficient information to determine that the damage resulted from recycling operations. Thus, we continue to maintain that the environmental problems study is appropriate to use in the development of the final rule.

EPA also disagrees with the commenter who argued that the environmental problems study only demonstrates non-compliance of existing regulations and therefore does not justify the promulgation of tighter requirements under today's final rule. On the contrary, the frequency of the damage cases, including violations of regulations demonstrates the need for greater, not less, oversight.

Furthermore, as part of a separate analysis, EPA has considered whether recycling of hazardous secondary materials under the 2008 DSW final rule could result in increased risk to human health and the environment and determined it is a complex issue because of the interactions between how the regulations are written and how they are implemented. Under the 2008 DSW final rule, EPA presumed that the conditions of the rule would prevent any increase in risk. However, what the 2008 DSW analysis failed to take into account was whether the conditions of the rule would operate as effectively in the real world as the more detailed requirements of the RCRA hazardous waste regulations.

A more detailed comparative analysis of the regulatory requirements under the 2008 DSW final rule with the hazardous waste regulations reveals potentially significant gaps in environmental protection under the 2008 DSW final rule. Examples of these gaps include the absence of measures to ensure compliance, incentives to accumulate larger volumes of hazardous secondary materials, the potential for increased releases, such as during storage and transportation of the hazardous secondary materials, the lack of prescriptive standards for storage and containment, potential issues associated with the interstate transport of hazardous secondary materials for recycling, and reduction in access to information and the opportunity for public participation. RCRA is a preventative statute and by design seeks to prevent damage before it occurs; relying solely on enforcement without addressing the root causes of the damage could needlessly increase the frequency, severity, and cost of damage cases. Therefore, EPA has chosen to finalize the changes to the 2008 DSW final rule being promulgated today.

Finally, EPA disagrees with comments stating we have not considered the positive role of the hazardous waste management industry. In development of the DSW rulemakings, the Agency specifically conducted a study of successful recycling that examined how responsible generators and recyclers of hazardous secondary materials ensures that recycling is done in an environmentally safe manner.[42] However, as EPA noted in the 2008 DSW final rule, the successful recycling study indicates that many responsible generators examine the recycler's technical capabilities, business viability, environmental track record, and other relevant questions before sending hazardous secondary materials for recycling. Currently, these recycler audits, which can be thought of as a form of environmental ''due diligence,'' are in essence a precaution to minimize the prospect of incurring CERCLA liability in the event that the recycling, or lack thereof, results in the release of material to the environment. However, the fact that these companies are willing to incur the expense of auditing recyclers as a business practice is of itself a marketplace affirmation that sending hazardous secondary materials to other companies for recycling involves some degree of risk. (73 FR 64683)

Comments: Correlation of Recycling Damage Cases With Regulatory Exclusions, Exemptions or Alternative Standards

Although at least one commenter supported the analysis titled ''Correlation of Recycling Damage Cases with Regulatory Exclusions, Exemptions, or Alternative Standards,''[43] which is included in the docket for this rulemaking. However, most commenters argued that this analysis was flawed and that EPA should gather information in a more responsible manner, such as with an information collection request (ICR).

Many commenters pointed out that EPA only identified seven exclusions that were ''likely'' correlated to some damage cases, yet EPA in its 2011 DSW proposal considered adding requirements to 32 exclusions. These commenters argued that this record was insufficient for justifying additional conditions.

Some commenters also took issue with how EPA assigned regulatory exclusions to certain damage cases. For example, a few commenters said that none of the five damage cases correlated to precious metals involved recycling of in-process secondary materials as part of precious metals mining and primary mineral processing, but rather involved off-site entities that were attempting to recover precious metals from photographic film, circuit boards, and other secondary materials generated by industry.

One commenter said that EPA identifies 35 cases that allegedly involve spent batteries; however, two of these involve non-lead batteries and thus are irrelevant and a third involves printed circuit boards. This commenter goes on to say that, of the remaining 32 lead-acid battery-related facilities for which EPA has identified known dates of operation, none began business operations after the 1982 and 1985 adoption of the RCRA regulations that control lead-acid battery collection and recycling. This commenter believed that the primary contamination at these sites almost certainly pre-dated RCRA and thus EPA cannot use these cases to support changes to 40 CFR 266.80. Another commenter said that none of the environmental damage associated with 52 damage cases could be shown to be the result of companies ''likely'' operating under the 261.4(a)(13) scrap metal exclusion and/or the 261.6(a)(3)(ii) scrap metal recycling exemption.

A few commenters argued that EPA has not compared the number of damage cases to the total number of recyclers and thus we do not know what percentage of all facilities the damage cases represent. Another commenter noted that the 132 damage cases that EPA correlated to the pre-2008 recycling exclusions makes up only 2.5% of the 5,321 facilities that EPA estimates are using the exclusions (a total number which this commenter believes EPA underestimates).

[42] U.S. EPA, *An Assessment of Good Current Practices for Recycling of Hazardous Secondary Materials*, November 2006 (EPA–HQ–RCRA–2002–0031–0354).

[43] Docket ID: EPA–HQ–RCRA–2010–0742–0010.

EPA's Response: Correlation of Recycling Damage Cases With Regulatory Exclusions, Exemptions or Alternative Standards

The goal of EPA's analysis to correlate damage cases with existing exclusions was to assess whether certain hazardous secondary material recycling exclusions, exemptions, or alternate standards are adequately protecting human health and the environment. Because the majority of exclusions, exemptions, and alternative standards do not include notification requirements, EPA does not have precise data regarding which and how many facilities are recycling hazardous secondary materials under reduced regulation. This lack of data hinders EPA's ability to collect information regarding what regulations a specific facility was operating under when damage occurred. Because this information is limited, the Agency had developed a methodology that correlates the type of hazardous secondary materials identified in the damage cases to regulations that likely governed the management of the hazardous secondary material. EPA used this methodology to identify patterns related to the types of hazardous secondary material involved in damage cases and whether those materials were likely to be managed under an exclusion, exemption, or alternate standard.

EPA understands commenters' concerns regarding the limitations of this analysis, including that EPA could only correlate with confidence 7 of the 32 recycling exclusions to damage cases in its environmental problems study. This result is more a lack of precision in the data and less that some recycling exclusions have no damage cases. For example, because notification is not required for these exclusions, we can only conservatively identify damage case correlations where the type of hazardous secondary material very clearly matches to an exclusion (*e.g.*, scrap metal). We lack information to make inferences for broadly applicable exclusions, (*e.g.*, use/reuse) or for broadly defined hazardous secondary materials (*e.g.*, metal-bearing wastes). Therefore, by virtue of some exclusions' broad applicability, we were unable to correlate them to specific damage cases. Additionally, due to the lack of data, it is difficult to analyze current trends in damage cases, and thus even more difficult to accurately project what the number of future damage cases might be under different scenarios. However, although it is difficult to assign specific damage cases to certain exclusions, we note that in the environmental problems study only nine of the damage cases were operating under a RCRA permit at the time of damage. Thus, EPA can generally conclude that the majority of the damage cases at third party recyclers were operating outside of RCRA, inferring these facilities were either operating illegally or operating under an exclusion, exemption, or alternate standard, or no standard.

Regarding other comments on the analysis, including comments on specific damage case-to-exclusion pairings and on comparing the number of damage cases to the total number of affected entities, EPA agrees with commenters that more information is needed prior to taking final action on specific conditions of the pre-2008 recycling provisions. EPA finds it may need to consider each exclusion in terms of evaluating specific regulatory gaps and whether additional conditions are needed to ensure protection of human health and the environment. Therefore, we are not finalizing specific conditions for the pre-2008 recycling provisions in today's rule and are instead deferring action until EPA can more adequately address commenters' concerns, including comments on the record. Before the Agency would take any such action, the Agency would provide the regulated community, as well as other stakeholders the opportunity for notice and comment.

XIV. Major Comments on the Exclusion for Hazardous Secondary Materials Legitimately Reclaimed Under the Control of the Generator and Recordkeeping for Speculative Accumulation

A. Proposed Changes to 2008 Final Rule

In its July 2011 DSW proposal, EPA proposed or solicited comment on certain changes to the 2008 DSW exclusion from the definition of solid waste for hazardous secondary materials legitimately reclaimed under the control of the generator. The first change was adding a regulatory definition of ''contained'' for units storing hazardous secondary materials. The definition included factors which, if met, would demonstrate that the unit was contained. Under the proposal, a storage unit is contained if it is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary material to the environment, and is designed, as appropriate for the hazardous secondary materials to prevent releases of hazardous secondary material to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures. The unit must also be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit. Finally, the unit must not hold incompatible materials and must address any potential risks of fires or explosions. The definition also stated that hazardous secondary materials stored in units that meet the applicable requirements of 40 CFR parts 264 or 265 are considered to be contained.

The second change concerned new recordkeeping requirements for speculative accumulation, ''same-company'' recycling, and recycling under certain tolling arrangements. With respect to speculative accumulation, EPA proposed to require generators and reclaimers operating under the generator-controlled exclusion to post accumulation start dates to allow inspectors and other regulatory authorities to quickly ascertain how long hazardous secondary materials had been in storage. If placing a label on the storage unit is not practicable, the first date that the excluded hazardous secondary material began to be accumulated must be entered in an inventory log. We also solicited comment on whether to add the proposed recordkeeping requirement to the general speculative accumulation provision at 40 CFR 261.1(c)(8), thereby extending the requirement to all recyclers subject to that provision. We also proposed a recordkeeping requirement for tolling contractors and toll manufacturers operating under the tolling exclusion, which would require maintaining records of hazardous secondary materials sent or received pursuant to the tolling contract. We also solicited comment on whether to add a similar recordkeeping requirement to generators and reclaimers operating under the ''same-company'' exclusion.

The third change concerned making notification a condition rather than a requirement of the exclusions. In addition, we proposed two structural changes. These were (1) placing the requirements for land-based units and non-land-based units in one regulatory provision (40 CFR 261.4(a)(23)), since the requirements for both types of units are the same; and (2) placing most definitions applicable to the generator-controlled exclusion in 40 CFR 261.4(a)(23) (together with the requirements) instead of in 40 CFR 260.10.

Comments: Authority for Proposed Changes

Many commenters supported all or some of these changes, either as proposed or with suggested modifications. Their comments are discussed below in reference to the specific changes that the Agency proposed. Some commenters, however, stated that EPA did not have the authority to impose conditions (particularly the ''contained'' standard) on hazardous secondary materials recycled under the control of the generator. These commenters generally believed that materials recycled under these exclusions are not discarded, and that EPA provided no new evidence that would justify the proposed changes. According to these commenters, the proposed changes are tantamount to treating the materials as wastes instead of valuable commodities, and are inconsistent with the ABR decision. One commenter noted that generators already have incentives to prevent releases of hazardous secondary materials because of potential liability, corporate values of stewardship and environmental responsibility, and public relations.

EPA's Response: Authority for Proposed Changes

The Agency has determined that the conditions proposed in our July 2011 DSW proposal are needed in order to ensure that the exclusion operates as intended and does not result in discarded hazardous secondary material posing significant risk to human health and the environment. We agree that generators and reclaimers operating under the generator-controlled exclusion have incentives to ensure that the hazardous secondary materials are safely managed. Nevertheless, the conditions we proposed are needed to ensure that the generator-controlled exclusion will correctly function to exclude only hazardous secondary material that is not discarded.

Specifically, the proposed ''contained'' requirement is a key provision for determining whether a hazardous secondary material is being managed as a valuable commodity. Such materials that are not contained and are instead released to the environment are not destined for recycling and are clearly discarded. The proposed definition specifies factors which, if met, demonstrate that the hazardous secondary materials in a unit are handled as valuable raw materials, intermediates, or products and thus are not discarded. We note that the criteria in proposed 40 CFR 261.4(a)(23)(i) are all performance measures, as opposed to specific technical standards, suggested by commenters in response to the June 2009 public meeting on the 2008 DSW final rule. These criteria also exemplify practices discussed in the preamble to the 2008 DSW final rule regarding containment of hazardous secondary materials, such as ways to prevent releases and operation and maintenance of the storage unit in the same manner as a production unit.

The proposed recordkeeping requirement for speculative accumulation (which would require posting of accumulation start dates on the storage unit or in an inventory log) would allow inspectors and other regulatory authorities to quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and whether the storage time exceeds existing limits under 40 CFR 261.1(c)(8). If such limits have been exceeded, the material would be discarded. The proposed recordkeeping requirement for the tolling exclusion (which would require records of shipments sent and received under tolling contracts) would also aid regulatory agencies in determining if tolling contractors and manufacturers are in compliance with the requirements for the exclusion and whether the hazardous secondary materials in question have been properly accounted for. A similar requirement to keep records of shipments sent and received under ''same-company'' recycling (for which the Agency solicited comment in the July 2011 DSW proposal) would serve the same purpose. Finally, submitting a notification to EPA is the only formal indication of a facility's prospective intent to reclaim a hazardous secondary material under this exclusion. For these reasons, EPA has determined that its proposed changes to the generator-controlled exclusion are necessary to demonstrate that hazardous secondary materials have not been discarded. The changes are therefore within the Agency's RCRA authority.

Comments: Scope of Proposed Changes

One commenter noted that the proposed rule would allow lead-acid battery recyclers to operate under the generator-controlled exclusion instead of the requirements in 40 CFR 266.80(b). This commenter believed that the latter requirements, specifically tailored to battery recyclers, are more appropriate for these facilities.

EPA's Response: Scope of Proposed Changes

In response to this comment, it was not the Agency's intent that spent lead-acid batteries be managed under the generator-controlled exclusion. The 2008 DSW final rule contained a provision (40 CFR 261.2(c)(4)(iv)) stating that spent lead-acid batteries were not eligible for the generator-controlled exclusion (nor were materials subject to material-specific standards under 261.4(a) or the listed hazardous wastes K171 or K172). The omission of this provision from the July 2011 DSW proposal as related to spent lead-acid batteries and material-specific standards was inadvertent, and EPA is therefore retaining it in this final rule (see 40 CFR 261.4(a)(23)(ii)(E)). However, for reasons discussed in section XI of this preamble, listed hazardous wastes K171 and K172 should be eligible for the generator-controlled exclusion; therefore, we are not including those wastes in this provision.

Comments: Exports

Another commenter noted that the text of proposed 40 CFR 261.4(a)(23)(i)(B) could initially be read to suggest that hazardous secondary materials may be transferred to a location outside the United States or its territories as long as the foreign receiving facility is under the control of the generator. It is not until one reads proposed 40 CFR 261.4(a)(23)(ii)(A) that the reader learns that the receiving facility must be in the United States or its territories. This commenter suggested revising the introductory text of 40 CFR 261.4(a)(23) to refer to recycling within the United States or its territories and deleting the subsequent condition.

EPA's Response: Exports

EPA agrees with this commenter who suggested modifying the introductory text of the generator-controlled exclusion to include a reference to the requirement that hazardous secondary materials legitimately reclaimed under the exclusions must be recycled within the United States or its territories. We have therefore revised 40 CFR 261.4(a)(23) to read as follows: ''Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section.'' We have also deleted the condition in proposed CFR 261.4(a)(23)(ii)(A) and renumbered the following subparagraphs.

B. Exclusion for Materials Recycled On-Site

Comments: On-Site Exclusion

In the 2008 DSW final rule, EPA promulgated an exclusion from the definition of solid waste for hazardous secondary materials that are generated and legitimately reclaimed at the generating facility. In the July 2011 DSW proposal, the Agency did not propose any changes to the scope of this exclusion. Commenters on the proposal generally supported excluding on-site recycling from the definition of solid waste, stating that such recycling did not involve discard and was not likely to pose environmental risks. However, one commenter argued that the exclusion for hazardous secondary materials recycled under the control of the generator was too broad and should be narrowed to materials recycled under a ''continuous industrial process,'' *i.e.*, recycled in the same process of which they are a byproduct, by the same generator, and at the same generating facility. If the exclusion was narrowed to this extent, it would preclude ''same-company'' or tolling recycling from being eligible for the exclusions. It would presumably also preclude certain types of on-site recycling that might involve different processes from being excluded under the definition of solid waste.

EPA's Response: On-Site Exclusion

EPA has determined that if hazardous secondary materials are generated and legitimately reclaimed at the generating facility (as well as a facility within the same company) under the conditions specified in today's rule, these materials have not been discarded. We do not agree with the comment that the exclusion should be limited to recycling of hazardous secondary materials under a ''continuous industrial process,'' *i.e.*, it takes place in the same process of which the materials are a byproduct, by the same generator and at the same generating facility. If hazardous secondary materials are recycled on-site at the generating facility using different processes, this circumstance does not mean that the generator has relinquished control of the materials or that they have been discarded. We are therefore finalizing this provision as proposed at 40 CFR 261.4(23)(i)(A).

C. Exclusion for Materials Recycled by the Same Company

In the 2008 DSW final rule, EPA promulgated an exclusion from the definition of solid waste for hazardous secondary materials that were generated and legitimately reclaimed off-site by the same ''person'' as defined in 40 CFR 260.10, if the generator performed one of two certifications. Under the first certification, the generating facility certified that it controlled the reclaiming facility; under the second certification, the generating facility certified that it was under common control with the reclaiming facility. In the July 2011 DSW proposal, the Agency solicited comment on whether to add a recordkeeping requirement to this exclusion that would require both the generating and reclaiming facilities to retain records for no less than three years of all hazardous secondary material shipped under the exclusion. The records would have to contain information which could be satisfied by routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). There was general support for this condition from those commenters who addressed it.

Comments: Same-Company Exclusion

Some commenters supported this exclusion. They believed that generators using the exclusion have strong incentives to ensure that hazardous secondary materials are not discarded by maintaining control over, and potential liability for, the reclamation process. However, other commenters believed that any off-site transport of hazardous secondary materials involved environmental risks that should be addressed by (at the least) requiring a hazardous waste manifest or by subjecting ''same-company'' off-site recycling to the proposed alternative Subtitle C standards for hazardous secondary materials that are transferred for the purpose of reclamation. Some commenters said that when hazardous secondary materials are transported off-site, the generator has little de facto control over such materials.

One commenter noted that proposed 40 CFR 261.4(a)(23)(i)(B) omitted the alternative certification for same-company recycling that occurs when the generating facility and the reclaiming facility are under common control. This certification was included in the 2008 DSW final rule.

EPA's Response: Same-Company Exclusion

The Agency continues to find that same-company recycling does not involve discard since it occurs under the control of the generator. Such control means that both the generating facility and the reclamation facility are familiar with the hazardous secondary materials and the company would be ultimately liable for any mismanagement of the hazardous secondary materials. Under these circumstances, the incentive to avoid such mismanagement would be sufficiently strong to greatly reduce the risks of transport, thus rendering unnecessary the use of the hazardous waste manifest or requiring the hazardous secondary materials to be reclaimed under the verified recycling exclusion. However, as noted above, the Agency solicited comment in its July 2011 DSW proposal on a recordkeeping requirement that would require both the generating and reclaiming facilities to retain records for no less than three years of all hazardous secondary material shipped under the exclusion. The records would have to contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. This requirement could be satisfied by routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). Such a provision would facilitate enforcement of the same-company exclusion and would allow tracking of all hazardous secondary materials recycled under the exclusion to ensure that such materials were properly accounted for. EPA agrees with the commenters who supported this requirement and finds that adding this recordkeeping requirement to the same-company exclusion is sufficient to address any risks involved in off-site transport of hazardous secondary materials. We are therefore finalizing the same company exclusion to include this requirement (see 40 CFR 261.4(a)(23)(i)(B)).

The Agency also agrees with the commenter who suggested that the alternative certification for facilities under common control that was included in the 2008 DSW final rule should be added to the exclusion. The omission of this provision from the July 2011 DSW proposal was inadvertent and the Agency will therefore simply retain the alternative certification in the regulations (see 40 CFR 261.4(a)(23)(i)(B)).

D. Tolling Exclusion

In its July 2011 DSW proposal, EPA proposed to add a recordkeeping requirement to the exclusion for hazardous secondary materials legitimately reclaimed under certain contractual tolling arrangements. Specifically, we proposed to require the tolling contractor to maintain at its facility for no less than three years records of all hazardous secondary materials received pursuant to the

written contract with the tolling manufacturer. It would also require the tolling manufacturer to maintain at its facility for no less than three years records of materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). EPA solicited comment on whether the proposed requirement would make the exclusion easier to enforce. We also solicited comment on whether the tolling exclusion should be retained or eliminated. We noted that no facilities appeared to be operating under the tolling exclusion as of the date of the proposed rule, and that the definitions and certifications involved in this exclusion were complicated. However, we also noted that if the tolling exclusion were eliminated, the tolling contractor conducting the reclamation might need to obtain a RCRA storage permit. This necessity could discourage recycling under tolling arrangements and prevent sustainable reclamation practices.

Comments: Tolling Exclusion

Those commenters who addressed the proposed recordkeeping requirement generally supported it, but many commenters believed that the tolling exclusion should be eliminated and that tolling should be regulated under EPA's proposed alternative Subtitle C regulatory standards for hazardous recyclable materials. Another commenter argued that if the Agency retained the tolling exclusion, we should require use of the hazardous waste manifest, financial assurance, and other Subtitle C requirements. Some of these commenters emphasized the absence of utilization of the tolling exclusion and said that federal regulations should address activities of national importance. One commenter noted that the exclusion could result in an inefficient use of enforcement resources as regulators would have to be trained and familiar with a regulatory concept with which they are not familiar. Another commenter argued that the assumption of liability for mismanagement by the tolling contractor was unlikely and could result in litigation. Other commenters emphasized environmental concerns with the tolling exclusion. These commenters doubted that recycling under tolling arrangements was actually under the ''control'' of the tolling contractor, given that a different corporate entity at a different physical location operates the production process. Some commenters raised similar concerns with the risks involved in off-site transportation of hazardous secondary materials that were raised in connection with ''same-company'' recycling.

Some commenters, on the other hand, urged EPA to retain the exclusion for tolling contracts. These commenters argued that hazardous secondary materials legitimately reclaimed under the tolling exclusion are managed as valuable products and not discarded. They also said that utilization of the exclusion could increase with time, particularly if more states picked up EPA's revisions to the definition of solid waste and if regulatory uncertainty were avoided. One commenter noted that the economic incentives under tolling contracts are such that there is no incentive for discard, since the tolling manufacturer is paid when it returns the hazardous secondary material to the contractor. Some commenters indicated that eliminating the tolling exclusion, by requiring tolling contractors to obtain RCRA storage permits, would operate as a severe disincentive to reclamation under tolling arrangements.

EPA's Response: Tolling Exclusion

EPA generally agrees with the commenters who supported retention of the tolling exclusion. We find that hazardous secondary materials are not discarded if they are legitimately reclaimed under the conditions specified in our tolling exclusion, particularly since participants in tolling contracts have strong incentives to handle such materials as valuable commodities rather than mismanage them. We also have determined that the conditions of the generator-controlled tolling exclusion, including the recordkeeping requirement for hazardous secondary materials sent and received under tolling contracts, are sufficient to prevent discard, thus rendering unnecessary the use of the hazardous waste manifest or other RCRA permit requirements for reclaimers. We have also concluded that retention or elimination of this exclusion should not depend on how frequently the exclusion is currently utilized, because determining frequency of utilization in the future is necessarily speculative. Additional states could pick up EPA's revisions to the definition of solid waste, and tolling arrangements could become more common due to increases in certain kinds of manufacturing or other technological developments. Regulatory authorities would then become more familiar with implementation of the provision. We are also concerned that eliminating the tolling exclusion could discourage the reclamation of valuable hazardous secondary materials that might otherwise be destroyed by incineration. This result would be inconsistent with our goal of encouraging the sustainable management of hazardous secondary materials. For these reasons, we are retaining the tolling exclusion in this final rule and finalizing the proposed recordkeeping requirement for this exclusion (see 40 CFR 261.4(a)(23)(i)(C)).

E. The Contained Standard

In its July 2011 DSW proposal, EPA proposed a regulatory definition of the contained standard. Under this proposed definition, a unit storing hazardous secondary materials is ''contained'' if it is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures. The unit must also be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit. Finally, the unit must not hold incompatible materials and must address any potential risks of fires or explosions. Hazardous secondary materials stored in units that meet the applicable requirements of 40 CFR parts 264 or 265 are considered to be contained.

In addition, the Agency also proposed placing the requirements for land-based units and non-land-based units in one regulatory provision (40 CFR 261.4(a)(23)), since the requirements for both types of units are the same. To clarify the regulatory status of units from which releases have occurred, the Agency also proposed a provision stating that: (1) A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation and (2) hazardous secondary material managed in a unit with leaks or other continuing or intermittent releases of the hazardous

secondary material to the environment is discarded and a solid waste.

Comments: Codification of the Contained Standard

Many commenters (particularly states) supported the codification of the contained standard. Under the 2008 DSW final rule, these commenters argued the only definitive way to determine whether a material was contained was an evaluation after a release had already occurred. They believed that codifying a definition of ''contained'' would make it easier for regulatory authorities and the regulated community to decide whether a unit meets the standard. Some commenters, however, believed that a regulatory definition of ''contained'' was not needed because the concept of what is contained was self-evident: To the extent clarification is needed, it could be provided in guidance.

EPA's Response: Codification of the Contained Standard

EPA agrees with those commenters who argued that codification of the contained standard is desirable. Based on comments and inquiries received from regulatory authorities and the regulated community after promulgation of the 2008 DSW final rule, we have determined that merely requiring that a unit be ''contained'' (without providing a regulatory definition) does not give regulatory certainty about how to comply with the standard. The number of comments and inquiries to this effect would seem to refute the idea that the concept of contained is self-evident. It was never the Agency's intent that violation of the standard could be addressed only after a significant release and subsequent environmental damage had occurred. More detailed regulatory criteria, such as those proposed in our July 2011 DSW proposal, will help all affected parties determine whether a unit adequately controls the movement of hazardous secondary materials. Such determinations will be of great benefit to regulatory authorities and to facilities operating under the generator-controlled exclusion. We are therefore retaining the codification of contained in this final rule.

Comments: Land-Based Storage

Some commenters believed that storage in land-based units should be prohibited completely under the generator-controlled exclusion. Other commenters supported allowing land-based units, but only if the Agency required periodic inspections, groundwater monitoring, or other measures. Other commenters emphasized that the Agency had no jurisdiction over land-based production units, and requested that EPA clarify in the preamble that we do not regulate such units.

EPA's Response: Land-Based Storage

EPA does not agree that land-based units should be categorically prohibited under the generator-controlled exclusion. We have determined that hazardous secondary materials, if they are stored in land-based units that meet the conditions specified in today's rule, have not been discarded. That is, if they are legitimately reclaimed as specified in today's rule, if they are contained and not speculatively accumulated, and if they have submitted the required notification, they are being managed as valuable commodities, rather than wastes. Indeed, the ABR decision expressed criticism of EPA for prohibiting any land placement, even ''for a few minutes''. 208 F.3rd at 1051. EPA interprets the court's discussion as a warning to the Agency to examine all factors, not just one (*e.g.*, land placement), when deciding whether a material is a waste. For the same reason, we do not find that it is necessary or appropriate to require groundwater monitoring, inspections at specified intervals, or other Subtitle C controls for hazardous secondary materials that are legitimately reclaimed under the control of the generator under these conditions, even for land-based units. These hazardous secondary materials are being managed under the control of the generator; by maintaining control over, and potential liability for, the hazardous secondary materials and the reclamation process, the generator ensures that such materials have not been discarded. We also note that the definition of ''land-based unit'' in 40 CFR 260.10 means an area where hazardous secondary materials are placed in or on the land before recycling, but the definition explicitly excludes land-based production units. Examples of land-based units include surface impoundments and piles.

Comments: Requirements for Non-Land-Based Units

Some commenters believed that the proposed standard was still too imprecise, or not sufficiently protective. These commenters generally suggested that EPA require storage units to meet the standards of 40 CFR 262.34(a)(1), or parts 264 or 265 for tanks, containers, or containment buildings. Some of these commenters argued that since hazardous secondary materials sent for reclamation were identical in composition to analogous materials sent for disposal, the storage standards should be the same for both disposal and recycling. Another commenter noted that EPA was considering tank standards for solvents under the proposed remanufacturing exclusion, and said that standards at least as stringent should be considered for other hazardous secondary materials sent for reclamation. Commenters also emphasized the ease of enforceability and implementation of standards with which the regulatory authorities and the regulated community are already familiar.

EPA's Response: Requirements for Non-Land-Based Units

In response to those commenters who suggested Subtitle C requirements for non-land-based units (such as tanks, containers and containment buildings) that store hazardous secondary materials under the generator-controlled exclusion, the Agency also finds that imposing these requirements is unnecessary for such materials meeting the conditions of the exclusion promulgated today. EPA is aware that implementation of program requirements would be simpler if units storing hazardous waste and those storing hazardous secondary materials were subject to the same requirements, and we are also aware that the chemical composition of hazardous secondary materials sent for disposal can be similar to that of hazardous secondary materials sent for legitimate recycling. Nevertheless, hazardous secondary materials that are legitimately reclaimed under the control of the generator have not been discarded, and such materials have value that provides generators with strong incentives to maintain safe management and handling. Imposing the Subtitle C requirements on these hazardous secondary materials could discourage legitimate reclamation, encourage disposal, and would be inconsistent with EPA's goal of fostering sustainable materials management. In response to the commenter who suggested that such requirements should be imposed because the Agency was considering them for the remanufacturing exclusion, we note that the generator-controlled exclusion covers a wide variety of hazardous secondary materials, rather than the solvents covered by the remanufacturing exclusion, for which tanks or container standards are appropriate for reasons described in section VII of this preamble.

Comments: Releases

Some commenters believed that the proposed regulatory definition of

''contained'' constituted a ''no-leak'' standard (including storm water runoff or fugitive air emissions) and that even a single release that was immediately recovered could lead to the hazardous secondary material remaining in the unit being considered discarded and a solid waste. Other commenters, however, said that all units will suffer a release at some point and that it would be unreasonable to categorically classify any release of whatever nature as discard.

In the preamble to the 2011 DSW proposal, EPA stated that certain units may be subject to occasional precipitation runoff that consists essentially of water, with trace amounts of hazardous constituents. The Agency noted that as long as such runoff does not contain hazardous secondary materials (*e.g.,* it is essentially rainwater with trace amounts of metals), it would not be considered a ''release of a hazardous secondary material.'' On the other hand, if the hazardous secondary material itself is swept away by the runoff (*e.g.,* if the hazardous secondary material consists of fine particulate matter, such as electric arc furnace dust), this transport via precipitation runoff could be considered a ''release of a hazardous secondary material'' and that pile may not be considered contained. Some commenters argued that even trace amounts of hazardous substances (such as through stormwater runoff) should be considered illegal releases from storage units. One of these commenters objected to our regulatory definition partly because it would allow releases that were not ''continuing'' or ''intermittent.''

Another commenter, however, argued that the existence of stormwater runoff (regulated under the Clean Water Act) or fugitive air emissions and dust (regulated under the Clean Air Act) does not mean that materials are not being managed as a valuable commodity and so cannot be used to justify a determination that a hazardous secondary material is subject to the fully applicable Subtitle C RCRA requirements. This interpretation would amount to an illegal expansion of RCRA authority, according to the commenter. The commenter also noted that EPA's distinction between runoff containing hazardous constituents and runoff containing the waste itself was irrelevant and that EPA should return to the ''significant release'' standard of the 2008 DSW final rule. Another commenter suggested that the Agency specify what concentration of hazardous secondary material would need to be detected to constitute a release.

EPA's Response: Releases

EPA does not agree with those commenters who argued that the proposed definition of ''contained'' imposed a strict, categorical, and impracticable ''no leaks'' standard, either for land-based units or non-land-based units. We note that the language of the proposed definition reads that the unit must be in good condition, ''with no leaks or *other continuing or intermittent unpermitted releases* of hazardous secondary materials to the environment. . .'' (emphasis added). This language clearly does not mean that any single release of whatever nature would automatically place the hazardous secondary materials remaining in the unit under Subtitle C regulation. In fact, we agree with those commenters who argue that most units will suffer a release at some point and that it would be unreasonable to categorically classify any release of whatever nature as discard.

Nor does EPA agree with those commenters who appeared to believe that any release should lead to loss of the generator-controlled exclusion and full regulation under RCRA Subtitle C. A single release that is quickly cleaned up would not generally affect the regulatory status of the hazardous secondary materials still contained in the unit. For example, sometimes a hazardous secondary material may escape from primary containment and may be captured by secondary containment or some other mechanism that would prevent the hazardous secondary materials from being released to the environment or would allow immediate recovery of the materials. In that case, the unit would not be subject to the RCRA hazardous waste regulations and the hazardous secondary materials in the unit would still be excluded from the definition of solid waste, even though any such materials that had been released and not immediately recovered would be considered discarded.

With respect to precipitation runoff, the Agency does not agree with those commenters who said that even trace amounts of hazardous substances (such as through stormwater runoff) should be considered illegal releases from storage units. Some units are inevitably subject to occasional precipitation runoff that consists essentially of water, with trace amounts of hazardous constituents. As long as the hazardous secondary material itself is not swept away by the runoff, this transport via precipitation runoff would not be a release of such a material and the unit could be considered contained. A contrary interpretation could place all such units under Subtitle C regulation and eliminate their eligibility for the generator-controlled exclusion, which is not the Agency's intent. EPA has determined that hazardous secondary materials placed in such units that are destined for legitimate recycling have not been discarded if they meet the conditions of these exclusions. EPA also agrees with the commenter who said that the existence of stormwater runoff (regulated under the Clean Water Act) and fugitive air emissions and dust (regulated under the Clean Air Act) does not automatically mean that materials are not being managed as a valuable commodity.

EPA also does not agree with the commenter who suggested that the Agency should return to the ''significance'' criterion for determining whether a release has occurred (in part to distinguish between runoff containing hazardous constituents and runoff containing the hazardous secondary material itself). The Agency does not agree that using this criterion, without further definition, would clarify this distinction. We also do not find that it is practicable to establish a concentration of hazardous secondary materials that could be used to determine whether a release has occurred, since such appropriate concentrations would vary for different materials and a single concentration limit would not be flexible enough to allow an accurate determination of ''contained'' for the wide variety of hazardous secondary materials.

Comments: Other ''Contained'' Issues

A few commenters suggested that EPA establish a petition process or a site-specific variance for facilities to demonstrate the appropriateness of site-specific alternative storage standards for their units (including land-based units). Some commenters believed that our reference to 40 CFR parts 264 and 265 meant that units were required to comply with those provisions. One of these commenters suggested that we specify that units meeting the requirements of 40 CFR parts 264 or 265 are ''presumptively'' contained. Other commenters said that the proposed definition of ''contained'' seemed more appropriate for hazardous secondary materials in flowable form, but not for solid materials such as scrap metal, for which a container is not necessarily needed. One of these commenters suggested that we clarify that a ''unit'' may include a designated location.

A few commenters suggested editorial revisions to the definition of contained. One commenter said that EPA should

clarify this provision to better indicate that the unit must not contain materials that are incompatible with the other wastes or materials placed in the unit or the materials of construction that comprise the unit. Another commenter said the examples of release should include soil contamination because contamination should not be allowed to pass through the soil to the groundwater before it is considered a release. Two commenters said the proposed text at 40 CFR 261.4(a)(23)(ii)(B) uses the word ''recycling'' in place of ''reclamation'' and omits the phrase ''or intermittent unpermitted,'' which does not comport with the preamble language.

EPA's Response: Other ''Contained'' Issues

In response to those commenters who suggested a mechanism (such as a petition process or variance) to provide alternative or site-specific containment requirements for certain facilities, such a mechanism is unnecessary because the definition of ''contained' in today's rule establishes minimum requirements that all units storing hazardous secondary materials should be able to meet. We have designed the ''contained'' criteria to be flexible enough to cover a wide range of units.

In response to comments that suggested the reference to 40 CFR parts 264 and 265 means that units were required to comply with those provisions, EPA did not intend to imply that meeting such standards was required. In response to the commenter who suggested stating that units meeting the applicable requirements of 40 CFR parts 264 or 265 are ''presumptively'' contained, EPA agrees that this language better reflects EPA's intent than the proposed language and is changing the proposed definition of ''contained'' accordingly. However, we do not agree with the commenter who suggested adding that solid hazardous secondary materials may be stored in ''designated locations.'' We have determined that our definition of ''contained'' (which includes land-based units) is sufficiently flexible to cover solid material, such as scrap metal or furnace bricks which are not stored in tanks, containers, or containment buildings. We have also made clear in the preamble the circumstances under which such materials could be considered ''contained.''

For the reasons stated above, EPA is finalizing the definition of ''contained'' as proposed, but replacing the statement that ''hazardous secondary materials meeting the applicable requirements of 40 CFR parts 264 or 265 are considered to be contained'' with ''hazardous secondary materials that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained'' (see 40 CFR 260.10).

EPA agrees with commenters who suggested editorial changes to the definition of contained and has incorporated these changes into today's rule.

F. Notification as a Condition

In the July 2011 proposal, EPA proposed to make the notification requirement in 40 CFR 260.42 a condition, rather than a requirement, of the generator-controlled exclusion in 40 CFR 261.4(a)(23). At issue are the consequences an entity would face for failing to notify. Thus, notification as a requirement of the exclusion means that failure to notify would constitute a violation of the notification regulations. On the other hand, notification as a condition of the exclusion means failure to notify could potentially result in the loss of the exclusion for the hazardous secondary materials (*i.e.,* the hazardous secondary materials would become solid and hazardous wastes and subject to full Subtitle C requirements). EPA also requested comment on whether notification should be a condition of the remanufacturing exclusion and of the pre-2008 recycling exclusions. (For EPA's response to comments for notification as a condition of the pre-2008 recycling exclusions, see section XIX.)

Comments: Notification as a Condition

Commenters were split on this issue. Many commenters supported EPA's proposed change to make notification a condition of the exclusion. These commenters argued that notification as a condition would decrease the incentives for a facility to evade enforcement by not notifying. A few commenters agreed that states would use enforcement discretion to distinguish between facilities that failed to notify due to an inadvertent oversight or from a blatant disregard for the requirement. One commenter urged EPA to clarify that a facility submitting a notification does not need to wait for any response from the implementing agency prior to using exclusion.

On the other hand, many commenters did not support this proposed change and argued that notification should remain a requirement of the exclusion, as it is currently. These commenters argued that notification, or the absence thereof, is not indicative of discard and that the information of who is using the exclusion should not impact the determination of whether a material is discarded. Some commenters argued that enforcement discretion is not exercised in a consistent and reasonable manner and that the proposed change would subject generators who are legitimately recycling their hazardous secondary materials to undue severe enforcement consequences. Other commenters argued that there are innocent reasons why a facility would not notify, for example, because of confusion surrounding the point when a virgin material becomes a secondary material. Still other commenters believed that it is highly unrealistic to believe that any facility operating under the provisions would intentionally fail to notify EPA in an attempt to evade enforcement. Other commenters argued that there is already sufficient incentive to notify because facilities' would already incur significant penalties under RCRA 3007 for failing to notify. Additionally, one commenter noted that making notification a condition of the exclusion differs from how other paperwork violations are treated.

EPA's Response: Notification as a Condition

EPA agrees with commenters who supported making notification a condition of the exclusion. The notification provision is the only formal indication of a facility's intent to reclaim a hazardous secondary material under the conditional exclusion. For example, if during an inspection of a large quantity generator of hazardous waste, EPA were to discover a hazardous secondary material that had been stored on-site for more than 90 days without a RCRA permit (an act that would typically be a violation of the hazardous waste regulations), a previously filed notification would be an indication that the facility was planning to reclaim the hazardous secondary material under the conditions of the exclusion. Absent such notification, it would be difficult for the facility to justify its true intentions for the hazardous secondary material. Failure to meet the notification provision is a strong indication that the facility either did not intend to comply with or was unaware of the provisions of the exclusion. In both cases, the lack of notification could indicate that the hazardous secondary material was being mismanaged.

EPA agrees with commenters that making notification a condition of the rule would further discourage facilities from trying to evade enforcement by not notifying because, under the final rule, the costs and consequences of not notifying are significantly higher than if notification remains a requirement. Notification is essential to keep

regulators and the public informed about hazardous secondary materials activity and to enable effective compliance monitoring. Making notification a condition provides states and EPA the ability to properly enforce those that intentionally fail to notify in order to evade enforcement, while leaving the flexibility to tailor enforcement appropriately in those cases involving an unintentional oversight. Therefore, EPA is making the notification provision in 40 CFR 260.42 a condition of the generator-controlled exclusion in 40 CFR 261.4(a)(23), as well as a condition of the remanufacturing exclusion in 40 CFR 261.4(a)(27).

In response to opposing comments, EPA does not agree that failing to notify is not indicative of discard. As noted, notification serves as a formal declaration that a facility is not managing a hazardous waste but, rather, an excluded hazardous secondary material under the conditions of the exclusion. Notification, thus, documents the generator's decision to not discard its hazardous secondary materials, which is the inherent first step in any exclusion from the definition of solid waste.

EPA also does not agree that the notification condition would be inappropriately enforced. EPA notes that notification as a condition subjects only those generators who failed to notify to enforcement consequences; generators who submit notifications as required, and meet the conditions of the final rule exclusions, would not face enforcement consequences. EPA does not find this to be unduly burdensome to the regulated community.

EPA also finds that the commenter's example of an innocent reason for failing to notify (because of confusion surrounding the point when a virgin material becomes a secondary material) as further reason to strengthen the notification provision. That is, in order to comply with the final rule, a generator must know which hazardous secondary materials are being managed according to the specific conditions of the exclusion. In other words, a generator has to make a choice to manage hazardous secondary materials under the conditions of the rule before they are considered ''excluded.'' (Notification, in fact, clearly documents this choice.) Therefore, EPA finds it difficult to believe that a generator could innocently fail to notify under the final rule because the generator is unclear about when a virgin material becomes a hazardous secondary material that it must manage under the exclusion. These ambiguities must be resolved prior to the facility availing itself of the exclusion.

EPA also disagrees with commenters that argued it is highly unrealistic to believe that any facility operating under the provisions would intentionally fail to notify EPA, as well as commenters that argued that sufficient incentives to notify already exist. We note that there is likely an economic incentive for some facilities to fail to notify and simply consider the paperwork violation as a cost of doing business. Where an economic incentive exists, EPA maintains that regulation is appropriate in order to adequately discourage undesirable behavior.

Finally, although notification as a condition may differ from how other paperwork requirements are applied in the hazardous waste regulations, it does not differ from how other paperwork requirements are applied in conditional exclusions from the definition of solid waste. For example, notification is a condition of the zinc fertilizer exclusion in 40 CFR 261.4(a)(20). Additionally, EPA confirms that the conditional exclusions at 40 CFR 261.4(a)(23) and 40 CFR 261.4(a)(27) are self-implementing and thus facilities do not need to wait for any response from the implementing agency prior to using exclusion.

G. Recordkeeping for Speculative Accumulation

In the July 2011 DSW proposal, EPA proposed to amend the generator-controlled exclusion to require persons operating under the exclusion to place a label on the storage unit indicating the first date that the excluded hazardous secondary material began to be accumulated. In cases where placing a label on the storage unit is not practicable (*e.g.,* if the hazardous secondary materials are stored in a surface impoundment), we proposed as an alternative to require persons operating under the generator-controlled exclusion to document in an inventory log the first date that the excluded hazardous secondary material began to be accumulated. EPA noted that enforcement personnel had suggested that ease of enforcement would be greatly facilitated if persons subject to the speculative accumulation requirement were required to post a start date for the accumulation. In this way, inspectors and other regulatory authorities could quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and, therefore, whether that facility was in compliance with the applicable storage time. The Agency also noted that placing labels on storage units or entering accumulation start dates in inventory logs is likely to be already part of normal business operations at many facilities. For this reason, the proposed requirement would not be unduly burdensome and would provide a greater degree of clarity both to the regulated community and to regulatory authorities who need to determine whether excluded hazardous secondary materials meet the speculative accumulation limits.

Since the same arguments for tracking accumulation start dates could be made more broadly for all recycling subject to the speculative accumulation limits, EPA also requested comment on whether to add this recordkeeping requirement to the speculative accumulation provision in 40 CFR 261.1(c)(8) itself. The Agency did not propose or solicit comment on changing the substantive requirements of the speculative accumulation provision, such as the time allowed for storage or the amount that is required to be recycled within a calendar year.

Comments: Recordkeeping for Speculative Accumulation

Many commenters, particularly states, supported the proposed recordkeeping requirement and also supported extending the requirement to all persons currently subject to the speculative accumulation requirements at 40 CFR 261.1(c)(8). These commenters generally believed that posting accumulation start dates (or using some other mechanism, such as an inventory log) provides assurance both to generators and inspectors that the generator in question is in compliance with the speculative accumulation provision, and that the proposed requirement would not be burdensome to the regulated community. One commenter supported requiring accumulation start dates to be posted in storage areas within a specified number of feet from the storage unit, since reference to logs distant from storage units could make enforcement difficult. Facilities that prefer a centrally located log could maintain such a ''master'' log in addition to the record maintained near the actual storage unit, this commenter suggested.

Some commenters, however, opposed the proposed recordkeeping provision for speculative accumulation, either for the generator-controlled exclusion or for other persons subject to 40 CFR 261.1(c)(8). Some of these commenters argued that 40 CFR 261.2(f) already requires respondents in enforcement actions who are claiming that a material is not a solid waste to demonstrate that they meet the terms of an exclusion or

exemption, by, among other things, providing appropriate documentation. Some commenters apparently believed that the proposed requirement would mandate sending a notification to EPA, or posting the quantity of the hazardous secondary material and the precise time it was generated, or posting ''finish'' dates, as well as ''start'' dates for accumulation. In addition, some commenters expressed concern about the potential difficulty of posting accumulation start dates for hazardous secondary materials that are recycled rapidly in continuous processes with little or no prior storage.

EPA's Response: Recordkeeping for Speculative Accumulation

After evaluating the comments received, EPA has concluded that the proposed recordkeeping requirements for speculative accumulation provide considerable benefits to both regulatory authorities and the regulated community and that the burden on the regulated community will be minimal. Posting accumulation start dates (or using another mechanism, such as an inventory log) is a simple and effective way to provide useful information about likely compliance with the speculative accumulation provision, and that the cost to facilities does not outweigh this benefit. We also find that all of the reasons for adopting this requirement for the generator-controlled exclusion apply equally to the question of whether to adopt it for all persons subject to 40 CFR 261.1(c)(8). In response to the commenter who supported also requiring the posting of accumulation start dates in storage areas within a specified number of feet from the storage unit, EPA is not convinced that such a requirement would be necessary for all facilities, and the appropriate distance from the storage unit might also vary for different facilities. We are therefore not adopting this requirement.

In response to those commenters who argued that the proposed recordkeeping requirement is redundant with § 261.2(f), we note that that provision applies to respondents in enforcement actions and does not provide specific guidance on how to determine compliance with the speculative accumulation provisions in the case of routine inspections. We therefore do not agree that the proposed recordkeeping requirement is redundant with 40 CFR 261.2(f). Today's revision to the speculative accumulation provision at 40 CFR 261.1(c)(8) does not entail submitting notifications to EPA, posting the quantity of the hazardous secondary material and the time it was generated, or posting finish dates. The final definition of ''contained'' specifies that a unit must be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit. Neither such a label nor the posting of an accumulation start date requires detailed information. In response to the commenters who were concerned about hazardous secondary materials that were continuously recycled without prior storage, we agree with those commenters and are revising the proposed recordkeeping requirement to allow ''other appropriate methods'' to be used to document the accumulation period.

For the reasons given above, EPA is amending 40 CFR 261.1(c)(8) to require that all persons subject to that provision must place materials in a storage unit with a label indicating the first date that the excluded hazardous secondary material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

XV. Major Comments on the Replacement of the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation

Summary of Comments: Replacement of the Transfer-Based Exclusion With the Alternative Subtitle C Recycling Standards

Environmental and community organizations, as well as many state commenters, supported withdrawing the transfer-based exclusion because this would remove the possibility of hazardous secondary materials being sent to unpermitted reclaimers without a manifest. These commenters agreed with EPA's rationale that transfers of most types of hazardous secondary materials to other companies for reclamation involve discard, and that the 2008 DSW transfer-based exclusion could result in adverse impacts to human health and the environment from discarded material. Commenters noted that, prior to reclamation occurring, hazardous secondary materials have limited inherent value. Some commenters in particular were concerned about how the transfer-based exclusion made the generator responsible for verifying the safety and legitimacy of the recycler's operations, when most generators would not have the expertise to make such a determination. One commenter examined the compliance history of the facilities currently operating under the 2008 DSW exclusions and noted that a large percentage have been the subject of enforcement actions in the past five years, and many have been subject to clean-up authorities under either RCRA or CERCLA for past contamination.

Most states supported the alternative hazardous waste standards as a replacement for the transfer-based exclusion as an approach that would help encourage recycling, while maintaining protection of human health and the environment. States generally supported the longer accumulation period, but some state commenters suggested replacing it with the speculative accumulation limits. Finally, while, as noted above, environmental groups supported removing the transfer-based exclusion because of the potential hazards from third-party recycling, they did not support the alternative standards because they believed that the longer accumulation times would not be as protective as full Subtitle C regulation.

In contrast, most industry commenters and a few states opposed replacing the transfer-based exclusion with alternative hazardous waste standards. These commenters argued that the withdrawal would significantly hinder reclamation and therefore, the lifecycle environmental benefits from recycling, contrary to the resource conservation goals of RCRA. One commenter reported that retaining the generator-controlled exclusion but not allowing off-site transfers limits generator flexibility if, due to unforeseen circumstances (*e.g.,* equipment malfunctions), the generator is not able to recycle on-site. Several industry commenters opposed the alternative standards, saying that the added compliance requirements (*e.g.,* the reclamation plan) are likely to outweigh any benefit provided by the relaxed accumulation time limits. Two commenters suggested that EPA apply the alternative standards to the reclamation facility, but reduce the requirements that apply to the generator, given that the majority of the damage cases occurred at the recycling facility.

Commenters also argued that EPA's record does not support repealing the transfer-based exclusion, stating that EPA did not present any new data that the 2008 DSW transfer-based exclusion would cause environmental harm and noting that the 2011 DSW proposal stated that facilities currently operating under the exclusion do not appear to have any problems from hazardous materials recycling. Comments included discussions of the conditions of the 2008 DSW transfer-based exclusion and

why such conditions would be adequate to protect human health and the environment, and suggested if EPA was concerned about the conditions, the solution would be to strengthen the conditions, not withdraw the exclusion. In particular, the Pennsylvania Department of Environmental Protection, which oversees 27 of the 65 facilities operating under the transfer-based exclusion, commented strongly in favor of keeping the transfer-based exclusion and suggested that EPA add a condition that recyclers have a RCRA Subtitle C permit.

EPA's Response: EPA agrees with those comments stating that the 2008 transfer-based exclusion could result in adverse impacts to human health and the environment from discarded material, but disagrees that all off-site transfers for reclamation requires Subtitle C hazardous waste regulation, because imposing Subtitle C hazardous waste regulation would result in regulating hazardous secondary material that is currently being legitimately recycled and not discarded as hazardous waste. Instead, EPA agrees with those commenters that support retaining an exclusion from the definition of solid waste for off-site recycling with additional conditions which will address the potential for discard happening in the future.

As discussed in more detail in Section VI of this preamble, EPA has identified several regulatory gaps in the 2008 transfer-based exclusion that could result in significant risk to human health and the environment from discarded material. Specifically, the conditions for the transfer-based exclusion for recyclers lack the ability to provide oversight before management begins and do not allow public participation in the environmental decision-making process, thereby decreasing the likelihood of compliance and increasing the potential for risk to human health and the environment from discarded hazardous secondary material. The evidence of past damage cases at third-party recycling facilities leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and the underlying perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material, demonstrates the need for such additional oversight and public participation. In other words, the transfer-based exclusion can exacerbate financial incentives for small and/or inexperienced businesses to take in more hazardous secondary materials than they actually can use, mishandle it, and even go out of business, as shown by the fact that bankruptcies or other types of business failures were associated with 66% of the recycling damage cases, resulting in multi-million dollar cleanups.

At the same time, as EPA noted in the 2011 DSW proposal and as was echoed in the public comments, EPA has also carefully monitored the implementation of the 2008 DSW final rule since it came into effect in December 2008, and to date, no environmental problems have been reported at facilities claiming the DSW exclusions. As of April 2014, a total of 65 facilities are operating under the transfer-based exclusion, 56 of which are generators transferring off-site and 7 which are reclamation facilities.[44] All seven reclamation facilities are RCRA permitted. (There are no reclaimers without a Subtitle C permit currently operating under the transfer-based exclusion). Of the 56 generators operating under the transfer-based exclusion, 32 generators appear to have either started or substantially increased their recycling as a result of the 2008 DSW exclusions. These include generators that had previously reported in their 2007, 2009, or 2011 biennial report that they sent their solvents offsite for fuel blending, and then notified that they are sending their spent solvents for reclamation under the 2008 DSW final rule. In addition, in at least five cases, facilities have switched from sending spent pickle liquor to landfilling or deep well injection to recycling under the 2008 DSW rule. In total, the 2008 DSW notifications document that over 57,000 tons of hazardous secondary material were reclaimed under the 2008 DSW rule during 2011.[45] In addition, the fact that the Pennsylvania Department of Environmental Protection (PA DEP), which oversees 27 of the 65 facilities operating under the transfer-based exclusion, commented strongly in favor of keeping the transfer-based exclusion, supports the idea that an exclusion for off-site reclamation can be safely implemented. At the same time, given that the transfer-based exclusion has been achieving its intended purpose of encourage safe, legitimate recycling, withdrawing the transfer-based exclusion and replacing it with RCRA Subtitle C hazardous waste requirements is unnecessary and would result in hazardous secondary material that is currently being legitimately recycled and not discarded being regulated as hazardous waste. Because Subtitle C regulation would be more stringent than the current exclusion, if EPA were to finalize the alternative Subtitle C standards, Pennsylvania (and other states that have adopted the 2008 DSW rule) would have to change their programs and regulate this material as hazardous waste, despite the fact that it is currently being legitimately recycled and not discarded.

However, the fact that the comments from PA DEP went on to recommend that the transfer-based exclusion be limited to RCRA-permitted recycling facilities also supports EPA's determination that the self-implementing measures of the transfer-based exclusion have the potential to result in significant risk to human health and the environment. Because all recycling under the transfer-based exclusion has been (to date) performed at RCRA permitted facilities, EPA is unable to extrapolate what would happen at facilities without a RCRA Subtitle C permit if the transfer-based exclusion were fully implemented. Given the evidence of past damage cases leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and the underlying perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material, additional oversight of recycling beyond the self-implementing measures of the transfer-based exclusion are needed to ensure that the hazardous secondary material is legitimately recycled and not discarded.

EPA is therefore replacing the transfer-based exclusion currently found in 40 CFR 261.4(a)(24) and (25) with the verified recycler exclusion in 40 CFR 261.4(a)(24). This replacement strikes an appropriate balance between encouraging the safe and legitimate recycling of hazardous secondary materials and allowing the appropriate oversight to ensure the exclusion works as intended. It also addresses the issue of allowing a generator flexibility to recycle on site or off site as circumstances require (as long as the generator notifies under both the generator-controlled exclusion and the verified recycler exclusion). As discussed in section VI. D of the preamble, the verified recycler exclusion retains the conditions from the transfer-based exclusion that were intended to help identify hazardous secondary material that is legitimate

[44] Some of these facilities are also managing hazardous secondary materials under the generator-controlled exclusion.

[45] U.S. EPA, *EPA's Evaluation of Data Collected from Notifications Submitted under the 2008 Definition of Solid Waste Exclusions,* April 11, 2014.

recycled and not discarded, and adds conditions that address the regulatory gaps identified in the 2011 DSW proposal.

XVI. Major Comments on the Remanufacturing Exclusion

A. List of Eligible Solvents

In the July 2011 DSW proposal, EPA requested comments on excluding 18 spent solvents when they are remanufactured back into higher value commercial-grade solvents under the conditions of the exclusion. The solvents were: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, N,N-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and methanol. EPA chose these 18 spent solvent chemicals to limit the exclusion to higher-value materials and processes that resemble manufacturing more than waste management. EPA also requested comment on whether there are other solvents, chemicals or other types of hazardous secondary materials that should be included in the remanufacturing exclusion. In particular, EPA requested comments on opportunities for remanufacturing other types of non-renewable hazardous secondary materials, such as metal catalysts or other types of metal-bearing hazardous secondary materials.

Comments: List of Eligible Solvents

Many commenters supported the current list of spent solvents and did not support expanding the list in any way. These commenters cautioned against expanding the list of chemicals until EPA could determine the effectiveness of this exclusion. Several other comments did not focus on adding solvents or other hazardous secondary materials, but focused on the toxicity or market structure of the 18 listed spent solvents. One commenter questioned the claim of ''higher-value'' for chloroform, chloromethane, ethyl benzene, xylene, methanol and MTBE. Another commenter stated they no longer use many of the 18 listed spent solvents because the solvents are defined as a toxic substance and a hazardous air pollutant under other environmental statutes. The commenter continued by saying that members of their association now use more ''environmentally friendly'' solvents.

The remaining commenters discussed adding solvents or other hazardous secondary materials. Some commenters suggested expanding the solvent list to include benzene, acetone, isopropyl alcohol, or all solvents used in reactors, extractors, purifiers or blending equipment in pharmaceutical, organic, chemical, or plastics and resins manufacturing. Finally other commenters suggested adding additional hazardous secondary materials that were not solvents. The hazardous secondary materials suggested for addition were metal-bearing hazardous secondary material, F006 and spent hydroprocessing catalysts.

EPA's Response: List of Eligible Solvents

EPA agrees with those commenters who supported the remanufacturing exclusion and limiting it to the list of 18 spent solvents, at least at this point in time. EPA determined that these 18 spent solvents are good candidates for remanufacturing because they are used in large volumes as processing aids and because there are existing markets for all these solvents to be remanufactured to serve similar purposes to those of the original commercial-grade materials. EPA does not agree with comments that suggested adding chemicals to the list, but did not provide specific data or information that would lead the Agency to add these chemicals to the list at this point in time. While EPA may expand the list of eligible hazardous secondary materials for the remanufacturing exclusion based on additional data (see section VII of this preamble), the currently available information only supports the inclusion of the proposed list of 18 spent solvents.

EPA disagrees with those commenters who did not support including many of the identified solvents on the list because of their toxicity. In the 2011 DSW proposal, EPA acknowledged that the eligible solvents have suspected or recognized hazardous health effects associated with their manufacture, processing, and use.[46] Although EPA and industry have been working to find substitutes for the more hazardous of these solvents, or find ways to use less of them, this has not yet been widely achieved.[47] [48] With respect to the pharmaceutical sector in particular, complex chemical processes already registered with the Food and Drug Administration are involved, and EPA has found this a very challenging area to address in terms of chemical substitution and process changes. In addition, some of these solvents are building blocks and primary intermediate chemicals, making them difficult to replace. Until lower-risk substitutes for these solvents are found, it is helpful from a health risk standpoint to minimize the volume of solvents manufactured and to limit exposure to those already manufactured. This is something that the remanufacturing exclusion can achieve.

B. List of Eligible Industry Sectors

Under the 2011 DSW proposal, EPA identified the operations of four manufacturing sectors as candidates for the remanufacturing exclusion. The eligible sectors were pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sector (NAICS 325510). These four sectors were selected because their primary business is manufacturing rather than waste management. Furthermore, these sectors are closely associated with the chemical functions identified in the remanufacturing exclusion and currently use a high volume of the solvents identified for the functional purposes included in this exclusion. EPA also asked for comment on whether there were other industry sectors that should be included in the remanufacturing exclusion.

Comments: List of Eligible Industry Sectors

Several commenters suggested specific industries for EPA to add to the remanufacturing exclusion. The suggested industries were K061 recyclers, the biofuels sector, recyclers with a part B permit like Safety-Kleen, petroleum refineries (NAICS 324110), petrochemical manufacturers (NAICS 325110), synthetic rubber manufacturers (NAICS 325212), fiber glass manufacturers, and electronic manufacturers. K061 recyclers and the biofuels sector were suggested due to their active markets and potential impacts on the environment if hazardous secondary materials were managed improperly. Companies, such as Safety-Kleen, with a part B permit, were suggested because these recyclers encourage sustainable materials management through remanufacturing. Petroleum refineries (NAICS 324110), petrochemical manufacturers (NAICS 325110) and synthetic rubber

[46] Allen, D., Shonnard, D., *Green Engineering: Environmentally Conscious Design of Chemical Processes, Risk Concepts,* chapter 2, pgs 35–62, Austin, S., U.S. EPA Editor, Published by Prentice-Hall, 2001.

[47] For information on U.S. EPA's Green Chemistry Program, see *http://www.epa.gov/gcc/.*

[48] Information on the American Chemical Society's Green Chemistry Institute's Pharmaceutical Roundtable is available via the ACS Web site *http://portal.acs.org/portal/acs/corg/content.*

manufacturers (NAICS 325212) were suggested due to their significant generation of spent solvents. The commenter believed these industry sectors' spent solvents should be eligible just like the solvents from the proposed industry sectors. Another commenter suggested adding fiber glass manufacturers because they operate refractory recycling programs and refractories are higher-value hazardous secondary materials. Finally, the electronics sector was recommended for its recycling of precious metals.

EPA's Response: List of Eligible Industry Sectors

EPA acknowledges that the industry sectors that were nominated for inclusion in the remanufacturing exclusion participate in recycling activities; however, these sectors' recycling activities do not include the types of practices or functions that were within the scope of the remanufacturing exclusion. Under the remanufacturing exclusion, a manufacturer may send their hazardous secondary material to another manufacturer, from one of the permissible industry sectors, provided that the remanufacturer uses the hazardous secondary material in one of the four permissible functions. The commenters all suggested industries that send their hazardous secondary materials to a third party, who is not necessarily a manufacturer, but a facility that would recover the solvent or other hazardous secondary material and who would then sell the recycled product to another person.

As discussed in the market forces study, it is generally in the best interest of commercial third party recyclers to maximize the amount of hazardous secondary material they can accept to increase profits. This market structure creates a perverse market incentive to over-accumulate hazardous secondary materials, which can result in discard, which the remanufacturing exclusion seeks to avoid. In contrast, the market forces study shows that facilities engaged in industrial intra-company recycling, where companies generate hazardous secondary materials as by-products of their main production processes and recycle the hazardous secondary materials used in production, have more flexibility in waste management decisions than a commercial recycler does. When a commercial recycler's primary or entire income is from accepting hazardous secondary materials for recycling and selling recycled products, there is no economic alternative if the market crashes to stay in business unless the company can afford the cost of a hazardous waste management permit and the cost of becoming a hazardous waste disposal facility. Remanufacturers, on the other hand, as a type of intra-industry recycler, profit primarily from the sale of their product and can switch their inputs between raw materials and hazardous secondary materials if market conditions shift.

It is also not clear that the suggested industry sectors will know what function their hazardous secondary materials will be used for after remanufacturing. As discussed previously, the remanufacturing exclusion encourages higher-value materials to be remanufactured and then used in high-value processes again. Furthermore, this exclusion focuses on the functions of aiding chemical manufacturing and processing because the solvents performing these functions retain their original physical and chemical properties. In these functions, the solvents are not contaminated by substances, such as inks and greases, which are difficult to separate, but only mixed with pure product ingredients, from which they can be separated readily in a commercially feasible manner. Unfortunately, the suggested industry sectors provided by commenters do not appear to coincide with the intent of remanufacturing hazardous secondary materials that retain their original physical and chemical properties. Therefore, these additional sectors will not be included in the remanufacturing exclusion.

However, EPA notes that these sectors would be eligible to participate in the verified recycler exclusion (40 CFR 261.4(a)(24)) if they meet the conditions of that exclusion.

C. Regulatory Language

In the July 2011 DSW proposal, EPA did not specifically include regulatory language for the remanufacturing exclusion, but EPA did include a streamlined version of the scope, applicability and conditions of the exclusion followed by a very detailed explanation of the exclusion that included the reasoning for each condition.

Comments: Regulatory Language

Many commenters said they were unable to comment on the remanufacturing exclusion because there was no regulatory language included in the proposal. Almost all commenters supported the concept of the remanufacturing exclusion, but requested that EPA re-propose the remanufacturing exclusion in a separate rulemaking with regulatory text, so commenters could accurately comment on the exclusion.

EPA's Response: Regulatory Language

The preamble language discussing the remanufacturing exclusion contained adequate detail and information to allow comment on the proposed remanufacturing exclusion. In the July 2011 DSW proposal, the remanufacturing exclusion was presented in a narrative form that closely resembles the regulatory language being finalized today. The proposed rule also included a large amount of detail on the scope, applicability, and conditions of the remanufacturing exclusion. The proposal laid out exactly what solvents, industry sectors, and chemical functions were permissible in the remanufacturing exclusion. The proposal then clearly stated what was required for the notification, remanufacturing plan, records of shipments and confirmations of receipts, tanks and container management standards and the speculative accumulation requirement. EPA has determined that between the narrative and detailed explanation of the remanufacturing exclusion, commenters were provided more than enough information to comment on the remanufacturing exclusion, and thus, we are finalizing it in today's final rule.

XVII. Major Comments on Legitimacy

A. Codifying Legitimacy for All Recycling

Comments: Codification of Legitimacy

Comments from industry across the board (including waste management companies) vehemently opposed codifying the legitimacy provision at § 260.43 for the pre-2008 recycling exclusions and exemptions, arguing that this action, combined with making factor 3 and factor 4 mandatory, is a drastic change in policy and likely will end much of the current recycling that is occurring under RCRA. Industry commenters argued that this would be a huge administrative burden with little environmental benefit and that recycling has been taking place under these exclusions largely without problems for many years. Some industry commenters expressed their opinion that the codified legitimacy factors are significantly different than EPA's existing legitimacy policy and therefore, the legitimacy analysis that would have to be undertaken is not substantively the same. Other commenters opined that applying the codified legitimacy standard to the pre-2008 exclusions and exemptions would function as a disincentive to recycling by adding

paperwork burden and increasing compliance difficulties, especially for generators who would be exposed to potential RCRA enforcement due to subsequent noncompliance by the recycler. One commenter stated that inspectors could miss the more obvious cases of sham recycling because Agency resources would be expended in reviewing the large amount of required documentation and inspecting the more frequently used pre-existing exclusions, such as the use/reuse exclusion in 261.2(e) and the closed loop recycling exclusion in 261.4(a)(8) to the detriment of investigating other potentially more problematic recycling.

Many of the specific industry commenters on this issue were scrap metal recyclers who argued that although they have been legitimately recycling for decades, expecting them to prove that their recycling operations were legitimate for the first time would be prohibitively expensive, time-consuming and unworkable. The scrap metal recycling industry had particular issues with factor 4 as drafted in the 2011 DSW proposal and had many questions on how to do the comparable demonstration.

With respect to the states, a number of states were supportive of codifying one legitimacy standard for all hazardous secondary material recycling activities. They argued that codifying the legitimacy provision would give industry and states a definitive standard to evaluate recycling and that industries operating under the pre-2008 recycling exclusions and exemptions should not have any problems documenting compliance with the legitimate recycling provision of § 260.43, if their recycling is truly legitimate. On the other hand, a number of states, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and the Northeast Waste Management Officials' Association (NEWMOA) all expressed concerns over applying the codified legitimacy standard to certain long-standing recycling exclusions, including lead-acid batteries, circuit boards, scrap metal, and closed loop recycling, with one state arguing that this additional regulatory burden was not necessary for the 2008 pre-existing exclusions and exemptions.

Several environmental and community organizations supported codification of the legitimate recycling provision for all hazardous secondary materials recycling, but did not provide a detailed explanation of their position. In addition, whereas one environmental organization acknowledged that EPA did not solicit comment on the elimination of these exclusions, this organization stated that they believed a re-examination of all of the exclusions by the Agency, including the pre-2008 exclusions and exemptions should be conducted as soon as possible.

EPA's Response: Codification of Legitimacy

In response to the many comments that were submitted, the Agency is making a number of changes to the 2011 DSW proposal. Specifically, EPA is codifying a general statement in § 261.2(g) that makes it clear that a hazardous secondary material found to be sham recycled is discarded and thus, is a solid waste. However, we are not codifying a reference to the legitimacy provisions at 40 CFR 260.43 in each of the pre-2008 recycling exclusions/exemptions, as we proposed to do in the 2011 DSW proposal. On further reflection, we have determined that the sham recycling prohibition in § 261.2(g) more clearly defines the Agency's view on legitimate recycling and the pre-2008 recycling exclusions and exemptions. We also agree with those commenters who pointed out that we generally looked at the legitimacy of the recycling activity when we promulgated the material-specific or industry-specific exclusions and, therefore, we are not requiring facilities to revisit past legitimacy determinations. However, by codifying a prohibition on sham recycling that applies to all hazardous secondary materials being recycled, we are confirming that we expect anyone operating under a recycling exclusion or exemption to do so legitimately. (As we discuss later in this section and in section VIII, the Agency also has made a number of other revisions to the legitimacy standard to address the concerns raised in the comments.)

Comments: Effect on Existing Legitimacy Determinations

Many industry commenters argued that EPA or the states have already made legitimate recycling determinations for their specific recyclable materials. Some commenters also noted that EPA considered legitimacy at the time their material-specific exclusion was promulgated and had already made legitimacy determinations for those recyclable materials (*e.g.,* the zinc fertilizer exclusion, precious metal exclusion, etc.). These commenters also argued that as part of rulemaking for the material-specific exclusions, the Agency had determined what conditions were necessary to ensure legitimacy. Some argued that overlaying the general legitimacy factors on the 2008 pre-existing conditional exclusions and exemptions is unnecessary and duplicative and would create significant disincentives to recycling.

EPA's Response: Effect on Current Legitimacy Determinations

In response to the concerns expressed that the codified legitimacy factors would lead to practices previously considered legitimate now being considered sham operations, in general, the Agency is clarifying that it does not intend for the current recycling legitimacy determinations to change due to the codification of the legitimacy factors. We consider the factors we are finalizing today to be consistent with the criteria in the Lowrance Memo and previous preamble statements on legitimate recycling. Therefore, we generally do not anticipate that implementing agencies will revisit past legitimacy determinations. If recycling was considered legitimate under the Lowrance Memo, its status should not change as a result of today's rule. To make its intent more clear, the Agency is codifying a prohibition against sham recycling in § 261.2(g) instead of adding a provision in each of the pre-2008 exclusions and exemptions referring to the legitimacy provision in § 260.43. This codification will give implementing agencies a clear regulatory statement that can be used to enforce against sham recyclers, yet not require the vast majority of recyclers that are performing legitimate recycling under the pre-2008 exclusions and exemptions to revisit previously-made legitimacy determinations.

Any existing legitimate recycling determination should not change due to the codification of the legitimacy factors. In addition, examples that were provided in the public comments helped inform our decision-making and led us to revise factor 4 significantly to address this issue. The final regulatory text is consistent with the pre-existing legitimacy guidance and the manner in which legitimacy determinations have been made by the EPA Regions and authorized states. Thus, we do not expect implementing agencies to revisit past legitimacy determinations.

Regarding the existing exclusions and exemptions in the regulations, EPA acknowledges that, in establishing a specific exclusion or exemption, we have already determined in the rulemaking record that the specific recycling practice is excluded from the definition of solid waste provided all the conditions of the rule are met. However, the Agency has always enforced its rules on the basis that any recycling must be legitimate (See *U.S.* v.

Self, 2 F.3d 1071, 1079 (10th Cir. 1993); *U.S.* v. *Marine Shale Processors,* 81 F.3d 1361, 1366 (5th Cir. 1996); *Marine Shale Processors* v. *EPA,* 81 F.3d 1371, 1381–83 (5th Cir. 1996)). This is meant to prevent a company from claiming to be operating under an existing exclusion or exemption and simply using that as a way to avoid full RCRA Subtitle C regulation. Thus, since EPA is not modifying the existing exclusions and exemptions, there is no change regarding legitimacy determinations, except that the factors are now codified. A company's ability to claim a recycling exclusion or exemption has always depended on the recycling being legitimate.

B. Making All Four Legitimacy Factors Mandatory

Comments: Mandatory Factors

For the most part, states commenting on this part of the proposal supported all the legitimacy factors being mandatory (the exceptions being Tennessee and Louisiana), although several states went on to say that they either opposed the petition process or are concerned about it for the following reasons: (1) The resources necessary for addressing incoming petitions, (2) the possibility of using the petition process as a potential backdoor out of legitimacy, and/or (3) the potential for the petition process to lead to inconsistencies among states on legitimacy determinations. Most states have supported making all four factors mandatory in past proposals and continue to do so here, arguing that codifying the legitimacy factors in the rule (instead of only in rule preamble and in policy documents) will provide clearer instruction to the regulated community and will strengthen the ability of state programs to enforce the criteria in situations where recycling is not legitimate. This, the states claim, will reduce the potential risk to human health and the environment from mismanagement of hazardous secondary materials and from elevated concentrations of contaminants in recycled products. They also argue that making all four factors mandatory will remove a serious flaw in the enforceability of legitimacy. Other commenters noted that requiring all four legitimacy factors to be met is critical to ensure reclamation is being conducted at a qualified facility and to minimize the potential for creation of future damage cases. Most states found it hard to conceive of a legitimate recycler that would not be able to satisfy all four factors.

Although some commenters representing the hazardous waste recycling industry did support making all the factors mandatory, the majority of industry commenters did not support this provision. Those commenters who did support a requirement that all four factors be met argued that this structure would be fairer and more enforceable. On the other hand, many of the commenters that argued against making all factors mandatory stated that this would discourage much of the current recycling and would be too hard to meet. Commenters particularly singled out factor 4 (toxics along for the ride) as problematic for implementation. Specifically, we got comments from multiple members of the mining and mineral processing industry arguing that factor 4 is not applicable to their industry and from scrap metal recyclers asking how factor 4 would apply at their facilities.

Many commenters also argued that the petition process was not an adequate mechanism for those processes that do not meet all four factors because there will be too many petitions for the states and EPA to be able to process and because shutting down recycling operations during the time spent waiting for petitions to be processed would be very expensive and wasteful.

Another important consideration is what the Agency has learned since implementing the 2008 DSW final rule, which finalized the legitimacy factors as a condition of the generator-controlled and transfer-based exclusions, with two factors that are mandatory and two factors that must be considered. Since that rule became effective, the Agency has become aware of a misconception regarding the ''to be considered'' factors. It has become clear that some industry stakeholders believe those factors to be less important, stating that they are optional or even can be ignored. This was not the Agency's intention at all. The Agency tried to make it clear that they must be considered and could, in fact, indicate sham recycling on their own. However, through public comment and stakeholder meetings, we have repeatedly heard that industry views these factors as optional.

Another argument against making all the factors mandatory requirements is that the overall determination is made on a case-by-case basis, which is often facility-specific, and not all legitimate recycling can fit into such a rigid system. Commenters argue that making all four factors mandatory removes the flexibility necessary for the broad universe of hazardous secondary materials being recycled.

EPA's Response: Mandatory Factors

After much consideration and review of the public comments, the Agency has decided to make all four legitimacy factors mandatory with adjustments to the factors themselves to account for the variability and diversity of legitimate hazardous secondary material recycling. As explained above in sections VIII.B.5 and VIII.B.6, we have adjusted the regulatory language of factor 4 to build in more flexibility for meeting this factor,[49] but are also making it clear in the regulatory language that it is important that each factor be met, except as otherwise noted.[50] Since finalizing the legitimacy factors in the 2008 DSW final rule, our experience with implementation has made us realize the importance of requiring all factors be met. Even though we stressed the importance of considering each factor in the 2008 DSW final rule, many of the stakeholders are under the misimpression that the factors that were to be considered could actually be ignored. We did not mean to give the impression that factor 3 and factor 4 were optional and thus, have decided that the best way to give the proper weight to these factors is to make them mandatory with additional flexibility to address the various recycling scenarios.

In addition, instead of a petition process for those legitimate recycling scenarios that don't meet factor 4, we are finalizing a documentation, certification, and notification process. We continue to find that legitimacy determinations are best made on a case-by-case basis, which has always been the case, with the facts of a specific recycling situation in hand. If a person has any questions as to the legitimacy of a particular recycling activity, he can always approach the appropriate regulatory agency for assistance in making a legitimacy determination.

C. Documentation of Legitimate Recycling

When the Agency codified the legitimacy standard in the 2008 DSW final rule, we did not require specific documentation regarding the legitimate recycling determination. In the 2011 DSW proposal, in addition to proposing that the legitimacy standard apply to all

[49] In addition, we are also finalizing in the regulatory language the additional flexibility that was proposed in factor 3 to the legitimacy provision.

[50] As we discuss in Section VIII.B.6.c, the Agency has included a self-implementing process that would allow the person performing the recycling to document, certify, and notify the appropriate Regional Administrator that even though the hazardous secondary material does not meet factor 4, the recycling is still considered legitimate.

hazardous secondary material recycling and that all four legitimacy factors must be met, EPA proposed a new documentation requirement for persons performing the recycling. We proposed that the recyclers include a narrative description of how their hazardous secondary materials are legitimately recycled and that this documentation be maintained on-site for the duration of the recycling operations and for three years after the recycling operations cease. However, as explained above in section VIII.C.2, we are only finalizing the requirement to document a legitimate recycling determination for those recyclers operating under the generator-controlled exclusion and for those recyclers that are legitimately recycling, but do not meet factor 4—that is, they must document why the recycling operation is legitimate even if they do not meet factor 4.

Comments: Documentation

ASTSWMO, NEWMOA, and most other states supported requiring documentation of legitimate recycling for both the generator and recycler (with exceptions noted in their comments about certain long-standing recycling exclusions and exemptions, including lead-acid batteries, circuit boards, scrap metal, and closed loop recycling). Most state environmental agencies cited the ability to implement and enforce the RCRA recycling program as the primary reason why documentation is needed. However, a few states did not support requiring documentation for any of the pre-2008 recycling exclusions and exemptions. One state agreed that some documentation may be necessary for inspections, but also stated that common business records would likely suffice in most cases. An environmental organization coalition suggested we provide a consistent format and require documentation of both generators and recyclers. Industry generally opposed the documentation requirement and felt that it would pose significant practical challenges, especially for factor 4. Some industry commenters felt that ''up-front'' documentation is not necessary since EPA can rely on § 261.2(f) for documentation. Other commenters argued that for companies that rely heavily on the existing exclusions and exemptions, it would be easy to inadvertently miss documenting every instance (*i.e.,* closed loop recycling) and the consequences could be severe. In fact, one industry association argued that documentation may actually cause more non-compliance due to the huge administrative burden, especially for large facilities that utilize many of the recycling exclusions and that the voluminous paperwork could result in inspectors missing more obvious sham recycling.

Other commenters objected to any recordkeeping requirements documenting that a recycling activity is legitimate, arguing the policy is not new so, therefore, no new documentation should be required. They argued that since EPA already believes most recycling is legitimate, requiring documentation for all recycling is overly burdensome, expensive, and not necessary. Some industry commenters argued that EPA offered no evidence in the record that documenting the legitimacy of a recycling practice would have any additional environmental benefit. A few commenters asserted that requiring documentation for all recycling might actually cause more non-compliance, especially for the more frequently used recycling exclusions, such as the use/reuse and closed-loop recycling exclusions.

Finally, there was ample confusion in the comments on who would be required to put together and provide the documentation. The Agency proposed that the requirement would apply to the ''persons performing the recycling.'' That is, if the generator sent his hazardous secondary materials off-site to a recycler, then the recycler would be the one responsible for maintaining the documentation. If, on the other hand, the generator recycled his hazardous secondary materials on-site, then the generator would be responsible for documenting that the recycling activity was legitimate. However, some commenters still expressed confusion over who would be responsible for the documentation.

EPA's Response: Documentation

As discussed previously, the Agency has determined that, for purposes of the existing pre-2008 recycling exclusions and exemptions, documentation is not required, unless the facility has determined it is legitimately recycling, but does not meet Factor 4. In the vast majority of cases, recycling under the existing exclusions is legitimate and documentation is not necessary. The Agency has previously acknowledged the legitimacy of these recycling practices when it first promulgated the material-specific and industry-specific exclusions and exemptions, when at that time it took into consideration the legitimacy of the recycling practices. After review of the public comment, the Agency has determined that routine documentation of legitimacy is an unnecessary burden for persons legitimately recycling under the pre-2008 recycling exclusions and exemptions.

However, the Agency is requiring documentation on legitimacy determinations under two circumstances: (1) Persons operating under the generator-controlled exclusion originally finalized in the 2008 DSW final rule, and (2) persons legitimately recycling under any recycling exclusion or exemption where the hazardous constituents in the recycled products are not comparable or are unable to be compared to those in analogous products (unless the recycled product meets widely recognized commodity specifications or the hazardous secondary material is returned to the production process). In these cases, the persons recycling would be required to keep documentation of the legitimacy of their recycling.

Specifically, the Agency has determined that requiring documentation under the generator-controlled exclusion is appropriate because this exclusion is generic and can be used by a wide variety of industries recycling any of a number of hazardous secondary materials. In addition, as explained above in section VIII.B.6.c, the Agency has also determined that documentation is necessary for those rare cases of legitimate recycling that has significantly higher levels of hazardous constituents in the recycled product than in an analogous product, or has no analogous product, has no widely-recognized commodity specifications for the recycled product, and is not returned to the production process. In those cases, due to the self-implementing nature of the legitimacy determinations, it is important that the recycler perform the proper assessment and document how the recycling is still legitimate.

Finally we would note that 40 CFR 261.2(f) applies whenever a person is claiming that a hazardous secondary material is not a solid waste, which oftentimes is because the material is being recycled. Section 261.2(f) states that, in the context of an enforcement action to implement Subtitle C of RCRA, a person claiming that a material is not a solid waste or is conditionally exempt from regulation is responsible for showing that they meet the terms of the exclusion or exemption and must provide appropriate documentation to show why they are eligible. For the legitimacy requirement finalized today, under § 261.2(f), in the event of an enforcement action, persons claiming that their recycling activity is legitimate would have the burden to provide documentation showing how the

recycling meets all four factors, except as otherwise noted. That is, they would need to show how the recyclable hazardous secondary materials provide a useful contribution to the recycling process and are stored as valuable commodities, and how the product of the recycling activity is valuable and comparable to a legitimate product.

D. Factor 3: Language and Implementation

Comments: Factor 3

Many commenters supported the regulatory language revisions to factor 3, particularly the following additional italicized language: ''Where there is an analogous raw material, the hazardous secondary material, must be managed, at a minimum, in a manner consistent with the management of the raw material *or in an equally protective manner.*'' Some commenters argued, however, that the real change to factor 3 was the proposed revision to the contained standard because the second part of factor 3 reads: ''Where there is no analogous raw material, the hazardous secondary material must be contained.'' These commenters expressed concern that by making factor 3 mandatory and by revising the contained definition, the Agency was in effect making factor 3 more stringent.

EPA's Response: Factor 3

The Agency disagrees with the comments that the revised contained standard is more stringent and thus, results in a more stringent factor 3. First, as noted by the commenters, the contained standard only applies in cases where there is no analogous raw material to compare the management of the hazardous secondary material to. More importantly, however, as explained in more detail is section V, while the revised contained standard is more clear and more definitive, it is not more stringent, but is consistent with the contained standard previously discussed and described in the preamble to the 2008 DSW final rule. Thus, EPA finds that overall the revisions to factor 3 are reasonable and consistent with the Agency's previous positions on legitimacy. Therefore, the Agency is finalizing the regulatory language for factor 3 as proposed and has determined the added flexibility will allow existing legitimate recycling to continue without any negative impact on environmental protection.

E. Factor 4: Language and Implementation

In the 2011 DSW proposal, EPA proposed to change the wording within the regulatory language for factor 4 from ''significant'' and ''significantly elevated'' to ''comparable to or lower than'' and explained that this language more clearly reflects the intent of this factor. In addition to this language change, other proposed changes to the legitimacy provision impact the design and implementation of factor 4. The proposal to make all four legitimacy factors mandatory led many commenters to discuss specific concerns they had about factor 4 and what problems they would have meeting the factor as it was proposed. In this section, EPA examines some of those comments, as well as provides the Agency's responses and the changes that were made to the proposal in this final rule to make factor 4 more workable.

In concert with many of the comments about the difficulties of meeting the proposed factor 4, EPA also received many comments about its proposed petition process for when a recycling process does not meet either factor 3 or factor 4. EPA is thus, also addressing those comments in this section of the preamble because the documentation, certification and notification process that will be replacing the proposed petition process is found within factor 4 of the legitimacy provision.

Comments: ''Comparable''

EPA's proposal to change the language within factor 4 that describes the comparison of levels of contaminants between products made from recycling of hazardous secondary materials and products using raw materials was supported by most of the states that commented on factor 4 and opposed by many of the industry commenters. The states that supported the change stated that the term ''comparable'' is better because it is more specific, though several of these commenters also asked for further guidance on the language.

Industry commenters who opposed this change to factor 4 stated that there was not a good reason in the preamble for the change in the language and that they do not think that ''comparable'' means the same thing as ''not significantly higher,'' arguing that if the terms mean the same thing there was no reason for EPA to change them. Several commenters argued that this change in language makes the factor more stringent and/or less flexible.

EPA's Response: ''Comparable''

EPA is finalizing the proposed language in this factor and using the term ''comparable'' in discussing levels of hazardous constituents. This term means any contaminants present in the product made from hazardous secondary materials are present at levels comparable to or lower than the levels in the analogous product, although levels can be slightly higher than those found in the analogous product, but must be within a small acceptable range. This change in language is not a change from its long-standing policy and it is also consistent with the legitimacy provisions in the Identification of Non-Hazardous Secondary Materials that are Solid Wastes final rule (76 FR 15456, March 21, 2011).

In response to comments requesting further guidance and those that state that this language change is making factor 4 too stringent, first we have repeated in section VIII of the preamble the examples that we included in the 2008 DSW final rule which explains how the Agency envisions this factor working. Moreover, the additional changes that it made to factor 4 in this final rule, describing several situations under which a product of a recycling process would be considered comparable to a legitimate product or intermediate, address both these concerns. As EPA determined in previous rulemakings, promulgating an exact numerical cut-off for what would be considered ''comparable'' is not practicable for the legitimacy provision because it applies to a wide variety of recycling scenarios. EPA may provide future guidance on the application of this provision if needed.

Comments: Uncertainty About Compliance

Many of the comments that EPA received from industry regarding factor 4 stated that facilities are concerned about this factor, particularly if it were to become mandatory, because it would be difficult to determine if a given recycling process is in compliance. Many of these commenters stated the high cost of testing for 40 CFR part 261 Appendix VIII constituents as one of their concerns.

EPA's Response: Uncertainty About Compliance

First, we are reiterating in this final rule that testing of the recycled product is generally not required under factor 4 of legitimacy. A generator can use its knowledge of the materials it uses and of the recycling process to make legitimacy determinations, although they may choose to test if they are uncertain if the product from their hazardous secondary materials contains elevated levels of hazardous constituents when compared to non-recycled products. In addition, factor 4

as finalized today presents no greater compliance issues than it would under the 2008 DSW final rule, because under the 2008 legitimacy definition, a facility still had to consider the hazardous constituents in Appendix VIII of part 261 in determining whether factor 4 is met, and be able to demonstrate why recycling was still legitimate even if it was not met. Furthermore, as we have noted elsewhere, we have made certain revisions to factor 4, in response to comments, for facilities to determine that they are in compliance with this factor. Specifically, the provisions in § 260.43(a)(4) state that products that meet widely recognized commodity standards and specifications would be considered comparable and meet factor 4 and hazardous secondary materials that are recycled back into the original generating process would be considered comparable and also meet factor 4, which is intended to make compliance with factor 4 simpler across many of the industries in which much industrial recycling takes place.

Comments: No Analogous Product To Compare

Many of the comments regarding factor 4, including many of the examples that were sent in to describe the difficulties of complying with factor 4, described recycling situations in which there is no analogous product and argued that it would be very difficult to meet the proposed factor 4 in a situation where there is no analogous product.

EPA's Response: No Analogous Product To Compare

After examining the comments submitted, including the examples provided, EPA agrees with the commenters that the design of proposed factor 4 did not adequately take into consideration recycling scenarios that either always includes some form of recycled hazardous secondary material or that would be considered closed loop recycling. As a result of these comments, EPA modified the structure of factor 4 to include provisions specifically for the situation where there are no analogous products, (found in § 260.43(a)(4)(ii)). The finalized provisions state that when there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate when the product is a commodity meeting widely recognized commodity standards and specifications or when the hazardous secondary materials being recycling are returned to the original process or processes from which they were generated.

This change to factor 4 provides the necessary flexibility to those persons who recycle hazardous secondary materials for which there is not an analogous product for comparison. However, EPA has also included a documentation, certification, and notice provision for cases that do not fit these two scenarios. Under this provision, the recycler can perform an assessment of the hazardous secondary material and still determine that its recycling is legitimate despite not meeting factor 4. This finding must be documented and certified by a responsible facility official and a copy kept on-site for as long as the recycling continues, and for 3 years after the recycling operations cease. Also, a notice of this finding must be sent to the appropriate Regional Administrator (or State Director, in an authorized state), using the Site ID form.

Comments: Petition Process

As stated above in this section, many commenters argued that the petition process was not an adequate mechanism for relief for those processes that do not meet all four factors and therefore, they opposed the proposed petition process. They argued that there would be too many petitions for the states and EPA to process efficiently, which could result in shutting down recycling operations during the time spent waiting for petitions to be processed, which would be very expensive and wasteful. States were particularly concerned about the amount of resources that would be needed to process the incoming petitions.

EPA's Response: Petition Process

In response to the arguments presented by the commenters in opposition to the petition process and the concerns with how implementation of the petition process could impact recycling, EPA is not finalizing the petition process in this final rule. Instead, EPA has made two changes to its proposal to account for the situations that the petition process was meant to cover. The first is the additional provisions in factor 4 (already discussed above in this section) that describe the specific situations in which EPA considers a product of a recycling process to be comparable to an analogous product or intermediate. The second is the documentation, certification, and notice provision for products that have levels of hazardous constituents that are not comparable to or lower than an analogous product or intermediate or that are unable to be compared, but which are not covered by the new provisions.

Under the documentation, certification, and notice process, a recycler must determine that its recycling is still legitimate despite the levels of hazardous constituents in the recycled product not being comparable to those in an analogous product or intermediate. This determination can take into account exposure of toxics in the product, bioavailability of toxics in the product or other relevant considerations that show the recycled product does not contain levels of hazardous constituents that pose a risk to human health or the environment. The facility then must prepare documentation explaining its assessment and include a certification that the recycling is legitimate. In addition, the facility would need to notify the appropriate Regional Administrator (or State Director, in an authorized state) of this finding.

This provision is a less burdensome process for both recyclers and the states implementing the RCRA program because it maintains the self-implementing nature of the legitimacy requirement. However, because facilities will still have to provide notice to the regulatory agency, it also allows implementing agencies to perform oversight and inspections of recycling facilities if they are concerned about the legitimacy of a specific recycling process.

XVIII. Major Comments on the Revisions to Solid Waste Variances and Non-Waste Determinations

In the July 2011 DSW proposed rule, EPA proposed several modifications to the existing regulations for solid waste variances and non-waste determinations in 40 CFR 260.31(c), 40 CFR 260.33 and 40 CFR 260.34 to ensure protection of human health and the environment and foster greater consistency on the part of implementing agencies.

A. Requiring Facilities To Re-Apply for a Variance or Non-Waste Determination

In the July 2011 DSW proposal, EPA proposed to revise 40 CFR 260.33(c) to require facilities to re-apply for a variance in the event of a change in circumstances that affects how a material meets the criteria upon which a solid waste variance has been based, as is currently required for non-waste determinations. Additionally, EPA requested comment on whether to require variances and non-waste determinations to be renewed periodically, and, if so, what time period would be appropriate (*e.g.,* two or five years as suggested in the preamble to the 2011 July DSW proposal).

Comments: Re-Apply for a Variance in the Event of a Change

The majority of commenters supported EPA's proposed change to require facilities to re-apply for a variance in the event of change in circumstances that affects how a hazardous secondary material meets the criteria upon which a solid waste variance has been based. The commenters believe the change promoted clarity and consistency in the regulations and that it made sense to ensure the hazardous secondary materials continued to meet the conditions of the exclusion over time. Other commenters, however, while supporting such a provision, urged EPA to require a re-certification rather than a full application process so as to reduce the burden on states and the regulated community.

A few commenters disagreed with this provision, as they argued that administrative authorities already use discretion to review changes in circumstances.

EPA's Response: Re-Apply for a Variance in the Event of a Change

EPA agrees with the majority of commenters that finalizing a requirement to require facilities to take action in the event of a change in circumstances will ensure the hazardous secondary material remains eligible for a variance and continues to meet the variance criteria over time. EPA also agrees with those commenters that suggested ways to reduce the administrative burden on states and the regulated community. Therefore, in today's final rule, EPA is requiring that, in the event of a change, the facility must send a description of the change to the regulatory authority and the regulatory authority will determine whether the facility must re-apply for a variance. This change in procedure allows both the regulatory authority and regulated community to avoid spending unnecessary resources where the change in circumstances is found to be of no consequence to the original variance that the regulatory authority has granted. EPA notes that re-applying for a variance should be less burdensome than the initial application because a facility would only have to update its original application.

EPA disagrees with those commenters who opposed this change on the basis that regulatory authorities already use discretion to review changes in circumstances. First, the changes that EPA made to the final rule would not automatically require a person to re-apply for the variance, but make the regulatory authority aware of the change so that an informed decision could be made as to whether the variance is still appropriate. Moreover, relying on case-by-case discretion to require notice in the event of a change could allow certain hazardous secondary materials to remain excluded from regulation under Subtitle C of RCRA, even though based on the changed circumstances, the variance is no longer appropriate, and could present a risk to human health and the environment. It would also contradict the Agency's goal to foster greater consistency on the part of implementing agencies.

Comments: Periodic Renewal of Variances and Non-Waste Determinations

A number of commenters did not support requiring periodic renewals of variances and non-waste determinations. Commenters opposed this change because of the additional burden on both the states and the regulated community and the fact that this would not be needed if EPA finalized its proposed change to require a renewal or recertification in the event of a change. Additionally, some commenters argued that the administrative authority already has discretion to set renewal timeframes as a condition of the variance. One commenter argued that facilities make significant business investments based on regulatory certainty and, thus, if variances are subject to repeal, this may prevent investment in recycling activities.

A few commenters, however, supported a renewal requirement and argued that reapplying in the event of a change is not the same as a periodic renewal. This commenter argued that the requirement to re-apply in the event of a change relies almost entirely on the facility to self-report on a change in circumstances, of which the facility may have an economic incentive not to do. Other commenters suggested that generators ''re-certify,'' rather than re-apply, on an annual or biennial basis that they continue to meet the conditions of a variance or non-waste determination in order to reduce administrative burden.

EPA's Response: Periodic Renewal of Variances and Non-Waste Determinations

EPA agrees with the commenters that supported a renewal requirement for solid waste variances and non-waste determinations. Variances and non-waste determinations are granted based on case-specific circumstances of a particular hazardous secondary material being recycled. Many of the variance and non-waste determination criteria specifically consider factors such as, the manner in which the hazardous secondary material is recycled, the market factors of the recycling process, the value of the hazardous secondary material, and contractual arrangements. However, these factors are not static and, instead, change and evolve over time. It is therefore prudent that regulatory authorities periodically review these case-specific situations to ensure that the hazardous secondary material continues to meet the criteria of the variance or non-waste determination. Therefore, EPA is adding a provision to 40 CFR 260.33(d) that solid waste variances and non-waste determinations shall be effective for a fixed term not to exceed 10 years, which is the same term limit for RCRA hazardous waste permits under 40 CFR 270.50(a).

EPA is establishing a time limit of 10 years (rather than two or five years, as suggested in the July 2011 proposal) considering the need to provide regulatory certainty to support business investment, as well as the fact that 10 years is the same as the duration of RCRA permits under 40 CFR 270.50(a). The 10-year time frame also ensures that renewals occur regularly enough in order to evaluate significant changes in recycling processes, technologies, and market factors that may affect the terms of a variance or non-waste determination.

EPA disagrees with those commenters who argued that periodic renewals would not be needed if EPA finalized the proposed change to require notice in the event of a change in circumstances that affect how a hazardous secondary material meets the conditions of a variance or, as currently required for a non-waste determination. As one commenter noted, the requirement to provide notice in the event of a change relies on a facility self-reporting that change and thus, this requirement may not be consistently implemented. A periodic time limit, in this case 10 years, however, triggers a re-review of the circumstances without relying on self-reporting by the facility. Furthermore, EPA disagrees with commenters who opposed this change on the basis that regulatory authorities already use discretion to review changes in circumstances. (See response to this comment in EPA's Response to ''Re-Apply for a Variance in the Event of a Change.) Regarding the commenter that argued that periodic renewals would disrupt business investment, EPA finds that a time limit of ten years (rather than two or five years, as suggested in the

July 2011 proposal) is a sufficient amount of time to provide regulatory certainty to support business investment, given that ten years is the same as the duration of RCRA permits.

B. Requiring Notification for Facilities Operating Under Variances and Non-Waste Determinations

In the July 2011 DSW proposal, EPA proposed to add a provision under 40 CFR 260.33 stating that facilities receiving a variance or non-waste determination must provide notification as required under 40 CFR 260.42. This would require facilities to send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the EPA or the State Director, if the state was authorized, using EPA Form 8700–12.

Comments: Requiring Notification for Facilities Operating Under Variances and Non-Waste Determinations

Commenters were split on this issue. Many commenters supported requiring facilities receiving a solid waste variance or non-waste determination to submit notifications in compliance with 40 CFR 260.42. These commenters believed that the notification would provide updated information about a facility's activities and would enable better compliance monitoring. These commenters also agreed that notification would improve transparency, because the notifications could be available online.

However, many commenters opposed requiring facilities that receive a variance from being a solid waste or non-waste determination to submit notifications. These commenters argued that the act of applying for and receiving a variance or non-waste determination constitutes adequate notification for regulatory authorities. These commenters also argued that notification would increase the burden on facilities and was not necessary if EPA finalized its proposal to require facilities to re-apply in the event of a change.

EPA's Response: Requiring Notification for Facilities Operating Under Variances and Non-Waste Determinations

Although EPA recognizes the arguments both for and against notification, EPA agrees with those commenters who support notification in order to enable better compliance monitoring and to improve transparency. Therefore, EPA is finalizing a requirement in 40 CFR 260.33(e) that facilities receiving a variance or non-waste determination must provide notification as required by 40 CFR 260.42.

This requirement serves to meet EPA's goal to foster greater consistency on the part of implementing agencies and to help ensure the proper implementation of the solid waste variances and non-waste determinations. The intent of the notification is to enable variances and non-waste determinations to be tracked nationally and over time, which facilitates state-to-state consistency in determinations. Additionally, notification enables effective oversight of facilities receiving solid waste variances and non-waste determinations because it provides regulatory authorities with a mechanism for receiving regularly updated information (such as information regarding quantities of hazardous secondary materials managed under the determination). Furthermore, this information can be used to identify facilities which may have undergone changes to their reclamation process significant enough to trigger a review of the determination under 40 CFR 260.33(c).

EPA does not agree that the solid waste variance or non-waste determination application itself constitutes adequate notification. Currently, individual facility applications are not tracked nationally and there exist no consolidated list of facilities operating under a solid waste variance or non-waste determination. Notification, using EPA Form 8700–12, ensures that standard information regarding facilities receiving solid waste variances and non-waste determinations can be collected, stored, and used to enable compliance monitoring and to foster consistency in implementing the regulations.

We also do not agree that the notification requirement is duplicative of the requirement to send notice in the event of a change because the two requirements serve different purposes and require different information. In the event of a change, facilities must send a description of the change in circumstances to EPA or the authorized state, who then make an evaluation as to whether a facility should re-apply for a solid waste variance or non-waste determination. Under 40 CFR 260.42, facilities submit information, such as type and quantity of hazardous secondary material being managed, using EPA Form 8700–12, which enables the information to be entered into EPA's database where it can be accessed by both EPA and state regulatory authorities.

Furthermore, EPA does not agree that notification using EPA Form 8700–12 poses an undue burden. The form is relatively simple to complete and is currently being used for facilities excluded from the definition of solid waste under 40 CFR 261.4(a)(23). Additionally, EPA is currently developing an electronic submission process, which will further reduce reporting burden.

C. Revisions to the Partial Reclamation Variance

In the July 2011 DSW proposal, EPA proposed to revise the partial reclamation variance provision of 40 CFR 260.31(c) to clarify when partially-reclaimed materials are not solid waste because they are commodity-like. Specifically, EPA proposed to: (1) Revise the introductory text to clarify when the variance applies; (2) revise the introductory text to require that all of the decision criteria must be met; (3) revise the language of all of the decision criteria; and (4) eliminate the sixth criterion, that is, ''other relevant factors.''

Comments: General Comments on Proposed Changes to Partial Reclamation Variance

Many commenters supported EPA's proposed changes to the partial reclamation variance. In fact, two of these commenters argued that existing variances that do not meet the new criteria should be rescinded or revised.

A few commenters, however, did not support the proposed changes. These commenters argued that EPA does not have the record to support its finding that states are inconsistently and incorrectly applying the partial reclamation variance criteria and that variances granted by the states are not protective of human health and the environment. Additionally, one commenter argued that EPA provided no documentation for public review to substantiate how EPA intended the variance criteria to apply when it promulgated the variance in 1985. Another commenter argued that the proposed changes will restrict recycling.

EPA's Response: General Comments on Proposed Changes to Partial Reclamation Variance

EPA agrees with commenters who supported the proposed changes. Not finalizing the proposed revisions to the partial reclamation variance would only result in a continuation of inconsistency among state determinations, which in some cases, allow partially-reclaimed materials to be excluded from the definition of solid waste when they are

clearly not commodity-like, but rather hazardous wastes. EPA notes, however, that the final changes to the partial reclamation variance criteria only apply to facilities receiving variances after the effective date of today's rule. The changes are not retroactive and thus would not apply to facilities currently operating under existing partial reclamation variances, unless and until the facility's variance came up for renewal. Thus, the Agency does not agree with those commenters who suggested that any variance that does not meet the revised criteria should be rescinded or revised immediately.

EPA estimates that the states have granted between 15 to 20 partial reclamation variances, including variances granted in Indiana, Louisiana, Ohio, Oregon, Pennsylvania, Texas and Washington. EPA itself has also issued a partial reclamation variance to World Resource Company (WRC) in Arizona. (See list of partial reclamation variances issues by the states in today's docket.) Some of the partial reclamation variances were granted as the Agency intended and have required RCRA Part B storage and treatment permits for the incoming hazardous waste material. Other states, however, have issued partial reclamation variances which contradict the intention of the partial reclamation variance. For example, EPA publicly expressed its disagreement in a November 18, 2010, letter to Indiana's Department of Environmental Management (IDEM) concerning the tentative approval of a facility's request for a partial reclamation variance, a copy of which is found in today's docket. In our letter, we made clear that we did not believe IDEM should grant a partial reclamation variance to incoming hazardous wastes that were not ''sufficiently commodity-like to qualify for the variance.''

EPA also disagrees with commenters who argued that EPA's record does not provide adequate basis for how the Agency intended the partial reclamation variance to operate. In the preamble to the 1985 DSW final rule (January 4, 1985; 50 FR 655), the Agency made clear that incoming materials to a partial reclamation facility were hazardous wastes and that the facility processing these incoming materials must obtain appropriate RCRA Part B storage and treatment permits. (Furthermore, these facilities are also subject to biennial reporting under 40 CFR 264.75.) Additionally, the Agency points to the partial reclamation variance it issued to WRC on August 13, 2002 (67 FR 52617) as a public example of the how the Agency intended for the partial reclamation variance to be implemented. In this case, the Agency's partial reclamation variance to WRC for the partial reclamation of F006 electroplating sludges required WRC to obtain RCRA Part B storage and treatment permits for the incoming hazardous waste.

In addition, EPA disagrees that the final rule changes will unnecessarily restrict recycling. Today's changes clarify how the partial reclamation variance has always been intended to operate; thus, any recycling that is consequentially restricted from the variance as a result of the changes was never intended to be excluded from hazardous waste requirements. EPA maintains that hazardous waste must be managed under appropriate hazardous waste requirements in order to ensure protection of human health and the environment.

Comments: Revisions to Introductory Text

Most commenters supported the proposed changes to the introductory text, including requiring that all criteria must be met and requiring compliance with the legitimacy criteria in 40 CFR 260.43. One commenter, while supporting the proposed changes said that EPA should define vague words such as ''commodity-like,'' ''sufficient economic value,'' and ''substantial.'' Another commenter said that commodity-like partially-reclaimed material must be marketable to the general public, that is, it must be a material that could be marketed to more than one facility.

Some commenters did not agree that all the criteria must be met. One commenter argued that this conflicts with EPA's 1985 preamble in which EPA said the Regional Administrator can weigh factors and may rely on any or all of them to reach a decision. Additionally, the WRC variance that EPA issued acknowledged that the partial reclamation steps being performed were ''not elaborate.'' However, the partial reclamation involved by WRC was sufficiently substantial to produce a commodity-like material as verified by contracts, sales, and subsequent management of the commodity-like material. Other commenters believed EPA's proposed changes to the introductory text imposed prescriptive conditions which conflict with the intent of the variance by restricting the administrative authority's decision-making discretion.

EPA's Response: Revisions to Introductory Text

EPA agrees with those commenters who supported the proposed changes to the introductory text, including requiring that all criteria must be met and requiring compliance with the legitimacy factors in 40 CFR 260.43. In response to the one commenter who believed that certain terms are vague, it is EPA's intent with this final rule to clarify how the partial reclamation variance should be applied. Although, specific definitions would be difficult to promulgate given the broad applicability of the terms, EPA notes that today's preamble discussion along with today's regulatory revisions to the variance criteria serve to better define how EPA is using these terms in the partial reclamation variance, particularly when a material becomes commodity-like. For example, EPA notes in its preamble that criteria 2–5 define the fundamental characteristics that indicate whether a partially-reclaimed material is ''commodity-like.''

Regarding comments that argued against requiring all criteria to be met, EPA has determined that in order to reduce the inconsistency in state-to-state partial reclamation variances, the criteria must be made more prescriptive. Balancing the factors, as was EPA's original direction in 1985, has resulted in subjective interpretations that differ across states and which, in some cases, do not align with the original intent of the partial reclamation variance. EPA finds that requiring all criteria to be met is a more effective framework for determining when a partially-reclaimed material is commodity-like and therefore not a solid waste.

Comments: General Comments on Revisions to Variance Criteria

Many commenters supported the changes to the criteria of the partial reclamation variance. However, a few commenters disagreed with inserting the word ''whether'' at the beginning of each criterion because it implied the criterion was more prescriptive. A few commenters also argued that EPA's proposed insertion of the word ''partially'' before ''reclaimed'' disregards the fact that EPA has acknowledged that more than one processing step may be necessary before the inherent value of a usable product is recovered.

EPA's Response: General Comments on Revisions to Variance Criteria

EPA agrees with the many commenters that supported the proposed changes to the variance criteria. Regarding EPA's proposed insertion of the word ''whether'' in each criterion, the intent of this change is to make the criteria more prescriptive in order to reduce the inconsistency of

partial reclamation variance determinations. EPA also disagrees that adding the word ''partially'' in front of ''reclaimed'' disregards the fact that EPA has acknowledged that more than one processing step may be necessary before the inherent value of a usable product is recovered. EPA recognizes that reclamation of hazardous secondary materials may involve multiple steps and hazardous waste may be recycled in any number of steps in accordance with the hazardous waste regulations. However, EPA maintains that a variance from the definition of solid waste is appropriate only for partially-reclaimed material that is commodity-like, as demonstrated by satisfaction of the partial reclamation criteria.

Comments: Proposed Criterion (1)—Whether the Degree of Partial Reclamation the Material Has Undergone Is Substantial

For the first proposed criterion, two commenters argued that EPA's use of ''partial reclamation'' in place of ''processing'' did not provide additional clarification. Another commenter stated the criterion should state EPA's intent on 76 FR 44129 and read ''whether the degree of partial reclamation the material has undergone is substantial and the material produced is not the original hazardous waste.'' Other commenters were concerned regarding the term ''substantial,'' because it is subjective and needs a better definition. These commenters argued that EPA has not provided a standard regarding when a material is ''no longer the original hazardous waste.''

EPA's Response: Proposed Criterion (1)—Whether the Degree of Partial Reclamation the Material Has Undergone Is Substantial

EPA disagrees with those commenters who argued that EPA's use of ''partial reclamation'' in place of ''processing'' did not provide additional clarification. The term ''processing'' is a broad, general term that can refer to a number of processes, such as the process used to generate the hazardous waste. However, the intention of the partial reclamation variance is to evaluate, specifically, the degree of partial reclamation and therefore it makes sense to use ''partial reclamation'' in criterion 1. Additionally, this revised language for the first criterion conforms to the revised changes in the introductory text of the partial reclamation variance.

EPA agrees with commenters that adding a clarifying statement to criterion (1) is helpful and has added ''as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste'' after ''substantial.'' We believe this language clarifies (and responds to the comment regarding the term ''substantial'') that the process used to generate the hazardous waste (such as dewatering of sludge) would not be considered ''substantial'' under this criterion. Therefore, by emphasizing that the partial reclamation process must be substantial in the first criterion, the Agency is reiterating that the material produced by the partial reclamation process must be commodity-like as supported by also meeting criteria (2)–(5).

Under the final rule, EPA is finalizing the first criterion to read: ''Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste.''

Comments: Proposed Criterion (2)—Whether the Partially-Reclaimed Material Has Sufficient Economic Value That it Will Be Purchased for Final Reclamation

For the second proposed criterion, one commenter supported EPA's emphasis in the preamble on the existence of contracts for the sale of the partially-reclaimed material. This commenter argued that such emphasis is important to ensure that partial reclaimers do not accumulate significant quantities of material without assurance that a willing buyer actually exists. This commenter stated that an example of excess accumulation risk is shown by the variance recently granted by IDEM to the facility, ShoreMet, in which the variance was granted on the basis that a market for the partially-reclaimed material would exist solely because other reclaimers had sold fully-reclaimed F006 (wastewater treatment sludges from electroplating operations) and F019 (wastewater treatment sludges from aluminum coating processes). This commenter argued that such an analysis does not ensure that ShoreMet can market its partially-reclaimed material.

Another commenter argued that reclamation may involve more than one processing step and that the proposed changes to this criterion limit the administrative authority's ability to consider the value of the partially-reclaimed material and the usable end products. This commenter also argued that the term ''value'' in 40 CFR 260.43 means sold to a third party or used as an effective substitute, which may not apply here. Still another commenter noted the F006 reclamation guidance [51] allows the use of theoretical ''on paper'' value of precious metals present, despite that substantial processing might be needed before those precious metals realize market value.

EPA's Response: Proposed Criterion (2)—Whether the Partially-Reclaimed Material Has Sufficient Economic Value That it Will Be Purchased for Final Reclamation

EPA agrees with the commenter that supported EPA's emphasis in the preamble on the existence of contracts for the sale of the partially-reclaimed material as demonstrating the second criterion is being met.

As we have stated previously, the partial reclamation variance is for those hazardous secondary materials that have been partially-reclaimed but, must be reclaimed further, as long as the partial reclamation has produced a commodity-like material. That is, if the partially-reclaimed material is being purchased for further reclamation, the Agency considers the partially-reclaimed material to have sufficient economic value, regardless of how each party calculates the value to be paid. Evidence to support this criterion may include sales information; demand for the materials; and business contracts, such as contracts specifying quantities of material sold, details of the transaction, and the effective price paid for the partially reclaimed material by purchasers (*i.e.,* after subtracting transportation costs and any other goods or services rendered in exchange for the material purchased).

EPA is making one change to the proposed second criterion. As noted above, EPA understands that reclamation of hazardous waste may involve multiple steps and thus EPA finds it is more appropriate to ensure that the partially-reclaimed material is purchased for ''further reclamation'' rather than ''final reclamation'' to allow for processes that use more than one reclamation step in processing the partially-reclaimed material. Therefore, the final second criterion in today's rule reads: ''Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation.''

[51] U.S. EPA, ''Background Document: Providing Context—The Example of F006 Electroplating Sludges,'' June 2011. Docket ID: EPA–HQ–RCRA–2010–0742–0016.

Comments: Proposed Criterion (3)—Whether the Partially-Reclaimed Material Is a Viable Substitute for a Product or Intermediate Produced From Virgin or Raw Materials Which Feeds Subsequent Production Steps

For the third criterion, one commenter disagreed with the proposed wording change because it restricts the authority's ability to consider the benefit provided by subsequent processing of the partially-reclaimed material and directs the authority only to consider whether it is immediately a substitute or product before further processing. Another commenter suggested replacing the phrase ''which feed subsequent production steps'' with the phrase ''that is used in a subsequent manufacturing process'' to be more clear. Still another commenter suggested that this criterion should state more plainly that ''it is a substitute for ingredients, intermediates, or commercially available virgin/raw materials.''

EPA's Response: Proposed Criterion (3)—Whether the Partially-Reclaimed Material Is a Viable Substitute for a Product or Intermediate Produced From Virgin or Raw Materials Which Feeds Subsequent Production Steps

EPA maintains that the partial reclamation variance is for those materials that have been partially-reclaimed, but must be reclaimed further, as long as the partial reclamation has produced a commodity-like material. Thus, whether or not a material is produced at a later stage of reclamation as a viable substitute for a product or intermediate is not relevant in determining whether a partially-reclaimed material produced earlier is commodity-like.

EPA agrees with the commenter who suggested replacing the phrase ''which feed subsequent production steps,'' with the commenters suggested wording, with certain modifications, in order to improve clarity. Therefore, the Agency is modifying this criterion to read, ''whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials, which is used in subsequent production steps.'' With this clarification, the Agency is making clear that, while multiple steps may be involved in producing a commodity-like material, it is only when the partially-reclaimed material is a viable substitute for a product or intermediate is it considered ''commodity-like.''

EPA is not making the suggested change to state that the partially-reclaimed material ''is a substitute for ingredients, intermediates, or commercially available virgin/raw materials'' because EPA is concerned that this language may introduce confusion in distinguishing between when a partially-reclaimed material is ''commodity-like'' as compared to raw or virgin material that would need to undergo substantial processing before meeting this definition. Therefore, EPA is maintaining the proposed language to read ''is a viable substitute for a product or intermediate produced from virgin or raw materials.''

Comments: Proposed Criterion (4)—Whether There Is a Guaranteed Market for the Partially-Reclaimed Material

For the fourth proposed criterion, whether there is a guaranteed market for the partially-reclaimed material, a few commenters argued that EPA is not specific enough to meet its objective and suggested that the criterion should read ''whether there is a guaranteed and secure long-term market for the partially-reclaimed material.'' These commenters also stated that EPA should include in the final rule more empirical and measurable ways to define this concept, for example including markets with consistent positive profit margins for a minimum of ten years.

EPA's Response: Proposed Criterion (4)—Whether There Is a Guaranteed Market for the Partially-Reclaimed Material

EPA agrees that clarity is needed and has modified the fourth criterion to include examples of how a market for the partially-reclaimed material can be demonstrated. The fourth criterion now reads, ''whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (*e.g.* record of sales and/or contracts, and evidence of subsequent use, such as bills of lading).'' In response to the commenter who urged EPA to include more empirical and measurable ways to define this concept, the Agency has determined that examination of the contracts, record of sales, and bills of lading between the partial reclaimer and its customers will provide adequate evidence of whether this criterion is satisfied.

Comments: Proposed Criterion (5)—Whether the Partially-Reclaimed Material Is Handled To Minimize Loss

For the fifth proposed criterion, one commenter argued that ''minimize loss'' should be better defined and that, at a minimum, the partially-reclaimed material should meet the ''contained'' standard for hazardous secondary materials and be managed exactly like any other commodity.

EPA's Response: Proposed Criterion (5)—Whether the Partially-Reclaimed Material Is Handled To Minimize Loss

EPA does not find that the phrase ''minimize loss'' needs to be better defined. As we have discussed elsewhere and in the preamble to the 2011 July DSW proposal, evidence to support this criterion may include documentation of facility procedures used to minimize loss (*e.g.,* inspections, training) and storage and management equipment designed to minimize loss. Additionally, under today's final rule, partially-reclaimed materials must meet the legitimate recycling standard in 40 CFR 260.43, which requires that the hazardous secondary materials be managed as a valuable commodity. This criterion explains that, where there is an analogous raw material, the hazardous secondary materials must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material should be contained, as defined in 40 CFR 260.10.

Comments: Revision To Eliminate Sixth Criterion

Many commenters supported EPA's proposal to eliminate the sixth criterion concerning other relevant factors. One commenter stated that criterion six has been and is currently being used as a primary basis for granting partial reclamation variances for hazardous secondary materials, and has led to the creation of unfair and illegal advantages for some reclaimers.

A few commenters, however, disagreed with the proposed change. One commenter argued that removing criterion six conflicts with the intent of the partial reclamation variance by restricting the administrative authority's discretion. Other commenters argued that the overall situation should be considered and that an applicant's history of compliance would be an ''other relevant factor'' that should be considered when evaluating an application for a partial reclamation variance.

EPA's Response: Revision To Eliminate Sixth Criterion

EPA agrees with those commenters that supported the elimination of the sixth criterion. The sixth criterion has resulted in subjective interpretations which have led, in the Agency's view, to incorrect application of the partial reclamation variance and therefore, EPA

is removing it from the list of criteria. We do not agree with the commenter who argued that removing this criterion would restrict the administrative authority's discretion. For example, EPA agrees with those commenters who said that an applicant's history of compliance could be considered as part of a partial reclamation variance determination. However, rather than requiring that compliance be considered under a sixth criterion, EPA notes that compliance would likely be a factor in determining how the facility is meeting the legitimate recycling factors in 40 CFR 260.43 and the partial reclamation variance criteria (1)–(5). For example, regulatory compliance could be used regarding whether the partially-reclaimed material is handled to minimize loss.

D. Revision to the Criteria for Non-Waste Determinations To Require Petitioners To Demonstrate Why Their Material Cannot Meet an Existing Exclusion

EPA proposed to revise the criteria for the non-waste determination in 40 CFR 260.34 to require that petitioners explain or demonstrate why their hazardous secondary materials cannot meet, or should not have to meet, the existing DSW exclusions under 40 CFR 261.2 or 40 CFR 261.4.

Comments: Non-Waste Determination Criteria To Require Petitioners To Demonstrate Why Their Material Cannot Meet an Existing Exclusion

Many commenters agreed with this proposed change. These commenters noted that, as a practical matter, it would seem facilities seeking such a determination would have already evaluated the existing exclusions and thus, requiring this information should not be overly burdensome.

A few commenters, however, disagreed with this proposed change. One commenter argued that petitioners will be unwilling to provide justification at the risk of disqualification of an accepted exclusion in another state or EPA region for the same process. Another commenter noted that there may be legitimate reasons where the use of an exclusion might be too close to call and the facility wants greater comfort in a determination. A third commenter argued it is unreasonable for EPA to place the burden of interpreting EPA's regulations on those who are regulated prior to consenting to review a request for a non-waste determination.

EPA's Response: Non-Waste Determination Criteria To Require Petitioners To Demonstrate Why Their Material Cannot Meet an Existing Exclusion

EPA agrees with those commenters who supported this proposed change to require that petitioners explain or demonstrate why their hazardous secondary materials cannot meet, or should not have to meet, the existing DSW exclusions under 40 CFR 261.2 or 40 CFR 261.4. EPA agrees that this type of evaluation should already have been conducted by facilities that are formally petitioning the state or EPA for a non-waste determination. This provision provides the regulatory authority with the information it needs, while helping to reduce the number of applications because facilities will be forced to evaluate whether an existing self-implementing exclusion may be used.

EPA does not agree with the opposing arguments presented by the commenters as a basis for not finalizing the proposed change. These arguments, including that a facility may want more comfort in a determination and that EPA shouldn't put the burden on facilities to interpret regulations, are precisely why EPA and authorized states would benefit from receiving an explanation or demonstration from the facility why they cannot or should not have to meet an existing exclusion. This information would enable regulatory authorities to review and resolve questions regarding whether a non-waste determination may be warranted. Additionally, EPA does not find convincing the argument that a facility may be unwilling to provide justification at the risk of disqualification of an accepted exclusion in another state or EPA region. In fact, by finalizing this change, EPA is fostering greater consistency in state-to-state interpretations.

E. Designation of the Regional Administrator as the EPA Recipient of Petitions for Variances and Non-Waste Determinations

In the July 2011 DSW proposal, EPA proposed to change the word ''Administrator'' to ''Regional Administrator'' in 40 CFR 260.30, 260.31, 260.32, 260.33, and 260.34. Due to the case-specific nature of the variances and non-waste determinations, EPA believed that these decisions may be better made by the Regional Administrator.

Comments: Designation of the Regional Administrator as the EPA Recipient of Petitions for Variance and Non-Waste Determinations

Most of the comments on this issue opposed the proposed change arguing that there are significant differences in regional interpretations just as there are differences in state interpretations and that the change will lead to increased inconsistency in the implementation of variances and non-waste determinations. Other commenters urged EPA to clarify that petitions for solid waste variances and non-waste determinations may be sent to Directors of authorized states, just as the petition process works currently. These commenters argued that states are delegated by EPA to administer the hazardous waste regulations and, therefore, states have a role in reviewing solid waste variance and non-waste determination petitions.

Only a few commenters supported the proposed change.

EPA's Response: Designation of the Regional Administrator as the EPA Recipient of Petitions for Variance and Non-Waste Determinations

EPA recognizes the commenters' concerns who argued that designating the Regional Administrator, rather than the Administrator, as the person responsible for evaluating such petitions and deciding whether to grant a solid waste variance or a non-waste determination may increase inconsistency by virtue of there being ten Regional Administrators as compared to the one Administrator. Because the Agency is striving for as much consistency as possible, we have decided not to finalize this proposed change. We would also note that the rule does not change in any way the delegation of authority to states authorized to administer the hazardous waste regulations and thus, authorized states that have adopted these provisions may continue to evaluate and decide whether to grant a solid waste variance or a non-waste determination, as they do currently.

F. Requirement To Share Copies of Variances and Non-Waste Determinations

In the July 2011 DSW proposal, EPA requested comment on whether to require states to share copies of any solid waste variance and non-waste determination petitions and the tentative decisions with EPA for review and comment in order to encourage collaboration and national consistency. Formalizing collaboration would have

the benefit of reinforcing existing working relationships between EPA and the states.

Comments: Requirement To Share Copies of Variances and Non-Waste Determinations

A number of comments did not support a requirement for states to share copies of solid waste variance and non-waste determination petitions with EPA for comment. These commenters argued that another layer of bureaucracy would delay the process. One commenter was concerned with protecting a company's confidential business information. Another commenter argued that EPA has not made an adequate case for the need for national approvals and that there may be legitimate reasons for arriving at different conclusions, for different variance petitions.

Some commenters, however, supported EPA's efforts to collect solid waste variance and non-waste determination decisions and to share the information with other states.

EPA's Response: Requirement To Share Copies of Variances and Non-Waste Determinations

EPA recognizes commenters' concerns who argued that requiring states to share copies of solid waste variance and non-waste determination petitions with EPA for review and comment would likely increase the duration of the petition process. Therefore, EPA is not codifying this requirement in the final rule. EPA, however, will likely continue to work with the states in order to increase state-to-state consistency in such determinations and may pursue non-regulatory efforts to collect and share solid waste variances and non-waste determinations as part of implementing the final rule.

XIX. Major Comments on the Proposed Revisions to Pre-2008 Recycling Exclusions

In the 2011 DSW proposed rule, EPA considered whether additional requirements should be codified for recycling exclusions and exemptions that EPA promulgated prior to the 2008 DSW final rule. Specifically, EPA requested comment on codifying the legitimate recycling standard in 40 CFR 260.43, the contained standard in 40 CFR 260.10, and the notification provision in 40 CFR 260.42 for 32 regulatory provisions that exclude or exempt certain types of recycling from full Subtitle C regulations.[52]

However, EPA explicitly did not reopen comment on any substantive provisions of the regulatory exclusions or exemptions. The inclusion of requirements for legitimacy, containment, and notification were strictly meant as means to better enforce the regulations.

The request for comment stemmed from EPA's analysis of a report it developed as part of the DSW rulemaking, ''An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials'' (environmental problems study), which analyzed 218 recycling damage cases.[53] The goal of the environmental problems study was to identify and characterize environmental problems that have been attributed to hazardous secondary material recycling activities. EPA then used the findings from this study to craft a number of conditions for the 2008 DSW final rule, which were specifically designed to target the major causes of damage and thus help define ''discard'' of hazardous secondary materials. These conditions, however, were applied only to the 2008 DSW exclusions.

EPA reviewed and analyzed each damage case in the environmental problems study and determined the regulatory provision that likely, or potentially, governed the management of the hazardous secondary materials.[54] This analysis was based on the type of hazardous secondary material and the date of the damage case related to the effective date of the regulatory provision. From this analysis, EPA had concluded that over half of the damage cases in the environmental problems study were associated with hazardous secondary materials that were likely excluded or exempted from Subtitle C regulation under an existing (pre-2008) regulatory provision.[55] For example, EPA reported in the 2011 DSW proposed rule that 52 damage cases (23%) are associated with scrap metal that is likely excluded under § 261.4(a)(13) and/or § 261.6(a)(3)(ii), while drum reconditioning accounted for 23 damage cases (10%), in which the residuals are likely excluded under 40 CFR 261.7. Additionally, 35 damage cases (16%) were associated with batteries that are likely managed under 40 CFR 273.2 and/or 40 CFR part 266 subpart G. Based on these results, and given that many of the pre-2008 recycling exclusions do not directly specify conditions that are necessary to ensure discard is not occurring, we concluded that these provisions may not be adequately enforceable in order to protect human health and the environment. Thus, in the 2011 DSW proposal, we requested comment on whether EPA should codify additional conditions for these recycling exclusions.

Many comments in response to EPA's request for comment on whether the Agency should codify additional conditions to the pre-2008 recycling provisions were unfavorable, although a number of comments indicated support for the codification.

Comments: Potential Impact of Additional Requirements

Industry commenters, and scrap metal recyclers in particular, strongly opposed adding conditions, arguing that the additional conditions will pose an undue burden on businesses without any environmental benefit and will discourage recycling. For example, commenters argued that scrap metal recyclers go to great lengths to ensure that they do not handle hazardous waste. These commenters said that, if EPA were to add conditions to the scrap metal exclusion, a scrap metal recycler would be required to obtain additional insurance, local licenses, training, new inspection procedures, lawyers, and consultants in order to maintain compliance and to prepare for an inadvertent loss of the exclusion, which would make it a handler of hazardous waste. Commenters argued that many scrap metal businesses are small and family-owned and cannot afford these new requirements and thus, these regulations will severely affect business and jobs.

Many commenters also argued that the contained standard is not necessary or practical and would be expensive. Commenters believed that the one-size-

[52] EPA also proposed additional recordkeeping requirements in the speculative accumulation standard in 40 CFR 261.1(c)(8). See section XIV for responses to these comments.

[53] The original environmental problems study, published January 11, 2007, reviewed 208 damage cases. Based on information submitted by commenters to the 2007 DSW supplemental proposed rule, EPA reviewed an additional ten recycling damage cases in an addendum to the environmental problems study, published July 14, 2008. A second addendum was published in June 2011. As part of this DSW final rule, EPA updated the environmental problems study to combine all of the information compiled from the 2007 study, the 2008 and 2011 addenda, and new information collected by EPA since June 2011. This 2014 updated study includes information on 250 damage cases and can be found in the docket for today's rule.

[54] U.S. EPA *Correlation of Recycling Damage Cases with Regulatory Exclusions, Exemptions or Alternative Standards.*

[55] The determination that the hazardous secondary materials were ''likely'' associated with pre-2008 recycling exclusions and exemptions was based on the waste description and the fact that most recyclers did not appear to have a RCRA permit. EPA did not specifically verify if the damage case facility was operating under an exclusion or exemption.

fits-all approach that EPA requested comment on fails to reflect EPA's recognition over the years of the need to tailor any conditions for regulatory exclusions to the specific characteristics of the recycling activities. For example, one commenter argued that the contained standard is redundant for the spent wood preservatives exclusion under 40 CFR 261.4(a)(9), which already requires facilities to manage solutions and wastewater ''to prevent release to either land or groundwater or both'' and to construct recycling units so ''prior to reuse they can be visually or otherwise determined to prevent such release.'' This commenter also noted that drip pads must comply with 40 CFR part 265 subpart W. Other commenters noted that applying the contained standard to lead-acid batteries is inappropriate and unnecessary because EPA, on several occasions, has recognized that individual lead-acid batteries qualify as ''containers,'' citing a November 17, 1989, memo from Sylvia Lowrance (RO 13339). Furthermore, these commenters argued that the contained standard duplicates § 266.80(b).

Regarding notification, many commenters did not support adding notification to the pre-2008 exclusions. These commenters argued that the EPA Form 8700–12 (Site Identification Form) and, in particular the Addendum to the Site Identification Form, which is used to notify under 40 CFR 260.42, is too burdensome for facilities operating under a pre-2008 exemption/exclusion. For example, the Addendum requires facilities to list their hazardous secondary materials using EPA hazardous waste codes. In some cases, particularly for scrap metal recyclers, facilities would be required to determine which secondary material would be considered a hazardous secondary material, which may involve extensive testing in order to determine which hazardous waste code to report on the form. Additionally, the Addendum also requires facilities to report quantities of hazardous secondary material managed under the exclusions, but commenters explained that facilities operating under a pre-2008 exclusion have not generally determined which secondary material would be considered a hazardous secondary material, and therefore, any quantity estimates, which are required on the Addendum, would not be reliable for programmatic decisions. Moreover, commenters argued that notification would be difficult for facilities with multiple excluded processes. For example, one commenter explained that one facility in Tennessee has more than a hundred closed-loop recycling processes and thus it would be extremely onerous to report each process on a notification.

Commenters also argued that it is difficult to estimate the number of facilities operating under the exclusions and thus the impact on the state implementers of the notification program is uncertain. For example, notification would impact all forms of scrap metal handling (junk yards, scrap dealers, steel-makers), generators and handlers managing lead-acid batteries (vehicle repair facilities, retailers) and precious metals destined for reclamation (x-ray facilities, dentists, vets, jewelers). These commenters argued that most states are already under resource constraints and will be unable to cope with the tens of thousands of new forms that would need processing if EPA were to codify notification as a condition of the exclusions. Some state commenters suggested ways to reduce the burden on states, including not requiring periodic notifications on the same day that biennial reports are due and by implementing a process whereby notifications could be submitted electronically. Commenters also noted that the re-notification requirement for excluded facilities would be more stringent than what is currently required for hazardous waste small quantity generators.

EPA's Response: Potential Impact of Additional Requirements

EPA did not believe at the time of the proposal that the additional requirements—meeting the legitimate recycling standard, the contained standard, and the notification requirement—would present an undue burden on facilities. As discussed in more detail below, this is because EPA considers certain requirements, like legitimate recycling and containment, inherent in the definition of solid waste recycling exclusions and assumes that the regulated community already meets these standards. Notification was considered to be a simple reporting requirement that would pose minimal additional burden.

However, upon reviewing the comments, EPA has determined that more study is needed before taking action. Therefore, EPA is not making any changes to the language of the 32 recycling exclusions and exemptions at this time. In the case of the legitimacy provision, EPA is instead codifying a general prohibition against sham recycling. In the case of the contained standard and notification requirement, EPA is deferring any action until further study is conducted. EPA's response to comments regarding burden implications of each of the provisions is discussed in more detail below.

(1) *Legitimacy.* With respect to legitimacy, it has been EPA's long-standing policy that all recycling of hazardous secondary materials must be legitimate. If a facility is engaged in sham recycling, this, by definition, is not real recycling and that material is being discarded. Additionally, EPA considers the four legitimacy factors codified in 40 CFR 260.43 to be substantively the same as the existing legitimacy policy, which has been articulated in the 1989 Lowrance Memo and in various DSW **Federal Register** notices.

In proposing to codify the legitimate recycling standard for all exclusions, we did not intend to raise questions about the status of general legitimacy determinations that underlie these existing exclusions from the definition of solid waste, or about case-specific determinations that have already been made by EPA or the states. As noted in the comments, EPA generally considered the legitimacy of the recycling process when the original determinations were promulgated, and the Agency did not intend to force companies to have to reexamine long standing legitimate recycling practices. Therefore EPA is not revising the pre-2008 exclusions and exemptions to include a legitimacy requirement.

However, as discussed in section VIII, these material-specific exclusions from the definition of solid waste do not negate the basic requirement that the hazardous secondary material must be legitimately recycled. Therefore, EPA is codifying a general statement in § 261.2(g) that makes it clear that a hazardous secondary material found to be sham recycled is discarded and thus, is a solid waste. By codifying a prohibition on sham recycling that applies to all hazardous secondary materials being recycled, we are confirming that we expect anyone operating under a recycling exclusion or exemption to be doing so legitimately. EPA finds that this will give implementing agencies a clear regulatory statement that can be used to enforce against sham recyclers, yet not require the vast majority of recyclers that are performing legitimate recycling under the pre-2008 exclusions and exemptions to revisit previously-made legitimacy determinations.

Additionally, the Agency has, based on the public comments, made adjustments to the legitimacy factors to build in more flexibility for meeting each factor and thus, ease the use of the

standard. For example, EPA has modified factor 4 to rely on widely-recognized commodity standards and specifications in the case where there is no analogous product as a way of recognizing industry standards that ensure their products are legitimate. EPA gives the example in the regulatory text of commodity specification grades for common metals, which would be relevant to scrap metal recyclers, among other metal recyclers. EPA has also included a provision that states that when ''hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused, the product of the recycling process is comparable to a legitimate product or intermediate,'' and thus would meet factor 4. This revision addresses concerns regarding the closed loop exemption at § 261.4(a)(8), as well as mineral processing to produce primary metals, because these processes always include materials looping back into the process to ensure that all the valuable metals that can be extracted from the ore are being collected for use.

For more information and responses to comments on legitimacy, please see section XVII in today's preamble.

(2) *Contained.* With respect to the contained standard, EPA has long determined that hazardous secondary materials that are released to the environment and are not destined for recycling are clearly discarded. Based on the environmental problems study, the results of which showed mismanagement of hazardous secondary materials as one of the major causes of damage, EPA requested comment in the 2011 DSW proposed rule on applying the proposed contained standard to all hazardous secondary materials. EPA assumes that the vast majority of recycling facilities ''contain'' their hazardous secondary materials and thus would already meet the contained standard. Therefore, EPA assumed that the contained standard would not present any additional burden to the regulated community, especially since the contained standard is ''performance-based'' and provides much flexibility, but could be used to enforce against those facilities that were mismanaging their materials.

However, as the commenters' noted, EPA has already promulgated certain management standards for some exclusions based on the case-specific characteristics of the hazardous secondary material or recycling process (*e.g.,* drip pads used to manage wastewaters and/or spent wood preserving solutions under 40 CFR 261.4(a)(9)). Thus, EPA understands that simply applying the contained standard wholesale across the 32 recycling provisions, may not be the most efficient or effective course of action as EPA would not be considering how the contained standard would work within each specific exclusion and its existing conditions. Therefore, EPA is deferring action on applying the contained standard to the pre-2008 exclusions and exemptions until we can more adequately address commenters' concerns.

(3) *Notification.* With respect to notification, EPA's intent was to provide basic information to regulatory authorities in order to enable adequate compliance monitoring of the exclusions. EPA had requested comment on requiring notification under 40 CFR 260.42 using the Site ID Form (EPA Form 8700–12), which is the same provision used for the 2008 DSW final rule exclusions. Given that this form is familiar to the regulated community, we had not considered this requirement to pose an undue burden.

However, based on comments we received, we understand that using the same notification requirement developed for hazardous secondary materials that were recently excluded in 2008 presents challenges when used for hazardous secondary materials that have been excluded for many decades. For example, the notification provision in 40 CFR 260.42 requires information on types of hazardous secondary materials (using hazardous waste codes) and quantities of these materials. However, as noted by commenters, this is difficult, for example, for scrap metal recyclers, because these facilities currently do not distinguish between non-hazardous scrap metal and scrap metal that would be hazardous waste were it not for the exclusion. Requiring notification in this instance may infer that scrap metal recyclers would be required to extensively test their hazardous secondary material in order to determine if the scrap metal was hazardous, and therefore excluded, and to determine which hazardous waste code to report on the form. Additionally, the notification presents challenges for facilities with numerous closed-loop recycling processes because the form would require these facilities to specifically list each process. We also understand commenters' concerns regarding the burden on states that must review and process these forms. Because the majority of the pre-2008 exclusions and exemptions do not include notification requirements, EPA does not have precise data regarding how many facilities are recycling hazardous secondary materials under these exclusions and exemptions. This lack of data hinders EPA's ability to more precisely estimate the burden on states and whether such a requirement would be environmentally beneficial. Therefore, EPA is deferring action on applying notification to the pre-2008 exclusions and exemptions until we can more adequately address commenters' concerns.

Comments: EPA's Authority To Add Requirements to Pre-2008 Exclusions

Commenters stated that EPA lacks jurisdiction to add requirements to materials that are not solid wastes and, if EPA is changing its position on the waste status of these materials, the Agency must provide a reasoned explanation for disregarding facts and circumstances that underlay the prior policy. Some commenters argued that EPA had evaluated each of the hazardous secondary materials at the time it promulgated the exclusions and thus, EPA must demonstrate why management in compliance with the existing conditions constitutes discard.

EPA's Response: EPA's Authority To Add Requirements to Pre-2008 Exclusions

EPA disagrees with comments that argue that EPA does not have the authority to require conditions for hazardous secondary materials being recycled. As noted in the Background section of this preamble, in the Safe Food court case, the D.C. Circuit upheld an EPA rule that excludes from the definition of solid waste hazardous secondary materials used to make zinc fertilizers, and the fertilizers themselves, as long as the recycled materials meet certain handling, storage, and reporting conditions and the resulting fertilizers have concentration levels for certain hazardous constituents that fall below specified thresholds. It is therefore within EPA's discretion to determine conditions under which a hazardous secondary material is not being discarded and thus may be excluded from hazardous waste regulation.

However, EPA agrees that more information is needed before determining whether adding requirements to the pre-2008 exclusions and exemptions is needed to make them more enforceable. EPA's request for comment on this issue was based on conclusions drawn from the environmental problems study, which evaluated over 200 damage cases, and the *Correlation of Recycling Damage Cases with Regulatory Exclusions, Exemptions or Alternative Standards,* which analyzed which damage cases

were likely operating under a pre-2008 exclusion and exemption. From these studies, EPA concluded that over half of the damage cases were likely operating under an existing exclusion and exemption. However, EPA did not examine the specific underlying causes of the damage cases (whether they were based on the lack of oversight of the pre-2008 exclusions and exemptions or on other causes). Thus EPA has decided that additional information is needed to determine whether additional regulatory action is needed, or whether the problems should be addressed through some other method, such as outreach and compliance assistance.

Comments: Record Support

Many commenters argued that EPA's record does not support this regulatory change and that EPA failed to conduct a thorough analysis. For example, commenters argued that EPA's record needs to show that significant environmental problems have been caused by a meaningful number of facilities operating in compliance with the pre-2008 exclusions and exemptions. These commenters noted that many of the damage cases involve civil or criminal violations, indicating that the problem was non-compliance with the regulations, not from a lack of regulations. Thus, these commenters believed that EPA already has sufficient authority to enforce against bad actors. Additionally, EPA's own analysis only links damage cases to just seven exclusions, yet EPA is considering adding conditions to 32 exclusions.

EPA's Response: Record Support

EPA disagrees with comments that argue that since the environmental problems study includes cases with civil or criminal violations, this demonstrates existing regulations are adequately enforceable. On the contrary, the frequency of violations in the damage cases may demonstrate the need for greater, not less, oversight, particularly in the case of sham recycling, where discard via over-accumulation of material can become a major problem before the Agency can take action.

For example, in one of the damage cases, a facility whose primary business was mixing electric arc furnace dust (K061) with agricultural lime for sale as a micronutrient lost its customers and could not sell its product. However, the facility continued to accept K061, and, after approximately seven months, the facility had accepted over 60,000 tons of this hazardous waste and stored it on the ground in piles up to 30 feet high, with no prospect of it being used to produce a product and, thus, legitimately recycled. While the initial recycling of the K061 hazardous waste was legitimate, when the facility failed to produce a product that was actually sold, the K061 could no longer be considered legitimately recycled, resulting in significant risk to human health and the environment from discarded material. Therefore EPA is codifying a general probation against sham recycling, in order to prevent such cases from occurring.

However, in the case of containment and notification, EPA agrees with commenters and has determined that additional information about the underlying causes of the damage cases would be useful to determine whether additional regulatory action is needed, or whether the problems should be addressed through some other method, such as outreach and compliance assistance.

EPA also understands commenters' concerns regarding the limitations of the correlation analysis, including the fact that EPA could only correlate with confidence 7 of the 32 recycling exclusions and exemptions to damage cases in its environmental problems study. The analysis was hampered by a lack of precision in the data. For example, because notification is not required for the majority of pre-2008 exclusions and exemptions, we can only conservatively identify damage case correlations where the type of hazardous secondary material very clearly matches to an exclusion (*e.g.,* scrap metal). We lack information to make inferences for broadly applicable exclusions, (*e.g.,* use/reuse) or for broadly defined hazardous secondary materials (*e.g.,* metal-bearing wastes). Therefore, by virtue of some exclusions' broad applicability, we were unable to correlate them to specific damage cases.

Although it is difficult to assign specific damage cases to certain exclusions, we note that in the environmental problems study only nine of the damage cases were operating under a RCRA permit at the time of damage. Thus, EPA can generally conclude that the majority of the damage cases were operating outside of RCRA, inferring these facilities were either operating illegally or likely operating under an exclusion, exemption, alternate standard, or no standard at all. In the case of containment and notification, EPA has determined that additional information about the underlying causes of the damage cases would be useful to determine whether additional regulatory action is needed, or whether the problems should be addressed through some other method, such as outreach and compliance assistance.

Comments: Time To Comment

Industry commenters argued that they did not have adequate time to comment. Further, they had no forewarning of the changes EPA was considering before the proposal was issued. EPA's request for comment did not involve prior discussions with stakeholders, as is typical when developing proposed rules. Moreover, this issue was not part of the 2008 DSW final rulemaking, Sierra Club's petition, or part of EPA's settlement agreement with the Sierra Club. Many commenters urged EPA to meet with industry representatives in order to better understand industry practices.

Commenters also argued that if EPA codified a notification as a condition of the exclusions, thousands of facilities would be at risk of losing the exclusion due to failure to notify, which could result in civil fines and solid waste management fees for the facility. These commenters stated that notification as a condition in this instance presents acute risks to facilities operating under an exclusion, because, up to this point, these facilities have not been required to comply with the RCRA hazardous waste requirements. Thus, commenters said many facilities may fail to notify simply because they were unaware the regulations had changed.

EPA's Response: Time To Comment

EPA understands commenters that argued they did not have adequate time to comment on applying the contained standard and notification for pre-2008 recycling exclusions and exemptions. Contrary to the legitimate recycling standard, which has been EPA's long-standing policy and has been articulated in the 1989 Lowrance memo and various **Federal Register** notices, EPA had not previously indicated it was considering the contained standard and notification for pre-2008 exclusions and exemptions prior to the 2011 DSW proposal. Although the 2011 proposed rule provided an opportunity for public comment, EPA understands commenters' concerns, with notification in particular, as these provisions would impact thousands of businesses, many of which may not be closely following DSW rulemaking activity. EPA agrees that a more inclusive approach to a potential rulemaking that involves stakeholders in upfront discussions would likely result in gainful information, more effective strategies for addressing issues, and better communication with the regulated community.

Comments: Support for Adding Requirements to Existing Exclusions

Some commenters, including environmental organizations, supported adding conditions to the pre-2008 exclusions and exemptions, arguing that EPA must adopt the regulatory conditions, including the legitimacy standard in light of the risks posed by the 32 recycling exclusions and the historical pattern of environmental contamination at facilities that are exempt from RCRA. These commenters believed that the prevention of one damage case every two years would more than offset the compliance costs. Some state commenters also supported adding conditions to the pre-2008 exclusions and exemptions, although some argued that EPA should exempt certain types of hazardous secondary materials, like scrap metal, spent lead-acid batteries, closed-loop recycling, and printed circuit boards, from the requirements.

Other commenters supported adding notification to the pre-2008 recycling provisions. These commenters argued that states may not be aware of excluded activities unless they are occurring at facilities that are otherwise regulated or are the subject of a citizen complaint. These commenters said that notifications would allow states to periodically evaluate these facilities to ensure they are meeting the terms of the exclusion and that, while the initial burden on states might be quite heavy, the long-term benefit of knowing where these facilities are justifies this burden.

EPA's Response: Support for Adding Requirements to Existing Exclusions

EPA acknowledges commenters who support additional requirements for the pre-2008 exclusions and exemptions in order to avoid potential damage cases and protect human health and the environment. However, based on the comments received, the EPA has determined that it does not have enough information to determine if adding requirements to the existing pre-2008 recycling exclusions and exemptions would be the most effective method for addressing the damage cases or whether a more targeted approach would be more appropriate.

Regarding legitimacy, in lieu of adding a legitimacy requirement to the specific recycling exclusions, EPA is instead codifying a general statement in § 261.2(g) that makes it clear that a hazardous secondary material found to be sham recycled is discarded and thus, is a solid waste. EPA finds that this will give implementing agencies a clear regulatory statement that can be used to enforce against sham recyclers, yet not require the vast majority of recyclers that are performing legitimate recycling under the pre-2008 exclusions and exemptions to revisit previously-made legitimacy determinations. EPA also notes that today's final legitimacy standard includes modifications that address implementation concerns for certain hazardous secondary materials and processes, such as scrap metal and closed-loop recycling. For more information on these modifications, please see the other sections on legitimacy in this preamble.

Regarding the contained standard and notification, for reasons stated above, the Agency is deferring action on applying the contained standard and notification to the pre-2008 exclusions and exemptions in order to consider how best to implement these conditions in the context of the case-specific circumstances of the regulatory provisions.

XX. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out the HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than the existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 FR 271.1(i)). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations or that narrow the scope of the RCRA program and Subtitle C hazardous waste regulations would continue to apply in those states.

B. Effect on State Authorization of Final Rule

The regulations finalized in today's notice are not promulgated under the authority of HSWA. Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program.

The revisions to the definition of solid waste being finalized today are more stringent than those promulgated under the 2008 DSW final rule, so those states which have adopted the 2008 DSW final rule would be required to modify their programs. However, when compared to the federal program that was in place when the 2008 DSW final rule was finalized, many of today's revisions would be considered less stringent (*e.g.,* the revised generator-controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion). Therefore, authorized states that have not adopted the 2008 DSW final rule are not required to modify their programs to adopt these exclusions and the federally authorized state hazardous waste regulations applying the full subtitle C requirements will continue to apply in those states. As noted in footnote 58 of the proposed rule, final decisions regarding whether a state rule is more stringent under 40 CFR 271.1(i)(1) or broader in scope than the federal program under 40 CFR 271.1(i)(2) are made when the Agency authorizes state programs. However, the revisions to the definition of legitimacy and the prohibition of sham recycling, as discussed in section VIII of the preamble, are more stringent than the current federal hazardous waste

program because they codify implicit requirements that have been largely implemented through guidance. Also, the additional recordkeeping requirement in the speculative accumulation provision in 40 CFR 261.1(c)(8), as discussed in section V of the preamble, is also more stringent than the current federal hazardous waste program. Finally, the changes to the standards and criteria for variances from classification as a solid waste discussed in section IX are more stringent than the current federal hazardous waste program. In these cases, all authorized states will be required to modify their programs to adopt equivalent, consistent and no less stringent requirements.

XXI. Statutory and Executive Order (EO) Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to ''raise novel legal or policy issues'' under section 3(f)(4) of Executive Order 12866. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in EPA's background document for today's action titled ''Regulatory Impact Analysis'' (RIA). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. EPA estimates that the 2014 DSW rule will result in a future annual costs savings of $1.0 to $2.0 million per year, depending on discount rate used, as compared to a baseline of full implementation of the 2008 DSW rule. This cost savings is based on the assumption that same number of states would adopt the 2014 DSW rule as would adopt the 2008 DSW rule. However, because the 2014 DSW rule addresses many of the concerns states raised about the 2008 DSW rule, there is a potential that more states would adopt it, thus increasing the upper bound of annual cost savings to $17.5 million to $59 million per year.

In addition to estimating the cost savings of today's action, the RIA also provides qualitative (*i.e.,* non-monetized) descriptions of three categories of expected future benefits for today's action consisting of: (1) Reduction in future environmental damages associated with industrial recycling of hazardous secondary materials; (2) improved industry environmental compliance; (3) indirect legal & financial benefits to industry consisting of reduced liability, less uncertainty for regulated entities, and lower legal and financial credit costs.

B. Paperwork Reduction Act (Information Collection Request)

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The information collection request has been updated since the July 22 proposed rule to reflect the final rule requirements and to respond to public comments. The EPA ICR number for this next submission will be 2310.03 and the OMB control number will be 2050–0202.

Several information requirements established for this action are voluntary to the extent that the conditional exclusions being finalized today are voluntary and represent an overall reduction in burden, as compared with the alternative information requirements associated with managing hazardous secondary materials as hazardous waste. The information requirements help ensure that: (1) Entities operating under today's rule are held accountable to the applicable requirements; and (2) inspectors can verify compliance with the conditions of today's rule when needed.

EPA estimates the total annual burden to respondents under the new paperwork requirements as a result of the final rule changes to be 34,454 hours and $68,071 in operations and maintenance costs ($2,378,111, including labor costs), respectively. Burden and costs continuing from the 2008 ICR No. 2310.02 include 2,034 hours and $299 in operations and maintenance ($144,235, including labor costs), respectively. The total annual burden and operations and maintenance costs are estimated at 36,488 hours and $68,370 in operations and maintenance costs, or 109,464 hours and $205,110 in operations and maintenance over three years. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on small size standards defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 for 27 NAICS codes with the largest number of affected entities; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are primarily small businesses in the manufacturing sector (*i.e.,* NAICS codes 32 and 33). We have determined that the average annual impact on small businesses is estimated to be significantly less than 1% of annual business sales for all small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Comments were requested, and the comment period was extended once until October 20, 2011. In September 2011, EPA held two public meetings to accept public comment on the proposal in Philadelphia, PA and in Chicago, IL.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA's RIA for today's action estimates the maximum state government share of future direct costs for complying with today's action is $0.3 million per year. No impacts are expected for local or Tribal governments. Because these direct costs are well below the $100 million annual direct cost threshold, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The RIA estimates that the state government share of future annualized direct costs is $0.3 million per year. No added costs are expected for local or tribal governments. Because these direct costs are well below the $25 million Federalism test threshold, EPA concludes that Executive Order 13132 does not apply to today's action.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Under the RCRA statute, the federal government implements hazardous waste regulations directly in Indian Country. Thus, the changes to the hazardous waste regulations promulgated today would not impose any direct costs on tribal governments. In addition, currently there are no facilities operating on land controlled by tribal governments, but if such facilities did locate in such areas, then this action could have tribal implications, to the extent that the rule is intended to address potential adverse impacts of the 2008 DSW final rule.

EPA consulted with tribal officials early in the process of developing this regulation to ensure they had an opportunity for meaningful and timely input into its development. Specifically, tribal representatives participated in the public meetings EPA held on the draft environmental justice methodology and noted that the Bureau of Census data used as the basis for the demographic analysis may undercount indigenous populations. EPA also sent a consultation letter to all federally recognized tribes requesting a consultation on the 2011 DSW proposal and held a tribes-only live webinar on August 11, 2011 to allow tribal official the opportunity to ask questions and offer input into the proposed rule. EPA did not receive formal comments from tribal officials during the consultation process.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the *Potential Adverse Impacts Under the Definition of Solid Waste Exclusions (Including Potential Disproportionate Adverse Impacts to Minority and Low-Income Populations)* in the docket for today's rule.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA does not expect today's final rule to adversely affect the supply, distribution, or use of energy.

On the contrary, EPA expects that at least two elements of today's final rule may provide future annual energy savings by (a) inducing under today's solvent remanufacturing exclusion larger future annual quantities of industrial processing solvents which get recycled rather than disposed (*i.e.,* incinerated) thereby reducing the relatively higher lifecycle energy and other lifecycle resource impacts associated with manufacturing virgin solvents, and (b) inducing more state governments to adopt the other DSW exclusions which are revised under today's final rule, thereby generally stimulating other types of industrial recycling of hazardous secondary materials (HSM), which EPA also expects may reduce adverse lifecycle impacts on the economy and environment compared to the lifecycle impacts of producing virgin materials for which larger future annual quantities of recycled HSM may substitute. Thus, Executive Order 13211 does not apply to this rule.

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.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order 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 has determined that this final rule will not have disproportionately high and adverse human health or

environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The purpose of this final rule is to revise the 2008 DSW final rule in such a way that reduces potential adverse impacts, including potential disproportionate impacts to minority and low-impact communities. For further information on the potential for disproportionate impacts to minority and low-income populations, see the *Potential Adverse Impacts Under the Definition of Solid Waste Exclusions (Including Potential Disproportionate Adverse Impacts to Minority and Low-Income Populations)* in the docket for today's rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on July 13, 2015.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Incorporation by reference, Recycling, Solid waste.

Dated: December 10, 2014.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6935, 6937, 6938, 6939 and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended as follows:

■ a. Add in alphabetical order the definition of ''Contained;''

■ b. Remove the definition of ''Hazardous secondary material generated and reclaimed under the control of the generator;'' and

■ c. Add in alphabetical order the definition of ''Remanufacturing,''

The additions read as follows:

§ 260.10 Definitions

* * * * *

Contained means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

* * * * *

Remanufacturing means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

* * * * *

Subpart C—Rulemaking Petitions

■ 3. Section 260.30 is amended by adding paragraph (f) to read as follows:

§ 260.30 Non-waste determinations and variances from classification as a solid waste.

* * * * *

(f) Hazardous secondary materials that are transferred for reclamation under § 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards.

■ 4. Section 260.31 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

* * * * *

(c) The Administrator may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (*e.g.,* records of sales and/or contracts

and evidence of subsequent use, such as bills of lading);

(5) Whether the partially-reclaimed material is handled to minimize loss.

(d) The Administrator may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under § 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. The Administrator's decision will be based on the following criteria:

(1) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to § 260.43;

(2) The reclamation facility or intermediate facility must satisfy the financial assurance condition in § 261.4(a)(24)(vi)(F);

(3) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

(4) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR part 261 subpart M;

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment, and

(6) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (*i.e.,* releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

■ 5. Section 260.33 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

* * * * *

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in § 260.31, § 260.32, or § 260.34 upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Administrator. The Administrator may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Administrator.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of this chapter.

■ 6. Section 260.34 is amended by revising paragraphs (b)(4) and (c)(5) to read as follows:

§ 260.34 Standards and criteria for non-waste determinations.

* * * * *

(b) * * *

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.

(c) * * *

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.

■ 7. Section 260.42 is amended by revising paragraphs (a) introductory text, (a)(4) through (9), removing paragraph (a)(10), and revising paragraph (b).

The revisions read as follows:

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under §§ 260.30, 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator using EPA Form 8700–12 that includes the following information:

* * * * *

(4) The regulation under which the hazardous secondary materials will be managed;

(5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(6) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(8) The quantity of each hazardous secondary material to be managed annually; and

(9) The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700–12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

■ 8. Section 260.43 is amended by revising the section heading and

paragraph (a) and removing and reserving paragraphs (b) and (c).

The revision reads as follows:

§ 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (*e.g.,* commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (*e.g.,* closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700–12.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 9. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart A—General

■ 10. Section 261.1 is amended by revising paragraphs (c)(4) and (8) to read as follows:

§ 261.1 Purpose and scope.

* * * * *

(c) * * *

(4) A material is ''reclaimed'' if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of § 261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in § 266.100(d)(1) through (3) of this chapter, and if the residuals meet the requirements specified in § 266.112 of this chapter.

* * * * *

(8) A material is ''accumulated speculatively'' if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (*e.g.,* slags from a single smelting process) that is recycled in the same way (*i.e.,* from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

* * * * *

■ 11. Section 261.2 is amended as follows:

■ a. Remove and reserve paragraph (a)(2)(ii);

■ b. Revise paragraph (b)(3);

■ c. Add paragraph (b)(4);

■ d. Revise paragraph (c)(3) and table 1 in paragraph (c)(4); and

■ e. Add paragraph (g).

The revisions and additions text reads as follows:

§ 261.2 Definition of solid waste.

* * * * *

(b) * * *

(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated; or

(4) Sham recycled, as explained in paragraph (g) of this section.

* * * * *

(c) * * *

(3) *Reclaimed.* Materials noted with a ''–'' in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an ''*'' in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§ 261.4(a)(17), or 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27).

(4) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3)), except as provided in §§ 261.4(a)(17), 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	.....	(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	.....	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	.....	.....
Scrap metal that is not excluded under 40 CFR 261.4(a)(13)	(*)	(*)	(*)	(*)

Note: The terms ''spent materials,'' ''sludges,'' ''by-products,'' and ''scrap metal'' and ''processed scrap metal'' are defined in § 261.1.

* * * * *

(g) *Sham recycling.* A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43.

■ 12. Section 261.4 is amended as follows:

■ a. Republish paragraph (a) introductory text;

■ b. Revise paragraph (a)(23) and (24);

■ c. Remove and reserve paragraph (a)(25); and

■ d. Add paragraph (a)(27).

The revisions and addition as follows:

§ 261.4 Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

* * * * *

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in § 260.10 of this chapter, and if the generator provides one of the following certifications: ''on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material,'' or ''on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.'' For purposes of this paragraph, ''control'' means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in § 260.10 shall not be deemed to ''control'' such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: ''On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the

hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process''. The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in § 260.10 of this chapter. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in § 261.1(c)(8).

(C) Notice is provided as required by § 260.42 of this chapter.

(D) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see § 266.80 and § 273.2 of this chapter).

(E) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in § 260.43(a). Documentation must be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in subpart M of this part are met.

(24) Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in § 261.1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in § 260.10 of this chapter, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under this paragraph (a) when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter);

(iv) The reclamation of the material is legitimate, as specified under § 260.43 of this chapter;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in § 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities) in the United States. A verified reclamation facility is a facility that has been granted a variance under § 260.31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under § 260.31(d) or the management of the hazardous secondary materials at that facility must be addressed under a RCRA Part B permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(*3*) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(E) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in subpart M of this part.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in § 260.10 of this chapter satisfy all of the following conditions:

(A) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility

which the hazardous secondary materials were received from;

(*3*) The type and quantity of hazardous secondary material in the shipment; and

(*4*) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(D) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An ''analogous raw material'' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or if they themselves are specifically listed in subpart D of 40 CFR part 261, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 40 CFR parts 260 through 272.

(F) The reclaimer and intermediate facility have financial assurance as required under subpart H of 40 CFR part 261,

(G) The reclaimer and intermediate facility have been granted a variance under § 260.31(d) or have a RCRA Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under this paragraph (a)(24) of this section provide notification as required under § 260.42 of this chapter.

* * * * *

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in paragraph (a)(27)(i) of this section in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in paragraph (a)(27)(i) of this section to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iv) After remanufacturing one or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR parts 704, 710–711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(v) After remanufacturing one or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer must:

(A) Notify EPA or the State Director, if the state is authorized for the program, and update the notification every two years per 40 CFR 260.42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(*1*) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(*2*) The types and estimated annual volumes of spent solvents to be remanufactured,

(*3*) The processes and industry sectors that generate the spent solvents,

(*4*) The specific uses and industry sectors for the remanufactured solvents, and

(*5*) A certification from the remanufacturer stating ''on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 40 CFR part 261, subparts

AA (vents), BB (equipment) and CC (tank storage),'';

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in subparts I and J of 40 CFR part 261, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 40 CFR part 261 subparts AA (vents), BB (equipment) and CC (tank storage); and

(F) Meet the requirements prohibiting speculative accumulation per 40 CFR 261.1(c)(8).

* * * * *

■ 13. Part 261 is amended by:

■ a. Adding Subparts I and J;

■ b. Adding reserved Subparts K and L;

■ c. Adding Subpart M;

■ d. Adding reserved Subparts N through Z; and

■ e. Adding Subparts AA through CC.

The additions read as follows:

Subpart I—Use and Management of Containers

Sec.
261.170 Applicability.
261.171 Condition of containers.
261.172 Compatibility of hazardous secondary materials with containers.
261.173 Management of containers.
261.175 Containment.
261.176 Special requirements for ignitable or reactive hazardous secondary material.
261.177 Special requirements for incompatible materials.
261.179 Air emission standards.

Subpart J—Tank Systems

261.190 Applicability.
261.191 Assessment of existing tank system's integrity.
261.192 [Reserved]
261.193 Containment and detection of releases.
261.194 General operating requirements.
261.195 [Reserved]
261.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
261.197 Termination of remanufacturing exclusion.
261.198 Special requirements for ignitable or reactive materials.
261.199 Special requirements for incompatible materials.
261.200 Air emission standards.

Subparts K–L [Reserved]

Subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

261.400 Applicability.
261.410 Preparedness and prevention
261.411 Emergency procedures for facilities generating or accumulating of 6000 kg or less of hazardous secondary material.
261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

Subparts N–Z [Reserved]

Subpart AA—Air Emission Standards for Process Vents

261.1030 Applicability.
261.1031 Definitions.
261.1032 Standards: Process vents.
261.1033 Standards: Closed-vent systems and control devices.
261.1034 Test methods and procedures.
261.1035 Recordkeeping requirements.
261.1036–261.1049 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

261.1050 Applicability.
261.1051 Definitions.
261.1052 Standards: Pumps in light liquid service.
261.1053 Standards: Compressors.
261.1054 Standards: Pressure relief devices in gas/vapor service.
261.1055 Standards: Sampling connection systems.
261.1056 Standards: Open-ended valves or lines.
261.1057 Standards: Valves in gas/vapor service or in light liquid service.
261.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
261.1059 Standards: Delay of repair.
261.1060 Standards: Closed-vent systems and control devices.
261.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
261.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.
261.1063 Test methods and procedures.
261.1064 Recordkeeping requirements.
261.1065–261.1079 [Reserved]

Subpart CC—Air Emission Standards for Tanks and Containers

261.1080 Applicability.
261.1081 Definitions.
261.1082 Standards: General.
261.1083 Material determination procedures.
261.1084 Standards: Tanks.
261.1085 [Reserved]
261.1086 Standards: Containers.
261.1087 Standards: Closed-vent systems and control devices.
261.1088 Inspection and monitoring requirements.
261.1089 Recordkeeping requirements.
261.1090 [Reserved]

Subpart I—Use and Management of Containers

§ 261.170 Applicability.

This subpart applies to hazardous secondary materials excluded under the remanufacturing exclusion at § 261.4(a)(27) and stored in containers.

§ 261.171 Condition of containers.

If a container holding hazardous secondary material is not in good condition (*e.g.,* severe rusting, apparent structural defects) or if it begins to leak, the hazardous secondary material must be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of this part.

§ 261.172 Compatibility of hazardous secondary materials with containers.

The container must be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

§ 261.173 Management of containers.

(a) A container holding hazardous secondary material must always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

§ 261.175 Containment.

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section.

(b) A containment system must be designed and operated as follows:

(1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise

designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system; and

(5) Spilled or leaked material and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

§ 261.176 Special requirements for ignitable or reactive hazardous secondary material.

Containers holding ignitable or reactive hazardous secondary material must be located at least 15 meters (50 feet) from the facility's property line.

§ 261.177 Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same container.

(b) Hazardous secondary material must not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

§ 261.179 Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart J—Tank Systems

§ 261.190 Applicability.

(a) The requirements of this subpart apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at § 261.4(a)(27).

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in § 261.193(a).

§ 261.191 Assessment of existing tank system's integrity.

(a) Tank systems must meet the secondary containment requirements of § 261.193, or the remanufacturer or other person that handles the hazardous secondary material must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, a written assessment reviewed and certified by a qualified Professional Engineer must be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the material(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.

Note to paragraph (b)(5)(ii): The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, ''Atmospheric and Low-Pressure Storage Tanks,'' 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) If, as a result of the assessment conducted in accordance with paragraph (a) of this section, a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of § 261.196.

§ 261.192 [Reserved]

§ 261.193 Containment and detection of releases.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to paragraph (a): If the collected material is a hazardous waste under part 261 of this chapter, it is subject to management as a hazardous waste in accordance with all applicable requirements of parts 262 through 265, 266, and 268 of this chapter. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids

resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks must include one or more of the following devices:

(1) A liner (external to the tank);

(2) A vault; or

(3) A double-walled tank.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s) (*i.e.,* capable of preventing lateral as well as vertical migration of the material).

(2) Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (*i.e.,* an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

Note to paragraph (d)(3): The provisions outlined in the Steel Tank Institute's (STI) ''Standard for Dual Wall Underground Steel Storage Tanks'' may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) [Reserved]

(f) Ancillary equipment must be provided with secondary containment (*e.g.,* trench, jacketing, double-walled piping) that meets the requirements of paragraphs (a) and (b) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (*e.g.,* excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

§ 261.194 General operating requirements.

(a) Hazardous secondary materials or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls (*e.g.,* check valves, dry disconnect couplings);

(2) Overfill prevention controls (*e.g.,* level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of § 261.196 of this subpart if a leak or spill occurs in the tank system.

§ 261.195 [Reserved]

§ 261.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material must satisfy the following requirements:

(a) *Cessation of use; prevent flow or addition of materials.* The remanufacturer or other person that stores or treats the hazardous secondary material must immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) *Removal of material from tank system or secondary containment system.* (1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material must, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) *Containment of visible releases to the environment.* The remanufacturer or other person that stores or treats the hazardous secondary material must immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) *Notifications, reports.* (1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Regional Administrator within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of this paragraph if it is:

(i) Less than or equal to a quantity of 1 pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Regional Administrator:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Regional Administrator as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) *Provision of secondary containment, repair, or closure.* (1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of paragraphs (e)(2) through (4) of this section, the tank system must cease to operate under the remanufacturing exclusion at 40 CFR 261.4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of § 261.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (*e.g.,* the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with § 261.193 of this subpart prior to being returned to use.

(f) *Certification of major repairs.* If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.,* installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification must be kept on file at the facility and maintained until closure of the facility.

Note 1 to § 261.196: The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to § 261.196: 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

§ 261.197 Termination of remanufacturing exclusion.

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at 40 CFR 261.4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under parts 261 through 266, 268, 270, 271, and 124 of this chapter, as applicable.

§ 261.198 Special requirements for ignitable or reactive materials.

(a) Ignitable or reactive material must not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive must store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's ''Flammable and Combustible Liquids Code,'' (1977 or 1981), (incorporated by reference, see § 260.11).

§ 261.199 Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same tank system.

(b) Hazardous secondary material must not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

§ 261.200 Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subparts K–L [Reserved]

Subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

§ 261.400 Applicability.

The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under § 261.4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d), that accumulates 6000 kg or

less of hazardous secondary material at any time must comply with §§ 261.410 and 261.411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that accumulates more than 6000 kg of hazardous secondary material at any time must comply with §§ 261.410 and 261.420.

§ 261.410 Preparedness and prevention.

(a) *Maintenance and operation of facility.* Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) *Required equipment.* All facilities generating or accumulating hazardous secondary material must be equipped with the following, *unless* none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) *Testing and maintenance of equipment.* All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) *Access to communications or alarm system.* (1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b) of this section.

(2) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (b) of this section.

(e) *Required aisle space.* The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) *Arrangements with local authorities.* (1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must document the refusal in the operating record.

§ 261.411 Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material.

A generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

(a) At all times there must be at least one employee either on the premises or on call (*i.e.,* available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d) of this section. This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler variance under

§ 260.31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident (*e.g.,* spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

§ 261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

A generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

(a) *Purpose and implementation of contingency plan.* (1) Each generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) *Content of contingency plan.* (1) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan''). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 262.410(f).

(4) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(c*) Copies of contingency plan.* A copy of the contingency plan and all revisions to the plan must be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d*) Amendment of contingency plan.* The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e*) Emergency coordinator.* At all times, there must be at least one employee either on the facility premises or on call (*i.e.,* available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in paragraph (f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) *Emergency procedures.* (1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and

areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (*e.g.,* the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident (*e.g.,* release, fire);

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.

(8) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident (*e.g.,* fire, explosion);

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

Subparts N–Z [Reserved]

Subpart AA—Air Emission Standards for Process Vents

§ 261.1030 Applicability.

The regulations in this subpart apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at § 261.4(a)(27) with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

§ 261.1031 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Resource Conservation and Recovery Act and parts 260–266.

Air stripping operation is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

Bottoms receiver means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

Condenser means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

Connector means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

Continuous recorder means a data-recording device recording an instantaneous data value at least once every 15 minutes.

Control device means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (*e.g.,* a primary condenser on a solvent recovery unit) is not a control device.

Control device shutdown means the cessation of operation of a control device for any purpose.

Distillate receiver means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

Distillation operation means an operation, either batch or continuous, separating one or more feed stream(s)

into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device that indicates whether gas flow is present in a vent stream.

First attempt at repair means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

Fractionation operation means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

Hazardous secondary material management unit shutdown means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

Hot well means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

In gas/vapor service means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

In heavy liquid service means that the piece of equipment is not in gas/vapor service or in light liquid service.

In light liquid service means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

In situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

Malfunction means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

Process vent means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (*e.g.,* distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak.

Sampling connection system means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Separator tank means a device used for separation of two immiscible liquids.

Solvent extraction operation means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Startup means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

Steam stripping operation means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

Surge control tank means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

Thin-film evaporation operation means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Vented means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

§ 261.1032 Standards: Process vents.

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected

process vents at the facility by 95 weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of § 261.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 261.1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Regional Administrator do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in § 261.1034(c) shall be used to resolve the disagreement.

§ 261.1033 Standards: Closed-vent systems and control devices.

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) [Reserved]

(b) A control device involving vapor recovery (*e.g.,* a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 261.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (*e.g.,* a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4)(ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[\sum_{i=1}^{n} C_i H_i \right]$$

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

Where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ (H_T)$$

Where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow

from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (*i.e.,* product side).

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 261.1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 261.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 261.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 261.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary

material on or before the date that the system becomes subject to this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in § 261.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (*e.g.,* a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in § 261.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (*e.g.,* a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (*e.g.,* a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Regional Administrator, except as provided for in paragraph (o) of this section, using the procedures specified in § 261.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 261.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 261.1035 of this subpart.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (l)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in § 261.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart X of this part; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of 40 CFR part 265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart O of this part; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(o) Any components of a closed-vent system that are designated, as described in § 261.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent

system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

§ 261.1034 Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedural requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 261.1033(l) of this subpart, the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with § 261.1032(a) and with the total organic compound concentration limit of § 261.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416]\left[10^{-6}\right]$$

Where:

E_h= Total organic mass flow rate, kg/h;

Q_{2sd}= Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i= Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i= Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

E_h= (Q)(C)(MW)(0.0416)(10^{-6})

Where:

E_h= Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

E_A=(E_h)(H)

Where:

E_A=Total organic mass emission rate, kg/y;

E_h=Total organic mass flow rate for the process vent, kg/h;

H=Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h, as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the

three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Regional Administrator's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material must make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material must take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples must be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples must be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under 40 CFR 260.11) of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

§ 261.1035 Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must keep the following records on-site:

(1) For facilities that comply with the provisions of § 261.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in § 261.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (*i.e.,* the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (*e.g.,* identify the hazardous secondary material management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (*e.g.,* temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the

hazardous secondary material takes any action (*e.g.,* managing a material of different composition or increasing operating hours of affected hazardous secondary material management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan must be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 261.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by § 261.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of ''APTI Course 415: Control of Gaseous Emissions'' (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 261.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 261.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 261.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 261.1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by § 261.1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 261.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 261.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with § 261.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with § 261.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in § 261.1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in § 261.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to § 261.1033(o) of this subpart shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 261.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 261.1033(l) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 261.1032 including supporting documentation as required by § 261.1034(d)(2) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

§§ 261.1036–261.1049 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

§ 261.1050 Applicability.

(a) The regulations in this subpart apply to equipment that contains

hazardous secondary materials excluded under the remanufacturing exclusion at § 261.4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

§ 261.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 261.1031, the Resource Conservation and Recovery Act, and 40 CFR parts 260–266.

§ 261.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 261.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 261.1059.

(2) A first attempt at repair (*e.g.,* tightening the packing gland) shall be made no later than five calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 261.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 261.1059.

(iii) A first attempt at repair (*e.g.,* relapping the seal) shall be made no later than five calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 261.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 261.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 261.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 261.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 261.1059.

(2) A first attempt at repair (*e.g.,* tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 261.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 261.1064(g)(2), for no

detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 261.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

§ 261.1054 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 261.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 261.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 261.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 261.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 261.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of §§ 261.1084 through 264.1086 of this subpart or a control device that complies with the requirements of § 261.1060 of this subpart.

(c) *In-situ* sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 261.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 261.1057 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 261.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section and §§ 261.1061 and 261.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 261.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 261.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(g) Any valve that is designated, as described in § 261.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 261.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before January 13, 2015.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 261.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in § 261.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 261.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 261.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (*e.g.,* porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 261.1064 of this subpart.

§ 261.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 261.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

§ 261.1060 Standards: Closed-vent systems and control devices.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 261.1033 of this part.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after July 13, 2015 and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (*i.e.,* must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of this subpart after January 13, 2015, due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (*i.e.,* must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

§ 261.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of § 261.1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Regional Administrator.

(2) If a valve leak is detected, it shall be repaired in accordance with § 261.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in § 261.1057 within the

hazardous secondary material management unit shall be monitored within 1 week by the methods specified in § 261.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 261.1057 for which leaks are detected by the total number of valves subject to the requirements in § 261.1057 within the hazardous secondary material management unit.

§ 261.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of § 261.1057 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in § 261.1057, except as described in paragraphs (b)(2) and (3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods (*i.e.,* monitor for leaks once every six months) for the valves subject to the requirements in § 261.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods (*i.e.,* monitor for leaks once every year) for the valves subject to the requirements in § 261.1057 of this subpart.

(4) If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in § 261.1057, but may again elect to use this section after meeting the requirements of § 261.1057(c)(1).

§ 261.1063 Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 261.1052–261.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 261.1052(e), 261.1053(i), 261.1054, and 261.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats the hazardous secondary material must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under § 260.11);

(2) Method 9060A (incorporated by reference under 40 CFR 260.11) of ''Test Methods for Evaluating Solid Waste,'' EPA Publication SW–846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (2) of this section.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Regional Administrator do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 261.1034(c)(1) through (4).

§ 261.1064 Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material must record and keep the following information at the facility:

(1) For each piece of equipment to which subpart BB of part 261 applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility (*e.g.,* identify the hazardous secondary material management unit on a facility plot plan).

(iii) Type of equipment (*e.g.,* a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment (*e.g.,* gas/vapor or liquid).

(vi) Method of compliance with the standard (*e.g.,* ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(2) For facilities that comply with the provisions of § 261.1033(a)(2), an implementation schedule as specified in § 261.1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 261.1035(b)(3).

(4) Documentation of compliance with § 261.1060, including the detailed design documentation or performance test results specified in § 261.1035(b)(4).

(c) When each leak is detected as specified in §§ 261.1052, 261.1053, 261.1057, and 261.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 261.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two successive months as specified in § 261.1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in §§ 261.1052, 261.1053, 261.1057, and 261.1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with § 261.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) ''Above 10,000'' if the maximum instrument reading measured by the methods specified in § 261.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with § 261.1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material (or designate) whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 261.1060 shall be recorded and kept up-to-date at the facility as specified in § 261.1035(c). Design documentation is specified in § 261.1035(c)(1) and (2) and monitoring, operating, and inspection information in § 261.1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in §§ 261.1052 through 261.1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 261.1052(e), 261.1053(i), and 261.1057(f).

(ii) The designation of this equipment as subject to the requirements of §§ 261.1052(e), 261.1053(i), or 261.1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 261.1054(a).

(4)(i) The dates of each compliance test required in §§ 261.1052(e), 261.1053(i), 261.1054, and 261.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of § 261.1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with § 261.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at in the facility:

(1) Criteria required in §§ 261.1052(d)(5)(ii) and 261.1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in §§ 261.1052 through 261.1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 261.1052 through 261.1060. The record shall include supporting documentation as required by § 261.1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (*e.g.,* changing the process that produced the material) that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in §§ 261.1052 through 261.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only three years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 261.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

§§ 261.1065–261.1079 [Reserved]

Subpart CC—Air Emission Standards for Tanks and Containers

§ 261.1080 Applicability.

(a) The regulations in this subpart apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at § 261.4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

(b) [Reserved]

§ 261.1081 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given to them in the Resource Conservation and Recovery Act and parts 260 through 266 of this chapter.

Average volatile organic concentration or *average VO concentration* means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of § 261.1084 of this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (*e.g.,* a sampling port cap), manually operated (*e.g.,* a hinged access lid or hatch), or automatically operated (*e.g.,* a spring-loaded pressure relief valve).

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Cover means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

Empty hazardous secondary material container means:

(1) A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.,* pouring, pumping, and aspirating, and no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

(2) A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

(3) A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

External floating roof means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

Floating membrane cover means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

In light material service means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic

constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

Internal floating roof means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

Liquid-mounted seal means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Material determination means performing all applicable procedures in accordance with the requirements of § 261.1084 of this subpart to determine whether a hazardous secondary material meets standards specified in this subpart. Examples of a material determination include performing the procedures in accordance with the requirements of § 261.1084 of this subpart to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

Maximum organic vapor pressure means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (*i.e.,* temperature, agitation, pH effects of combining materials, etc.) reasonably expected to occur in the tank. For the purpose of this subpart, maximum organic vapor pressure is determined using the procedures specified in § 261.1084(c) of this subpart.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 261.1084(d) of this subpart.

Point of material origination means as follows:

(1) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under § 261.4(a)(27).

Note to paragraph (1) of the definition of *Point of material origination:* In this case, this term is being used in a manner similar to the use of the term ''point of generation'' in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

(2) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

Volatile organic concentration or *VO concentration* means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of § 261.1084 of this subpart. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3) at 25 degrees Celsius must be included.

§ 261.1082 Standards: General.

(a) This section applies to the management of hazardous secondary material in tanks and containers subject to this subpart.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in §§ 261.1084 through 261.1087 of this subpart, as applicable to the hazardous secondary material management unit, except as provided for in paragraph (c) of this section.

(c) A tank or container is exempt from standards specified in §§ 261.1084 through 261.1087 of this subpart, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in § 261.1083(a) of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary

material shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

§ 261.1083 Material determination procedures.

(a) *Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.* (1) *Determining average VO concentration at the point of material origination.* A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of § 261.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in §§ 261.1084 through 261.1087 of this subpart, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of § 261.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 261.1082 of this subpart.

(2) *Determination of average VO concentration using direct measurement or knowledge.* For a material determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) *Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination*—(i) *Identification.* The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) *Sampling.* Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the ''site sampling plan'' required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3] at 25 degrees Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be

expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with ''Alternative Validation Procedure for EPA Waste and Wastewater Methods,'' 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) *Calculations.* (A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with paragraphs (a)(3)(ii) and (iii) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

C = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination ''i'' of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination ''i'' as determined in accordance with the requirements of paragraph (a)(3)(iii) of this section (*i.e.* the average of the four or more samples specified in paragraph (a)(3)(ii)(B) of this section), ppmw.

(B) For the purpose of determining C_i, for individual material samples analyzed in accordance with paragraph (a)(3)(iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(*1*) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(*2*) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(4) *Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.* (i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Regional Administrator and the remanufacture or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Regional Administrator may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section.

(b) [Reserved]

(c) *Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.* (1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in § 261.1084(c) of this subpart.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) *Sampling.* A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary

material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) *Analysis.* Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, ''Evaporative Loss from External Floating-Roof Tanks,'' (incorporated by reference—refer to § 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879–92 (incorporated by reference—refer to § 260.11 of this chapter); and

(E) Any other method approved by the Regional Administrator.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in § 261.1085(b)(1)(i) of this subpart for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (*i.e.,* a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (*e.g.,* some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in paragraph (d)(9) of this section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

§ 261.1084 Standards: tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which § 261.1082(b) of this subpart references the use of this section for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the

remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (4) of this section:

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in § 261.1083(c) of this subpart. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank (*e.g.,* a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (*e.g.,* a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(*1*) and (*2*) of this section.

(*1*) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(*2*) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in § 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section.

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in § 261.1089(b) of this subpart.

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in § 261.1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (*i.e.,* no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (*e.g.,* manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the

other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Regional Administrator as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least seven calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in § 261.1089(b) of this subpart.

(4) Safety devices, as defined in § 261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 261.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (B) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in § 261.1089(b) of this subpart.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in § 261.1089(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Regional Administrator at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator

at least seven calendar days before refilling the tank.

(4) Safety devices, as defined in § 261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 261.1087 of this subpart.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in § 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in § 261.1087 of this subpart.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the remanufacture or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in § 261.1089(b) of this subpart.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 261.1083(d) of this subpart.

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 261.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 261.1087 of this subpart.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have

permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 261.1087 of this subpart.

(3) Safety devices, as defined in § 261.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (2) of this section.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in § 261.1087 of this subpart.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in § 261.1082(c)(1) of this subpart at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in § 261.1082(c)(2) of this subpart.

(iii) The hazardous secondary material meets the requirements of § 261.1082(c)(4) of this subpart.

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an ''unsafe to inspect and monitor cover'' and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (*e.g.,* fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

§ 261.1085 [Reserved]

§ 261.1086 Standards: containers.

(a) *Applicability.* The provisions of this section apply to the control of air pollutant emissions from containers for which § 261.1082(b) of this subpart references the use of this section for such air emission control.

(b) *General requirements.* (1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) [Reserved]

(c) *Container Level 1 standards.* (1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on

packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (*e.g.,* a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (*e.g.,* a ''portable tank'' or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (*i.e.,* covers and closure devices on such a container are not required to be secured in the closed position).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* is not an empty hazardous secondary material container) the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are

secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous secondary material in light material service.

(d) *Container Level 2 standards.* (1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in § 261.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacture or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (*i.e.,* covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed

position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in § 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* is not an empty hazardous secondary material container), the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) *Container Level 3 standards.* (1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (ii) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 261.1087 of this subpart.

(3) Safety devices, as defined in § 261.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in § 261.1087 of this subpart.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in § 261.1089(d) of this subpart.

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements

specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in § 261.1083(d) of this subpart shall be used.

(1) Each potential leak interface (*i.e.,* a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

§ 261.1087 Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in § 261.1033(k) of this part.

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (*e.g.,* valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in § 261.1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of § 261.1033(c) of this part; or

(iii) A flare designed and operated in accordance with the requirements of § 261.1033(d) of this part.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (*i.e.,* planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in § 261.1089(e)(1)(v) of this subpart.

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (*i.e.,* periods when the control device is not operating or not operating normally) except in cases when it is necessary to

vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of § 261.1033(g) or (h) of this part.

(ii) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of § 261.1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of § 261.1033(j) of this part.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in § 261.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in § 261.1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in § 261.1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Regional Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Regional Administrator may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in § 261.1033(f)(2) and (l). The readings from each monitoring device required by § 261.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

§ 261.1088 Inspection and monitoring requirements.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in §§ 261.1084 through 261.1087 of this subpart.

(b) The remanufacture or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

§ 261.1089 Recordkeeping requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in §§ 261.1084 through 261.1087 of this subpart in accordance with the conditions specified in § 261.1080(b)(7) or (d) of this subpart, respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of § 261.1084 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of § 261.1084 of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by § 261.1084 of this subpart that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of § 261.1084 of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary

material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in § 261.1084(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of § 261.1084(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in § 261.1084(e) of this subpart shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in § 261.1084(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by § 261.1084(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 261.1084(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in § 261.1084(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) [Reserved]

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of § 261.1086 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of § 261.1087 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in § 261.1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with § 261.1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in § 261.1035(b)(3) and all test results.

(iv) Information as required by §§ 261.1035(c)(1) and 261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of § 261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in paragraphs (e)(1)(vi)(A) through (C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 261.1087(c)(3)(ii) of this subpart.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in § 261.1082(c)(1) or (c)(2)(i) through (vi) of this subpart, shall prepare and maintain at the facility records documenting the information used for each material determination (*e.g.,* test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of § 261.1083 of this subpart.

(2) [Reserved]

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as ''unsafe to inspect and monitor'' pursuant to § 261.1084(l) or § 261.1085(g) of this subpart shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as ''unsafe to inspect and monitor,'' the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

§ 261.1090 [Reserved]

[FR Doc. 2014–30382 Filed 1–12–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 80 Tuesday,

No. 8 January 13, 2015

Part III

Environmental Protection Agency

40 CFR Parts 52 and Part 81

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and Part 81

[EPA–R09–OAR–2014–0636; FRL–9921–48–Region 9]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS

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 California to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) in the San Joaquin Valley (SJV) Moderate $PM_{2.5}$ nonattainment area. These SIP revisions are the 2012 $PM_{2.5}$ Plan, submitted March 4, 2013, and the Supplement, submitted November 6, 2014. The EPA is also proposing to disapprove interpollutant trading ratios identified in these SIP submittals for nonattainment new source review permitting purposes. Finally, the EPA is proposing to reclassify the SJV area, including Indian country within it, as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS based on EPA's determination that the area cannot practicably attain this standard by the applicable Moderate area attainment date of December 31, 2015. Upon final reclassification as a Serious area, California will be required to submit a Serious area plan including a demonstration that the plan provides for attainment of the 2006 $PM_{2.5}$ NAAQS in the SJV area by the applicable Serious area attainment date, which is no later than December 31, 2019, or by the most expeditious alternative date practicable, in accordance with the requirements of part D of title I of the CAA.

DATES: Any comments must arrive by February 27, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0636, by one of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.
- Email: *tax.wienke@epa.gov.*
- Mail or deliver: Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region 9, 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 the 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 the EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

Docket: The index to the docket (docket number EPA–R09–OAR–2014–0636) for this proposed rule is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region 9, 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: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 947–4192, *tax.wienke@epa.gov.*

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

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I. Background for Proposed Actions

On October 17, 2006, the EPA revised the 24-hour national ambient air quality standard (NAAQS or standard) for $PM_{2.5}$, particulate matter with a diameter of 2.5 microns or less, to provide increased protection of public health by lowering its level from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³ (40 CFR 50.13).[1] Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children (78 FR 3086 at 3088, January 15, 2013). $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of

[1] *See* 71 FR 61224 (October 17, 2006). The EPA set the first NAAQS for $PM_{2.5}$ on July 18, 1997 (62 FR 36852), including annual standards of 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 μg/m³ based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7). In 2012, the EPA revised the annual standard to lower its level to 12 μg/m³ (78 FR 3086, January 15, 2013, codified at 40 CFR 50.18). Unless otherwise noted, all references to the $PM_{2.5}$ standard in this notice are to the 2006 24-hour standard of 35 μg/m³ codified at 40 CFR 50.13.

various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, the EPA designated the SJV as nonattainment for the 2006 $PM_{2.5}$ standard of 35 μg/m³ (74 FR 58688, November 13, 2009). This designation became effective on December 14, 2009 (40 CFR 81.305). The SJV area is also designated nonattainment for the 1997 annual and 24-hour $PM_{2.5}$ standards.[3]

The SJV $PM_{2.5}$ nonattainment area is home to 4 million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. It encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern. For a precise description of the geographic boundaries of the San Joaquin Valley $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

The local air district with primary responsibility for developing plans to attain the NAAQS in the area is the San Joaquin Valley Air Pollution Control District (SJVAPCD or District). The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources under state jurisdiction in the SJV is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

Ambient 24-hour $PM_{2.5}$ NAAQS design value levels in the San Joaquin Valley are among the highest recorded in the United States for the 2011–2013 period.[4] Exceedances of the 24-hour $PM_{2.5}$ standard occur almost exclusively during the late fall and winter months from October to March, when ambient $PM_{2.5}$ is dominated by ammonium nitrate (a secondary particulate formed from nitrogen oxides (NO_X) and ammonia emissions) and directly-emitted particulates, such as wood smoke. During the winter, the SJV experiences extended periods of stagnant weather with cold foggy conditions which encourage wood burning and are conducive to the formation of ammonium nitrate (2012 $PM_{2.5}$, Appendix G, pp. 7 to 9).

II. Clean Air Act Requirements for $PM_{2.5}$ Moderate Nonattainment Area Plans

In April 2007, the EPA issued the Clean Air Fine Particle Implementation Rule (''2007 $PM_{2.5}$ Implementation Rule'') to assist states with the development of SIPs to meet the Act's attainment planning requirements for the 1997 $PM_{2.5}$ standards (72 FR 20583, April 25, 2007, codified at 40 CFR part 51, subpart Z). This rule was premised on the EPA's prior interpretation of the Act as allowing for implementation of the $PM_{2.5}$ NAAQS solely pursuant to the general nonattainment area provisions in subpart 1 of part D, title I of the CAA (''subpart 1'') and not the more specific provisions for particulate matter nonattainment areas in subpart 4 of part D, title I of the Act (''subpart 4''). Among other things, the 2007 $PM_{2.5}$ Implementation Rule included nationally applicable presumptions regarding the need to evaluate and potentially control emissions of certain $PM_{2.5}$ precursors.[5]

In March 2012, the EPA issued a guidance document to aid states in preparing SIPs to meet the Act's attainment planning requirements for the 2006 24-hour $PM_{2.5}$ standard.[6] The 2012 guidance was based, in large part, on the requirements in the 2007 $PM_{2.5}$ Implementation Rule, which the EPA based solely upon the statutory requirements of subpart 1.

California had three years from the effective date of SJV's designation as nonattainment for the 2006 $PM_{2.5}$ standard to submit a SIP for the SJV that addressed the applicable requirements of the Act.[7] On December 20, 2012, the District adopted the 2012 $PM_{2.5}$ Plan to provide for attainment of the 2006 $PM_{2.5}$ standard. On January 24, 2013, CARB adopted the Plan as an element of the California SIP and submitted it to the EPA on March 4, 2013.

On January 4, 2013, several weeks after the District's adoption of the Plan, the U.S. Court of Appeals for the DC Circuit issued its decision in a challenge to the EPA's 2007 $mPM_{2.5}$ Implementation Rule (*NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013)). In *NRDC,* the court held that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to particulate matter nonattainment areas in subpart 4.[8] The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ standards under subpart 4 because $PM_{2.5}$ particles fall within the statutory definition of PM_{10} and are thus subject to the same statutory requirements as PM_{10}. The court remanded the 2007 $PM_{2.5}$ Implementation Rule in its entirety, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002, and instructed the EPA ''to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.''

Consistent with the *NRDC* decision, on June 2, 2014 (79 FR 31566), the EPA published a final rule classifying all areas currently designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ standards as ''Moderate'' under subpart 4 and establishing a deadline of December 31, 2014 for states to submit

[2] *See* EPA, Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA–452/R–12–005, December 2012), p. 2–1.

[3] *See* 70 FR 944 (January 5, 2005) and 40 CFR 81.305. In June 2008, California submitted the 2008 $PM_{2.5}$ Plan to provide for attainment of the 1997 $PM_{2.5}$ standards in the SJV. In November 2011, the EPA approved all but the contingency measures in the 2008 $PM_{2.5}$ Plan (76 FR 69896, November 9, 2011). In July 2013, the State submitted a revised contingency measure plan, which the EPA approved in May 2014 (79 FR 29327, May 22, 2014).

[4] *See* U.S. EPA, 2013 Design Value Reports, $PM_{2.5}$ Detailed Information Updated 8/24/14, available at *http://www.epa.gov/airtrends/values.html* (''$PM_{2.5}$_DesignValues_20112013_FINAL_08_28_14'') (hereafter ''2013 $PM_{2.5}$ Design Value Reports''). ''Design values'' are the 3-year average NAAQS metrics that are compared to the NAAQS levels to determine when a monitoring site meets or does not meet the NAAQS. *See* 40 CFR part 50 Appendix N, Section 1.0(c).

[5] Specifically, in 40 CFR 51.1002(c), the 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,'' unless the State or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants ''significantly contribute'' to $PM_{2.5}$ concentrations in the nonattainment area (40 CFR 51.1002(c)(3), (4) and 72 FR 20586 at 20589–97 (April 25, 2007)).

[6] *See* Memorandum, dated March 2, 2012 (withdrawn June 6, 2013), from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X re: ''Implementation Guidance for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (''2012 Guidance'') Available at: *http://epa.gov/ttn/naaqs/pm/pm25_guide.html.*

[7] *See* CAA section 172(b) and 40 CFR 51.1002(a).

[8] The *NRDC* decision also remanded the EPA's 2008 final rule to implement the nonattainment New Source Review (NNSR) permitting requirements for $PM_{2.5}$ (73 FR 28231, May 16, 2008) which, like the 2007 $PM_{2.5}$ Implementation Rule, was premised on the requirements of subpart 1. Today's proposal does not address requirements for NNSR programs other than the requirements concerning $PM_{2.5}$ precursors in CAA section 189(e), which we discuss in Section IV.C below, and $PM_{2.5}$ interpollutant trading ratios, which we discuss in Section IV.J below.

any attainment-related and nonattainment new source review (NNSR) SIP elements required for these areas pursuant to subpart 4. The EPA provided its rationale for these actions in both the proposed and final classification/deadline rule.[9]

On September 18, 2014, the District adopted the ''Supplemental Document, Clean Air Act Subpart 4: The 2012 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ Standard and District Rule 2201 (New and Modified Stationary Source Review)'' (''Supplement'') as a revision to the 2012 $PM_{2.5}$ Plan. The District adopted the Supplement to address subpart 4 requirements for the 2006 $PM_{2.5}$ standard to the extent that these requirements were not adequately addressed in the 2012 $PM_{2.5}$ Plan. CARB submitted the Supplement to the EPA on November 6, 2014. The Supplement includes information on the implementation of reasonably available controls for ammonia sources in the SJV and the District's demonstration that attainment by the Moderate area attainment date of December 31, 2015 is impracticable (''impracticability demonstration''). As a consequence of the *NRDC* decision, we are reviewing the 2012 $PM_{2.5}$ Plan and Supplement for compliance with the applicable requirements of both subpart 1 and subpart 4.

The EPA has longstanding guidance interpreting the subpart 4 requirements for particulate matter 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) (''General Preamble'') and ''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) (''Addendum'')). The General Preamble at 13538 discusses the relationship of subpart 1 and subpart 4 SIP requirements, and notes that SIPs for moderate nonattainment areas must meet the general provisions in subpart 1 to the extent that these provisions are not otherwise ''subsumed by, or integrally related to, the more specific [subpart 4] requirements.'' Some subpart 1 provisions have no subpart 4 equivalent (*e.g.,* the emission inventories (CAA section 172(c)(3)) and contingency measures (CAA section 172(c)(9)) and for these provisions, subpart 1 continues to govern. Other provisions of subpart 1 are subsumed or superseded by more specific requirements in subpart 4 (*e.g.,* certain provisions concerning attainment dates).

Because the 2012 $PM_{2.5}$ Plan was initially developed and submitted to meet the requirements of subpart 1 and the 2007 $PM_{2.5}$ Implementation Rule, certain elements of the Plan address provisions of subpart 1 rather than the applicable provisions of subpart 4. Specifically, these elements are the State's request for an attainment date extension from 2014 to 2019 under CAA section 172(a)(2)(A); the demonstration of attainment by 2019; those portions of the reasonably available control measure (RACM) demonstration that show there are no section 172(c)(1) RACM that would expedite attainment from 2019 to 2018; the transportation conformity motor vehicle emission budgets for 2019; and the contingency measures for failure to attain. We are not proposing any action on these specific SIP elements at this time.

As part of this proposal, the EPA is proposing to determine that the SJV cannot practicably attain the 2006 $PM_{2.5}$ standard by the Moderate area attainment date of December 31, 2015 and to reclassify the area from Moderate to Serious nonattainment under subpart 4. Should the EPA finalize this proposal to reclassify the SJV area as a Serious area, the State will be required to adopt and submit a new plan addressing the Serious area requirements in subpart 4. We discuss these Serious area requirements in more detail in section V. below.

III. Clean Air Act Procedural Requirements for SIP Submittals

We are proposing action on two California SIP submittals. The first is the ''2012 $PM_{2.5}$ Plan,'' which the State submitted to EPA on March 4, 2013 (hereafter ''2012 $PM_{2.5}$ Plan'' or ''the Plan'')[10] and the second is the ''Supplemental Document, Clean Air Act Subpart 4: The 2012 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ Standard and District Rule 2201 (New and Modified Stationary Sources),'' which the State submitted to EPA on November 6, 2014 (hereafter ''the Supplement'').[11]

CAA sections 110(a)(1) and (2) and 110(l) require each 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 the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2012 $PM_{2.5}$ Plan. The District conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the Plan on December 20, 2012.[12] CARB provided the required public notice and opportunity for public comment prior to its January 24, 2013 public hearing on the Plan.[13] The SIP submittal includes proof of publication of notices for these public hearings. We find, therefore, that the 2012 $PM_{2.5}$ Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

The District adopted the Supplement after reasonable public notice and hearing.[14] CARB adopted the Supplement for submittal as a SIP revision at its October 24, 2014 Board meeting after reasonable public notice.[15]

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

The March 4, 2013 submittal of the 2012 $PM_{2.5}$ Plan became complete by operation of law on September 4, 2014. We find that the Supplement satisfies the completeness criteria in 40 CFR part

[9] *See* 79 FR 69806, 69809 (November 21, 2013) and 79 FR 31566, 31568 (June 2, 2014).

[10] *See* Letter dated March 4, 2013, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, with enclosures.

[11] *See* Letter dated November 6, 2014, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, with enclosures.

[12] *See* 2012 $PM_{2.5}$ Plan, p. ES–6 and SJVAPCD Governing Board Resolution 2012–12–19, ''In the Matter of Adopting the San Joaquin Valley Unified Air Pollution Control District 2012 $PM_{2.5}$ Plan,'' December 20, 2012.

[13] *See* CARB Resolution 13–2, ''San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' January 24, 2013.

[14] *See* Notice of Public Hearing to Adopt Supplemental Document to the *2012 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ Standard* and New Source Review Rule to address Clean Air Act Subpart 4 requirements, available at *http://www.valleyair.org/Air_Quality_Plans/docs/NPH_SD_PM25Plan_09_2014.pdf.*

[15] *See* CARB, Notice of Public Meeting to Consider the Supplemental Document for the San Joaquin Valley 24-Hour $PM_{2.5}$ SIP, September 23, 2014, and CARB Board Resolution 14–37, October 24, 2014.

51, appendix V (*see* our Technical Support Document at section I.B).

IV. Review of the San Joaquin Valley 2012 $PM_{2.5}$ Plan and Supplement

We summarize our evaluation of the 2012 $PM_{2.5}$ Plan and Supplement below. Our detailed evaluation can be found in the Technical Support Document (TSD) for this proposal which is available online at *www.regulations.gov* in docket number EPA–R09–OAR–2014–0636, on EPA Region 9's Web site at *www.epa.gov/region9/air/sjv-pm25/index.html,* or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventory

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires that each SIP include a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area. . . .'' By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. For the 2006 24-hour $PM_{2.5}$ standard, this includes direct $PM_{2.5}$ as well as the main chemical precursors to the formation of secondary $PM_{2.5}$: NO_X, SO_2, VOC, and ammonia (NH_3). Primary $PM_{2.5}$ includes condensable and filterable particulate matter.

A state should include in its SIP submittal documentation explaining how the emissions data were calculated. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed. California is required to use EMFAC2011 to estimate tailpipe and brake and tire wear emissions of $PM_{2.5}$, NO_X, SO_2, and VOC from on-road mobile sources (78 FR 14533, March 6, 2013). States are required to use the EPA's AP–42 road dust method for calculating re-entrained road dust emissions from paved roads (76 FR 6328, February 4, 2011).

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the state must also submit future ''baseline inventories'' for the projected attainment year and each reasonable further progress (RFP) milestone year, and any other year of significance for meeting applicable CAA requirements. By ''baseline inventories'' (also referred to as ''projected baseline inventories''), we mean projected emissions inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The SIP should include documentation explaining how the emissions projections were calculated.

2. Emissions Inventories in the 2012 $PM_{2.5}$ Plan

The planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_2, VOC, and ammonia) for the SJV $PM_{2.5}$ nonattainment area together with documentation for the inventories are found in Appendix B of the 2012 $PM_{2.5}$ Plan. Winter daily average inventories, representing conditions in the period November through April, are provided for the base year 2007 and the baseline year of 2012 and each baseline year from 2014 to 2019. A winter inventory is used because exceedances of the 35 $\mu g/m^3$ $PM_{2.5}$ standard in the SJV occur mostly during the winter months (p. 3–4 and Appendix G, p. G–6). Baseline inventories reflect all control measures adopted prior to January 2012. Growth factors used to project these baseline inventories are derived from data obtained from a number of sources such as the California Energy Commission and Department of Finance as well as studies commissioned by the SJV's metropolitan planning organizations (pp. B–21 to B–30).

Each inventory includes emissions from point, area, on-road, and non-road sources. The inventories use EMFAC2011 for estimating on-road motor vehicle emissions (p. B–26). After EMFAC2011 was released in 2011, new information on statewide diesel fuel usage and economic forecasts became available to the State. For the 2012 $PM_{2.5}$ Plan, CARB adjusted EMFAC2011 emissions estimates for heavy-duty trucks to reflect this new information (p. B–26). The EPA allowed the use of these adjustment factors in transportation conformity determinations in the SJV.[16] Re-entrained paved road dust emissions were calculated using the EPA's AP–42 road dust methodology (Appendix B, p. B–25).

Table 1 provides a summary of the winter daily average inventories of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the base year of 2007. These inventories provide the basis for the control measure analysis and the RFP and attainment demonstrations in the 2012 $PM_{2.5}$ Plan.

TABLE 1—SAN JOAQUIN VALLEY EMISSIONS INVENTORY SUMMARY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2007 BASE YEAR

[Winter daily average in tons]

	Direct $PM_{2.5}$	NO_X	SO_2	VOC	Ammonia
Stationary Sources	9.4	45.6	10.4	96.2	19.8
Area Sources	62.5	19.0	0.8	213.2	342.2
On-Road Mobile Sources	9.1	296.5	0.6	67.3	5.3
Off-Road Mobile Sources	6.1	103.9	1.0	38.0	0.0
Total	87.1	465.1	12.8	414.8	367.3

Source: 2012 $PM_{2.5}$ Plan, Appendix B, Tables B–1 to B–5.

3. Evaluation and Proposed Action

The inventories in the 2012 $PM_{2.5}$ Plan are based on the most current and accurate information available to the State and District at the time the Plan and its inventories were being developed in 2011 and 2012, including the latest EPA-approved version of California's mobile source emissions model, EMFAC2011. The inventories comprehensively address all source categories in the SJV and were developed consistent with the EPA's inventory guidance. For these reasons, we are proposing to approve the 2007 base year emissions inventory in the 2012 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3).

[16] Letter dated January 14, 2014, Matthew Lakin, Chief, Air Planning Office, EPA-Region 9 to John Taylor, Branch Chief, Transportation Planning Branch, CARB; Subject: Use of San Joaquin Valley Heavy Duty Diesel Vehicle Recession Adjustment Methodology.

We are also proposing to find that the baseline inventories in the Plan provide an adequate basis for the RACM, RFP, and impracticability demonstrations.

B. Air Quality Modeling

1. Requirements for Air Quality Modeling

CAA section 189(a)(1)(B) requires each state in which a Moderate area is located to submit a plan that includes a demonstration either (i) that the plan will provide for attainment by the applicable attainment date, or (ii) that attainment by that date is impracticable. The 2012 $PM_{2.5}$ Plan and Supplement include a demonstration that attainment by the Moderate area attainment date is impracticable.

Air quality modeling is used to establish emissions attainment targets, the combination of emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors that the area can accommodate and still attain the standard, and to assess whether the proposed control strategy will result in attainment of the standard. Air quality modeling is performed for a base year and compared to air quality monitoring data collected during that year in order to determine model performance. Once the model performance is determined to be acceptable, future year changes to the emissions inventory are simulated with the model to determine the relationship between emissions reductions and changes in ambient air quality. To project future design values, the model response to emission reductions, in the form of Relative Response Factors (RRFs), is applied to monitored design values from the base year.

For demonstrating attainment, the EPA's recommendations for model input preparation, model performance evaluation, use of the model output for the attainment demonstration, and modeling documentation are described in *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, EPA–454/B–07–002, April 2007 (''Modeling Guidance''), as amended by ''Update to the 24 Hour $PM_{2.5}$ NAAQS Modeled Attainment Test,'' Memorandum dated June 28, 2011, from Tyler Fox, Air Quality Modeling Group, OAQPS, EPA to Regional Air Program Managers, EPA (''Modeling Guidance Update'').[17] The EPA has not issued modeling guidance specific to impracticability demonstrations but believes that a state seeking to make such a demonstration generally should provide air quality modeling similar to that required for an attainment demonstration. The main difference is that for an impracticability demonstration, the model's projected design value on the required attainment date would be above the NAAQS, despite full implementation of the SIP control strategy including all reasonably available control measures (RACM). Alternatively, a model projection could show that the implementation of the SIP control strategy (including RACM) results in attainment of the standard, but that this is achieved only after the applicable attainment date. We are using the latter alternative in evaluating the 2012 $PM_{2.5}$ Plan, since its modeling focuses on an attainment year of 2019, instead of 2015, which is the Moderate area attainment year for this area under subpart 4 (CAA section188(c)(1)).[18]

The EPA recommends that states prepare modeling protocols as part of their modeled attainment demonstrations (Guidance, p. 133). The Guidance (at pp. 133–134) describes the topics to be addressed in this modeling protocol. A modeling protocol should detail and formalize the procedures for conducting all phases of the modeling analysis, such as describing the background and objectives, creating a schedule and organizational structure, developing the input data, conducting model performance evaluations, interpreting modeling results, describing procedures for using the model to demonstrate whether proposed strategies are sufficient to attain the applicable standard, and producing documentation to be submitted for EPA Regional Office review and approval prior to actual modeling.

In addition to a modeled attainment demonstration, which focuses on locations with an air quality monitor, EPA's Guidance describes an Unmonitored Area Analysis (UAA). This analysis is intended to ensure that a control strategy leads to reductions in $PM_{2.5}$ at other locations that have no monitor but that might have base year and future baseline (projection year) ambient $PM_{2.5}$ levels exceeding the standard.

Finally, as discussed below, the Modeling Guidance recommends supplemental air quality analyses. These may be used as part of a Weight of Evidence analysis (WOEA), which assesses attainment by considering evidence other than the main air quality modeling attainment test. While supplemental analyses can increase confidence in the reliability of the modeling, they are less important for evaluating the impracticability demonstration *per se*. That is, the level of rigor in the modeling analyses supporting the Plan's conclusion that attainment will occur by 2019 is less important when the object is to demonstrate that attainment is not practicable by 2015. Supplemental analyses to support a demonstration of attainment by the end of 2019 will be necessary in a new Serious area plan.

2. Air Quality Modeling in the 2012 $PM_{2.5}$ Plan

A brief description of the modeling in 2012 $PM_{2.5}$ Plan and our evaluation of it follows. More detailed information about the modeling is available in section II.B. of the TSD.

CARB and the District jointly performed the air quality modeling for the 2012 $PM_{2.5}$ Plan. The modeling analysis uses the Community Multiscale Air Quality (CMAQ) photochemical model, developed by the EPA.[19] It incorporates routinely available meteorological and air quality data collected during 2007. The MM5 (Mesoscale Model version 5) was used to prepare meteorological input for CMAQ. Air Quality modeling was performed only for the first and fourth quarters (Q1 and Q4) of 2007 which is sufficient for modeling the 2006 24-hour $PM_{2.5}$ standard in the SJV because the high 24-hour $PM_{2.5}$ concentrations occur only during the colder part of the year. Only the top 10 percent of modeled days is required for projecting the 98th percentile-based design values into the future. (Modeling Guidance Update, p. B–1) The 2012 $PM_{2.5}$ Plan's modeling protocol is contained in Appendix F and includes descriptions of the photochemical modeling. Additional

[17] The EPA Modeling Guidance and Modeling Guidance Update are available on EPA's SCRAM Web site, Web page: *http://www.epa.gov/scram001/guidance_sip.htm;* direct links: *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf* and *http://www.epa.gov/ttn/scram/guidance/guide/Update_to_the_24-hour_PM25_Modeled_Attainment_Test.pdf.*

[18] The District developed the Plan to address the requirements of subpart 1 as interpreted in the 2007 p.m.2.5 Implementation Rule (prior to the D.C. Circuit's remand of this rule in *NRDC*) which authorized the EPA to extend the attainment date as appropriate for a period no greater than 10 years from the date of designation, considering the severity of nonattainment and the availability and feasibility of pollution control measures (*see* CAA section 172(a)(2)(A) and 40 CFR 51.1004). Because the SJV areas was designated nonattainment effective December 14, 2009 (74 FR 58688 (November 13, 2009), the date ''10 years from the date of designation'' would be December 14, 2019.

[19] The 2012 $PM_{2.5}$ Plan also included receptor modeling source apportionment analyses, using both the Chemical Mass Balance (CMB) model and the Positive Matrix Factorization (PMF) model. These models distinguish the ambient $PM_{2.5}$ contributions of several broad emissions source categories based on how they match the chemical species components of $PM_{2.5}$ measurements. These results generally corroborated results from the photochemical modeling, but were not themselves part of the attainment demonstration.

description of the photochemical modeling is also covered in the Weight of Evidence Analysis (''WOEA'').[20] The protocol was reviewed by the EPA and a number of academic experts, and covers all of the topics recommended in the Guidance, including thorough discussions of past modeling results and emission inventory preparation procedures.

The air quality modeling and results are summarized in Chapter 4 of the Plan (section 4.5, p. 4–22) and in the WOEA (section 10, p. 62). The Plan's meteorological model and air quality model performance statistics and graphics are available from the CARB Web site (''Meteorology and Air Quality Modeling for the 2012 24-Hour $PM_{2.5}$ Plan for the San Joaquin Valley'', *http://arb.ca.gov/eos/SIP_Modeling_PM25/24hr_PM25_ModelingPage.htm*). The air quality model performance appears to be quite good, with bias within the criteria for acceptance, and usually within the original performance goals; performance is very good for total $PM_{2.5}$ and for nitrate, the largest component of $PM_{2.5}$; however, time series plots show that some high $PM_{2.5}$ periods were underestimated.

The 2012 $PM_{2.5}$ Plan included a UAA in Appendix 6 of the Weight of Evidence Analysis in Appendix G of the Plan (p. G–175). (ARB Staff Report Appendix B is identical to Plan Appendix G, except that it does not include the latter's Appendices 5 and 6).

3. Evaluation of the Air Quality Modeling in the 2012 $PM_{2.5}$ Plan

The modeling showed that existing State and District control measures are not sufficient to attain the 2006 $PM_{2.5}$ standard by 2019 at all monitoring sites in the SJV. Modeling of the additional measures in the Plan (additional direct $PM_{2.5}$ reductions from residential wood burning and from commercial charbroiling) showed attainment at all sites by 2019. *Id.*

Given the extensive discussion of modeling procedures, tests, and performance analyses called for in the Modeling Protocol and the good model performance, the EPA finds that the modeling is adequate for purposes of supporting the RACM demonstration, the RFP demonstration, and the demonstration of impracticability in the 2012 $PM_{2.5}$ Plan and Supplement. To satisfy the statutory requirements for a serious area attainment demonstration, however, the State will need to address documentation gaps outlined in the TSD (section II.B. of the TSD).

While the State included a UAA in the Plan, it makes no difference for the impracticability demonstration we are concerned with here. Any unmonitored peaks with concentrations higher than at the monitors would merely strengthen the case for attainment being impracticable by the required date. A demonstration that attainment is impracticable at monitor locations is sufficient to meet the requirements of section 189(a)(1)(B)(ii). The EPA finds that the supplemental analyses presented in the WOEA are useful in a weight of evidence analysis, and support the demonstration of the impracticability of attainment by 2015.

We note finally that existing ambient air quality monitoring data also support the modeled demonstration that attainment of the 2006 $PM_{2.5}$ standard by December 31, 2015 is impracticable. Compliance with the 2006 24-hour $PM_{2.5}$ standard is assessed using the three-year average of the yearly 98th percentile concentrations. The most recent monitored $PM_{2.5}$ concentrations show that compliance with the 2006 standard is not possible by the end of 2015. *See* discussion in section II.F.3 of the TSD and section V.A. of this proposal.

C. $PM_{2.5}$ Precursors

1. Requirements for the Control of $PM_{2.5}$ Precursors

The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous SO_2, NO_X, VOC and ammonia to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[21] Formation of secondary $PM_{2.5}$ may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with cloud or fog droplets.[22]

The 2007 $PM_{2.5}$ Implementation Rule contained rebuttable presumptions concerning the four $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. *See* 40 CFR 51.1002(c). Although the rule included presumptions that states should address SO_2 and NOx emissions in their attainment plans, it also included presumptions that regulation of VOCs and ammonia was not necessary. Specifically, in 40 CFR 51.1002(c), the 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,'' unless the state or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants ''significantly contribute'' to $PM_{2.5}$ concentrations in the nonattainment area. 40 CFR 51.1002(c)(3), (4); see also 2007 p.m.2.5 Implementation Rule, 72 FR 20586 at 20589–97 (April 25, 2007).

In *NRDC,* however, the D.C. Circuit remanded the EPA's 2007 $PM_{2.5}$ Implementation Rule in its entirety, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002. *See NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). Although the court expressly declined to decide the specific challenge to these presumptions (*see* 706 F.3d at 437, n. 10 (D.C. Cir. 2013)), the court cited CAA section 189(e)[23] to support its observation that ''[a]mmonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}'' and that ''[f]or a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated.'' 706 F.3d at 436, n. 7 (*citing* CAA section 189(e)). Consistent with the *NRDC* decision, EPA now interprets the Act to require that under subpart 4, a state must evaluate all $PM_{2.5}$ precursors for regulation unless it provides a demonstration adequate to rebut the presumption for a particular precursor in a particular nonattainment area.

The provisions of subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified particulate matter (PM) precursor. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the

[20] The WOEA is Appendix B to the ''[CARB] Staff Report, Proposed Revision to the $PM_{2.5}$ State Implementation Plan (SIP) for the San Joaquin Valley,'' Release Date: January 11, 2013 (''Staff Report''), which can be found in the docket for this proposed rule. Appendix G to the 2012 $PM_{2.5}$ Plan also contains a weight of evidence analysis which is identical to the one in the CARB Staff Report except for the two additional appendices 5 and 6.

[21] EPA, Air Quality Criteria for Particulate Matter (EPA/600/P–99/002aF, October 2004), Chapter 3.

[22] EPA, Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA–452/R–12–005, December 2012), p. 2–1.

[23] Section 189(e) of the CAA states that ''[t]he control requirements applicable under plans in effect under this part for major stationary sources of PM_{10} shall also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' CAA section 302(g). The EPA has identified SO_2, NO_X, VOC, and ammonia as precursors to the formation of $PM_{2.5}$. Accordingly, the attainment plan requirements of subpart 4 presumptively apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.* CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for RACM and RACT, best available control measures (BACM) and best available control technology (BACT), most stringent measures, and NSR) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary. For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM_{10} precursors area-wide under CAA section 172(c)(1) and subpart 4 (*see* General Preamble, 57 FR 13498 at 13539–42), a state may demonstrate in a SIP submittal that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{10} levels in the nonattainment area.[24]

We are evaluating the SJV $PM_{2.5}$ Plan in accordance with the presumption embodied within subpart 4 that all $PM_{2.5}$ precursors must be addressed in the state's evaluation of potential control measures, unless the state adequately demonstrates that emissions of a particular precursor do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQs in the nonattainment area. In reviewing any determination by the state to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.

2. Evaluation of Precursors in SJV $PM_{2.5}$ Plan and Supplement

In the 2012 $PM_{2.5}$ Plan, the State and District identify NO_X, and SO_X as the precursors that it must control in order to attain the 2006 $PM_{2.5}$ standard in the San Joaquin Valley within 10 years of the area's designation as nonattainment for the $PM_{2.5}$ NAAQS (*i.e.,* by 2019).[25] Although no technical demonstration is necessary to support a conclusion consistent with the regulatory presumptions under subpart 4, the Plan nevertheless provides supporting evidence describing the need for NO_X and SO_X controls. The Plan states that further reductions in VOC and ammonia emissions would not contribute to attainment of the $PM_{2.5}$ standard in the area and provides analyses to support this position. In the following, we discuss the technical basis that the District provided in the Plan to support its positions with respect to SO_2, NO_X, VOC, and ammonia.

a. SO_2

The 2012 $PM_{2.5}$ Plan recognizes that emissions of SO_2 contribute significantly to ambient $PM_{2.5}$ levels in the San Joaquin Valley, and that ambient $PM_{2.5}$ concentrations are sensitive to reductions in SO_2.

The 2012 $PM_{2.5}$ Plan shows the measured contribution of SO_2 emissions to ambient $PM_{2.5}$ concentrations in pie charts portraying the contribution of various pollutant species. Depending on time period and location, the ammonium sulfate contribution is 6 to 9 percent,[26] and the corresponding contribution of just the sulfate part of the ammonium sulfate molecules is 4 to 7 percent of ambient $PM_{2.5}$. The Plan's ''Weight of Evidence Analysis'' (''WOEA'') also gives the ammonium sulfate portion of the 2007 design value concentration, 4.7 $\mu g/m^3$ at Bakersfield.[27] The corresponding sulfate-only portion is 3.4 $\mu g/m^3$. These contribution levels are substantial, although smaller than the contributions of some other components.

Ambient $PM_{2.5}$ sensitivity to reductions of SO_2 emissions is also presented in the Plan in the form of modeling results. The results from the sensitivity modeling is cited and discussed below in the NO_X subsection. The SO_2-specific results are that a 25% reduction in Valley-wide SO_2 emissions would result in a 0.18 $\mu g/m^3$ decrease in ambient $PM_{2.5}$ concentrations at the design value monitoring site, Bakersfield-California. It can also be inferred from the modeling that there is an ambient $PM_{2.5}$ decrease of 0.08 $\mu g/m^3$ per ton of SO_2 reduction (WOEA, Tables 6 and 7, p. 65). The 0.18 $\mu g/m^3$ $PM_{2.5}$ decrease for a 25% SO_2 reduction is considerably lower than the 3.75 $\mu g/m^3$ decrease that would result from a 25% NO_X reduction, but the 0.08 $\mu g/m^3$ $PM_{2.5}$ decrease per ton of emissions reduction is the same for SO_2 as it is for NO_X. The reason the 25% NO_X reduction provides a larger reduction in ambient $PM_{2.5}$ levels than a 25% SO_2 reduction is simply that the NO_X emission inventory for the area is much larger than the SO_2 inventory. The 2007 winter planning inventory for SO_2 is just 12.8 tpd, whereas for NO_X it is 465.1 tpd, more than 35 times larger (*see* 2012 $PM_{2.5}$ Plan at Appendix B, Emission Inventory, grand totals in tables B–3 for SO_2 and B–2 for NO_X.) Even though the relatively small SO_2 contribution to ambient $PM_{2.5}$ concentrations leaves little scope for reductions, the sensitivity of ambient $PM_{2.5}$ to SO_2 emission reductions indicates that SO_2 emissions contribute significantly to $PM_{2.5}$ levels above the standards.

Based on the technical analyses provided in the Plan, the EPA agrees with the State's and District's conclusion that SO_2 controls must be included in the evaluation of potential control measures for the 2006 $PM_{2.5}$ standard in the SJV, consistent with the requirements of subpart 4.

b. NO_X

The 2012 $PM_{2.5}$ Plan recognizes that emissions of NO_X contribute significantly to ambient $PM_{2.5}$ levels in the San Joaquin Valley, and that ambient $PM_{2.5}$ concentrations are sensitive to reductions in NO_X. The Plan discusses NO_X in conjunction with ammonia, because these precursors react together to create ammonium

[24] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. *See, e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[25] This identification is made in the 2012 $PM_{2.5}$ Plan, Appendix G, ''$PM_{2.5}$ Weight of Evidence Analysis'' (''WOEA'') at pp. iv and 66, and in the CARB, ''Staff Report, Proposed Revision to the $PM_{2.5}$ State Implementation Plan (SIP) for the San Joaquin Valley,'' Release Date: January 11, 2013 (''Staff Report'') at p. 9, which can be found in the docket for this proposed rule. The WOEA is also included as Appendix B to the Staff Report.

[26] 2009–2010 peak day average in 2012 $PM_{2.5}$ Plan Appendix A, Figures A–29 and A–30, p. A–52; 2009–2011 peak day average in WOEA Figure 7, p. 10.

[27] WOEA at Table 5, p. 63.

nitrate, the largest component of ambient $PM_{2.5}$ particles by species in the SJV.[28] The chemical products of ammonia and NO_X (ammonium and nitrate) combine in a 1:1 molecular ratio, but as discussed below, this ratio does not mean that emissions controls for the two precursor pollutants would be equally effective at reducing ambient $PM_{2.5}$. The Plan provides several lines of evidence to indicate that reductions in NO_X emissions are effective in reducing $PM_{2.5}$ concentrations exceeding the standard, and also that they are more effective than reductions in ammonia emissions. The evidence includes ambient contributions, model simulations of NO_X emission reductions, historical trends, and the relative amounts of NO_X and ammonia.

The Plan indicates that the ambient contribution of NO_X to $PM_{2.5}$ levels in the SJV is substantial. Ammonium nitrate is the largest chemical component of ambient $PM_{2.5}$ in the SJV, comprising 65 percent of the 2009–2011 average peak 24-hour $PM_{2.5}$ concentration at Bakersfield (WOEA, p. 10). Using the 2009–2011 24-hour $PM_{2.5}$ design value of 61.8 μg/m^3,[29] the ammonium nitrate concentration on peak $PM_{2.5}$ days is approximately 40.2 μg/m^3. If only nitrate itself is considered (*i.e.,* the nitrate part of the ammonium nitrate molecules), the contribution of NO_X represents approximately 50.3 percent of the 2009–2011 average peak 24-hour $PM_{2.5}$ concentration at Bakersfield, which is an ambient contribution of 31.1 μg/m^3.[30] Whether considered as ammonium nitrate or simply as nitrate, NO_X is clearly a significant contributor to ambient $PM_{2.5}$ levels above the standard in the SJV.

In addition to this evidence on the contribution of NO_X to $PM_{2.5}$ concentrations, the Plan provides evidence that ambient $PM_{2.5}$ concentrations are sensitive to NO_X reductions (*i.e.,* nitrate $PM_{2.5}$ concentrations go down when NO_X emissions are reduced). The evidence is from modeling, historical trends, and relative proportions of NO_X and ammonia. The 2012 $PM_{2.5}$ Plan provides evidence from past and current photochemical modeling simulations that ambient ammonium nitrate is sensitive to NO_X reductions. The Plan describes past modeling studies that were documented in academic journals.[31] In the various studies, when NO_X emissions were reduced by 50 percent, ambient ammonium nitrate decreased by 25 to 50 percent, depending on the episode modeled and the geographic location.[32] Modeling for the 2012 $PM_{2.5}$ Plan also shows substantial sensitivity of ambient $PM_{2.5}$ concentrations to reductions in NO_X emissions. In the Plan, the State modeled a 25 percent reduction in NO_X emissions and showed a decrease in Bakersfield $PM_{2.5}$ concentrations of 3.75 μg/m^3, a 6 percent decrease in the 2009–2011 design value of 61.8 μg/m^3 and similar levels of ambient decreases at other monitors (WOEA, Table 6, p. 65).

The 2012 $PM_{2.5}$ Plan provides additional (non-modeling) evidence on the effectiveness of NO_X reductions. The historical downward trends of NO_X emissions and of ambient nitrate concentrations are discussed in Chapter 4 and the WOEA of the Plan.[33] Daily NO_X emissions levels and winter nitrate concentrations appear correlated over time on an annual basis. Both have decreased by about a third during the period 2004 to 2011. This is evidence that existing NO_X controls are effective at reducing ammonium nitrate. The evidence is strengthened by the fact that this reduction in ambient nitrate occurred despite an increase in emissions of ammonia, the other precursor to ammonium nitrate, during the same period (Plan p. 4–8).

The Plan further describes the effectiveness of NO_X controls by characterizing it as the ''limiting precursor'' in ammonium nitrate formation, based on the relative amounts of NO_X and ammonia. Based on monitored concentrations and the emissions inventory, the Plan concludes that NO_X is the limiting precursor. The limiting precursor concept is illustrated briefly in Chapter 4 and described more fully in the WOEA.[34] One molecule of each of NO_X and ammonia is required to form each molecule of ammonium nitrate. If NO_X is in short supply relative to ammonia, then NO_X is the limiting factor in ammonium nitrate formation.[35]

The WOEA includes plots (Figures 16 and 17, p. 19) of ammonia and nitric acid (which contains nitrate) concentrations at two monitoring sites in the SJV (Angiola and Fresno) that were measured during the winter 2000–2001 CRPAQS[36] study and reported in Lurmann *et al.* (2006).[37] The Plan notes that ammonia concentrations are at least an order of magnitude larger than those of nitrate and notes Lurmann *et al.*'s conclusion that NO_X is the limiting precursor.

The WOEA also considers emissions inventories to support the argument that NO_X is the limiting precursor. The WOEA normalized NO_X emissions using the relative molecular weights of NO_X and ammonia, in order to reflect the number of molecules of each available to react with each other (p. 18, Table 1). In 2000, the amount of NO_X available was only about two-thirds the amount of ammonia; in 2011 NO_X was only one-third of ammonia. This shows the scarcity of NO_X relative to ammonia and implies that NO_X is the limiting precursor in the formation of ammonium nitrate.

Based on the range of technical analyses provided in the Plan and other information available to EPA, the EPA agrees with the State's and District's conclusion that NO_X controls must be included in the evaluation of potential control measures for the 2006 $PM_{2.5}$ standard in the SJV, consistent with the requirements of subpart 4.

c. Ammonia

The 2012 $PM_{2.5}$ Plan and Supplement state that ''[b]ecause of the regional

[28] 2012 $PM_{2.5}$ Plan Appendix A, Figures A–30 and A–29, p. A–52.

[29] *See* 2012 $PM_{2.5}$ Plan, p. A–10. The design value for Bakersfield-California for 2009–2011 is given as a rounded value of 62 μg/m^3 in Table A–5 in Appendix A of the Plan. For greater precision in estimating species contributions, we have used the unrounded value of 61.8 μg/m^3 calculated as the average of the 98th percentiles values for each year (66.7, 53.3, and 65.5) as listed in Table A–4.

[30] The nitrate fraction of ammonia nitrate is calculated as molecular weight of nitrate (62) divided by the molecular weight of ammonium nitrate (80) and equals 77.5 percent.

[31] The academic journal papers and are described in Appendix F, section 2.7 (p. 28), and in WOEA, section 5.c (p. 64).

[32] Kleeman, M.J., Ying, Q., and Kaduwela, A., Control strategies for the reduction of airborne particulate nitrate in California's San Joaquin Valley, Atmospheric Environment, 2005, 39, 5325–5341. Liang, J., Gürer, K., Allen, P.D., Zhang, K.M., Ying, Q., Kleeman, M., Wexler, A., and Kaduwela, A., 2006, A photochemical model investigation of an extended winter PM episode observed in Central California: Model Performance Evaluation, Proceedings of the 5th Annual CMAQ Models-3 User's Conference, Chapel Hill, NC. Pun, B.K., Balmori R.T.F, and Seigneur, C., 2009, Modeling wintertime particulate matter formation in Central California, Atmospheric Environment, 43, 402–409. Different models and emission inventories in these studies conducted over the years also contribute to the variation in results.

[33] 2012 $PM_{2.5}$ Plan, Chapter 4, p. 4–8 and Figure 4–7, p. 4–10; more detail in WOEA section 9, p. 58, Figures 49–52.

[34] Chapter 4, Figures 4–4 and 4–5 (Plan, p. 4–9); WOEA, section 5b, p. 16. See also CARB Staff Report, p. E–3.

[35] As noted below in the ammonia subsection, the ''limiting precursor'' concept is not absolute, and must be used with caution. However, for NO_X it does support evidence from the modeling results that NO_X significantly contributes to $PM_{2.5}$ exceedances.

[36] CRPAQS is the California Regional Particulate Air Quality Study. More information is available about CRPAQS at *http://www.arb.ca.gov/airways/ccaqs.htm.*

[37] Lurmann, F.W., Brown, S.G., McCarthy, M.C., and Roberts, P.T., December 2006, Processes Influencing Secondary Aerosol Formation in the San Joaquin Valley during Winter, Journal of Air and Waste Management Association, 56, 1679–1693.

surplus in ammonia, even substantial ammonia emissions reductions yield a relatively small reduction in nitrate'' (Plan p. 4–8) and that ''ammonia reductions would not significantly contribute to the Valley's attainment of the 2006 $PM_{2.5}$ standard'' (Plan p. 4–11). To support this finding, the Plan and Supplement discuss the ambient contribution of ammonia to measured $PM_{2.5}$ levels in the SJV, and the sensitivity of ambient $PM_{2.5}$ to ammonia reductions. The latter includes discussion of the relative abundance of NO_X and ammonia, and of modeled simulations of further reductions in ammonia emissions.

The Plan indicates that ammonia contributes to ambient concentrations of $PM_{2.5}$, in the form of ammonium nitrate and ammonium sulfate. As noted above in the NO_X discussion, ammonium nitrate contributes 65 percent of the 2009–2011 average peak $PM_{2.5}$ ambient levels at Bakersfield. Ammonium sulfate contributes an additional 7 percent (p. G–10; WOEA, p. 10). Thus, ammonium nitrate and ammonium sulfate together account for a total of 72 percent of the peak 24-hour $PM_{2.5}$ concentrations, or 44.5 $\mu g/m^3$, and ammonia emissions are essential to the formation of both of these components of the ambient particulate matter. If only the ammonium portion of these molecules is considered, the corresponding figures are 16.6 percent of peak $PM_{2.5}$ ambient levels, or 10.3 $\mu g/m^3$.[38] This level of contribution is a substantial fraction of the SJV's 2009–2011 design value of 61.8 $\mu g/m^3$, and indicates that emissions of ammonia contribute significantly to ambient $PM_{2.5}$ concentrations that exceed the 24-hour $PM_{2.5}$ standard in the SJV.

Next we examine information in the Plan regarding the sensitivity of ambient $PM_{2.5}$ levels in the SJV to ammonia emission control. On this issue there is conflicting evidence. Based on evidence that ammonia is not the limiting precursor and that modeled ammonia reductions are relatively ineffective, the Plan concludes that controls for ammonia are not warranted. However, a detailed evaluation of the modeling shows that ammonia controls can be effective at reducing ambient $PM_{2.5}$ in some locations.

The Plan's evidence discussed above to support the argument that NO_X is the limiting precursor for ammonia nitrate formation is also presented as evidence that ammonia is not the limiting precursor, and so ambient $PM_{2.5}$ would not be sensitive to ammonia reductions (WOEA, p. 16–20). The Plan notes that there is both an abundance of ambient ammonia relative to ambient nitrate, and an abundance of ammonia emissions relative to NO_X emissions. The Plan also indicates that there is an abundance of gaseous ammonia relative to particulate ammonium at multiple locations during the 2000–2001 winter episode in the CRPAQS study (WOEA, p. 20 and Figure 18). This abundance suggests that even under conditions favorable to ammonium nitrate formation, a substantial amount of unreacted ammonia remains. Based on these multiple pieces of evidence on the abundance of ammonia, the Plan concludes that ammonia is not the limiting factor for ammonium nitrate formation and, thus, that reducing ammonia emissions would not reduce ambient $PM_{2.5}$ in the SJV.

The 2012 $PM_{2.5}$ Plan also considered air quality modeling analyses to evaluate the effectiveness of reducing ammonia as compared to other precursors, and to $PM_{2.5}$ decreases needed for attainment. Modeling for the 2012 $PM_{2.5}$ Plan indicated that a 25 percent reduction in ammonia emissions resulted in a 0.55 $\mu g/m^3$ decrease in ambient $PM_{2.5}$ (WOEA, p. 65, Table 6). This benefit is roughly one-seventh the corresponding benefit for a 25 percent reduction in NO_X. *Id.* Restating the inventory reduction percentages in terms of tons per day reductions, the Plan notes that reducing ammonia emissions by one ton per day is only about 10 percent as effective as reducing one ton per day of NO_X (Plan p. 4–11). Thus, based on this air quality modeling, the Plan concludes that additional ammonia control is considerably less effective than NO_X control.

The Plan also notes that, assuming the same rate of improvement in ambient $PM_{2.5}$ concentration per ton of ammonia reduced, it would take a 34 percent reduction in ammonia emissions to decrease ambient $PM_{2.5}$ by 1 $\mu g/m^3$, the amount that would have been needed to advance projected attainment by one year from 2019 to 2018. The Plan considers this to be ''an infeasible amount, since there are no control strategies that exist or have been identified which could achieve such large reductions'' (Plan, p. 4–11).

The Plan assumes that additional ammonia control, as modeled, would provide limited benefit for attainment planning purposes. The Plan concludes, based upon the various information and analyses described above, that ''ammonia reductions would not significantly contribute to the Valley's attainment of the 2006 $PM_{2.5}$ standard'' (Plan p. 4–11), and therefore additional control measures should not be evaluated.

After reviewing the information discussed above, EPA believes that the information provided by the State and District in the Plan and Supplement shows that ammonia contributes to a large fraction of measured $PM_{2.5}$ concentrations in the SJV area, in the form of ammonium nitrate and ammonium sulfate. Additionally, modeling analyses submitted by the State and studies available to EPA indicate that although ammonia control is generally less effective at reducing $PM_{2.5}$ concentrations when compared to NO_X control, it remains true that reducing ammonia emissions in the SJV would reduce $PM_{2.5}$ by varying amounts throughout the nonattainment area. Moreover, reductions in ammonia in conjunction with reductions of SO_2 and NO_X would help to provide for attainment of the NAAQS in the SJV.

While EPA finds the modeling and other analyses presented in the 2012 $PM_{2.5}$ plan to be credible, the fact remains that the modeling analyses show that additional reductions in ammonia may reduce ambient $PM_{2.5}$ levels to varying degrees. In the various studies, when ammonia emissions were reduced by up to 50 percent, ambient ammonium nitrate decreased by 5 to 25 percent, depending on the episode modeled and the geographic location evaluated. (WOEA, p. 64) These percentages for ammonia benefits are generally smaller than those for NO_X reductions, but these modeling results show that reductions in ammonia emissions under certain circumstances can effectively reduce ambient $PM_{2.5}$. The fact that all the modeling studies, including the modeling done for the current Plan, find at least some benefit from ammonia control shows that the concept of a ''limiting precursor'' discussed above is not absolute. In addition, the test for determining whether emission reduction measures for a particular precursor must be evaluated for purposes of timely attainment should not be exclusively based on the control effectiveness of the precursor relative to other precursors, but should also consider whether emissions of the precursor ''contribute significantly'' to ambient $PM_{2.5}$ levels which exceed the $PM_{2.5}$ standard in the nonattainment area.

Regarding the Plan's statement that it would take a 34 percent reduction in

[38] The ammonium fraction of ammonia nitrate is calculated as molecular weight of ammonium (18) divided by the molecular weight of ammonium nitrate (80) and equals 23.5 percent. The ammonium fraction of ammonia sulfate is calculated as molecular weight of ammonium portion (36) divided by the molecular weight of ammonium sulfate (132) and equals 27.3 percent.

ammonia emissions to decrease ambient $PM_{2.5}$ by 1 μg/m³, the amount needed to advance attainment by one year from 2019 to 2018, EPA notes that the test for advancing the attainment date is based not on an evaluation of control measures for a single pollutant but rather on an evaluation of potential control measures for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors from all types of sources in the nonattainment area. We also note that the appropriate inquiry in this context is whether reasonably available control measures would advance attainment by one year from 2015 to 2014 (not from 2019 to 2018), given under subpart 4 the applicable attainment date for the SJV area for the 2006 $PM_{2.5}$ NAAQS is December 31, 2015.

In summary, the information provided by the State and District in the Plan and Supplement shows that ammonia contributes to a large fraction of measured $PM_{2.5}$ concentrations in the SJV area, in the form of ammonium nitrate and, to a lesser extent, ammonium sulfate. Additionally, modeled evidence submitted by the State and studies available to EPA indicate that although ammonia control is less effective at reducing $PM_{2.5}$ concentrations compared to NO_X control, reducing ammonia emissions in the SJV would reduce $PM_{2.5}$ by some amount in parts of the Valley. Given the severity of the $PM_{2.5}$ nonattainment problem in the SJV, the demonstration that attainment in SJV by 2015 is impracticable, and the documentation in the 2012 $PM_{2.5}$ Plan showing that ammonia emissions are responsible for more than 10 μg/m³ of ambient $PM_{2.5}$ concentrations in the SJV area, EPA does not agree with the statement in the Plan that additional ammonia controls need not be evaluated to satisfy CAA requirements for the 2006 $PM_{2.5}$ standard in the SJV.

While stating that additional ammonia reductions are not necessary, the State nevertheless provided in the Supplement an evaluation of ammonia control measures currently implemented in the SJV and other potential ammonia control measures. We discuss the State's ammonia control evaluation in section D, below (''Reasonably Available Control Measures/Reasonably Available Control Technology'').

d. VOC

The 2012 $PM_{2.5}$ Plan states that further reductions in VOC emissions would not contribute to $PM_{2.5}$ attainment in the San Joaquin Valley. To support this finding, the Plan discusses the ambient contribution of VOC to measured $PM_{2.5}$ levels in the Valley, the indirect role of VOC in ammonium nitrate formation, and modeled simulations of further reductions in VOC emissions.

There are two routes by which VOC can contribute to ambient $PM_{2.5}$. The first is through various chemical reactions leading to the formation of Secondary Organic Aerosols (SOA). The second is through photochemical reactions that create oxidants such as ozone and the hydroxyl radical (OH), which in turn oxidize NO_X emissions to nitrate, leading to the formation of particulate ammonium nitrate. The Plan's Chapter 4 (p. 4–12) discussed both routes in section 4.4.2. The WOEA discusses SOA in section 6 (WOEA, p. 32) and the oxidant route in section 5d (WOEA, p. 24).

For the direct contribution of VOC to $PM_{2.5}$, SOA, the 2012 $PM_{2.5}$ Plan states that modeling for annual average $PM_{2.5}$ for the 2008 $PM_{2.5}$ Plan found that anthropogenic SOA were about 3 to 5 percent of total organic aerosol, and that SOA were mainly formed during the summer from nonanthropogenic sources. The winter anthropogenic contribution that is of interest for the 24-hour $PM_{2.5}$ standard would necessarily be lower, since SOA formation is less at winter temperatures, which are lower than the annual average. The Plan also cites a study by Chen *et al.* [39] for the winter 2000–2001 CRPAQS episode. This study found that the SOA portion of total organic aerosol had a maximum value of 4.26 μg/m³ with concentrations at Fresno and Bakersfield of 2.46 and 2.28 μg/m³, respectively, which represent 6 percent and 4 percent of the total organic aerosol at those locations. Applying this roughly 5 percent SOA proportion to the organic carbon portion of the measured 2009–2011 winter $PM_{2.5}$ composition shows that SOA is around 0.9 percent of total ambient $PM_{2.5}$ at Bakersfield, and 1.5 percent of ambient $PM_{2.5}$ at Fresno.[40] Because anthropogenic SOA is only a portion of the total, the portion due to controllable anthropogenic sources would be even less. These modeling studies show that SOA is not a substantial component of ambient $PM_{2.5}$ in the SJV and that the potential for reducing ambient $PM_{2.5}$ through VOC emission reductions is very limited.

For the indirect contribution of VOC to $PM_{2.5}$, nitrate formation via daytime photochemistry, it appears that this route is also not a substantial contributor, based on modeled sensitivity to VOC reductions. For one such study there were relatively low modeled concentrations of ozone, which did not appear consistent with nitrate formation via daytime oxidant (ozone) photochemistry, which would be expected to have elevated ozone levels.[41] The Plan reviews the same studies that the State relied on in the 2008 $PM_{2.5}$ Plan for attainment of the 1997 $PM_{2.5}$ standards (Plan Modeling Protocol, p. F–31). The EPA's review of these studies and of the 2008 $PM_{2.5}$ Plan's examination of them is covered in the TSD for the EPA's final action on the 2008 $PM_{2.5}$ Plan.[42] The findings from those reviews remain the same for the current Plan: past modeling studies vary on whether controlling VOC reduces $PM_{2.5}$, but the most reliable ones show VOC control has little benefit, or even a disbenefit. As detailed in that previous TSD and in the Plan's Modeling Protocol, the studies for which VOC control showed a benefit at some times and places are less reliable because they used unrealistic emissions levels, unrealistic control scenarios, or the effect occurred at $PM_{2.5}$ concentrations no longer reached in the SJV. The Protocol also suggested that there is sufficient background ozone flowing in from outside the SJV area to perform the oxidizing role, even in the absence of oxidants generated from VOC emissions within the SJV,[43] implying that VOC reductions would have little effect on ambient $PM_{2.5}$ levels exceeding the standard in the SJV. The overall conclusion is that the effect of reducing VOC emissions is somewhat uncertain, but in general produces little benefit or

[39] Chen, J., Ying, Q., and Kleeman, M.J., 2010, Source apportionment of wintertime secondary organic aerosol during the California regional PM_{10}/$PM_{2.5}$ air quality study, Atmospheric Environment, 44(10), 1331–1340.

[40] The contribution of Organic Matter to 2009–2011 peak day $PM_{2.5}$ levels was 17 percent at Bakersfield and 29 percent at Fresno (*see* Staff Report, Appendix B, p. 10 [pdf.52], Figure 6. Five percent of these gives 0.85 percent SOA at Bakersfield and 1.45 percent at Fresno. As a fraction of the 2007 design values of 66 μg/m³ at Bakersfield and 63 μg/m³ at Fresno, these give SOA contributions of 0.56 and 0.91 μg/m³ at Bakersfield and Fresno, respectively.

[41] Pun, B.K., Balmori R.T.F, and Seigneur, C., 2009, Modeling Wintertime Particulate Matter Formation in Central California, Atmospheric Environment, 43: 402–409. doi: 10.1016/j.atmosenv.2008.08.040.

[42] EPA-Region 9, Technical Support Document and Responses to Comments Final Rule on the San Joaquin Valley 2008 $PM_{2.5}$ State Implementation Plan,'' September 30, 2011, section II.C.

[43] Kleeman, M.K., Ying, Q., and Kaduwela, A., 2005, Control strategies for the reduction of airborne particulate nitrate in California's San Joaquin Valley, Atmospheric Environment, 39: 5325–5341 September 2005. doi:10.1016/j.atmosenv.2005.05.044; cited in Plan Modeling Protocol. p. F–36).

even a disbenefit in $PM_{2.5}$ concentrations.

Added to this evidence from past studies is the 2012 Plan's current modeling, which indicates a disbenefit from controlling VOC at important geographic locations. This is shown by negative $PM_{2.5}$ sensitivities (that is, decreased VOC emissions result in increased $PM_{2.5}$ levels) for multiple locations.[44] In addition, diagrams of model $PM_{2.5}$ response at Bakersfield to various combinations of NO_X and VOC reductions show graphically that VOC reductions increase $PM_{2.5}$, for any given level of NO_X.[45] For all the monitoring sites, these NO_X vs. VOC diagrams show either no decrease or an actual increase in $PM_{2.5}$ as VOC emissions are reduced. The current modeling provides strong evidence that additional VOC reductions would not decrease ambient $PM_{2.5}$ concentrations in the SJV.

In sum, the information provided by the State and District in the Plan and Supplement shows that: (a) wintertime levels of secondary organic aerosol measured in the SJV are low and therefore the direct products of VOC emissions do not directly contribute significantly to $PM_{2.5}$ levels above the standard in the SJV; and (b) wintertime reductions in VOC emissions in the SJV, when $PM_{2.5}$ concentrations are high, would not reduce ambient $PM_{2.5}$ levels, and therefore the indirect products of VOC emissions also do not directly contribute significantly to $PM_{2.5}$ levels above the standard in the SJV. Based on this information, we propose to determine that at this time VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 $PM_{2.5}$ standard in the SJV nonattainment area.

3. Proposed Action

Based on a review of the information provided by the District and other information available to EPA, we propose to determine that at this time VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels which exceed the 2006 $PM_{2.5}$ standard in the SJV and, therefore, that VOCs may be excluded from the State's evaluation of potential control measures for purposes of this standard in this area. Consistent with the regulatory presumptions under subpart 4, all other $PM_{2.5}$ precursors (NO_X, SO_2, and ammonia) must be included in the State's evaluation of potential control measures for the 2006 $PM_{2.5}$ standard in the SJV area, including NNSR provisions to implement the requirements of subpart 4.[46] We discuss the State's evaluation of potential control measures for NO_X, SO_2, and ammonia, as well as direct $PM_{2.5}$, in section D (''Reasonably Available Control Measures/Reasonably Available Control Technology'').

D. Reasonably Available Control Measures/Reasonably Available Control Technology

1. Requirements for RACM/RACT

CAA section 172(c) under subpart 1 describes the general attainment plan requirement for RACM and RACT, requiring that attainment plan submissions ''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 NAAQS. The attainment planning requirements specific to $PM_{2.5}$ under subpart 4 likewise impose upon states an obligation to develop attainment plans that require RACM on sources of direct $PM_{2.5}$ and those $PM_{2.5}$ precursors determined to be subject to the RACM/RACT requirement. CAA section 189(a)(1)(C) requires that Moderate area $PM_{2.5}$ SIPs contain provisions to assure that RACM are implemented by no later than 4 years after designation of the area. The EPA reads CAA sections 172(c)(1) and 189(a)(1)(C) together to require that attainment plans for Moderate nonattainment areas must provide for the implementation of RACM and RACT for existing sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the nonattainment area as expeditiously as practicable but no later than 4 years after designation.[47] As part of the RACM/RACT analysis, all available controls should be evaluated, and reasonable controls should be adopted.

The terms RACM and RACT are not specifically defined in the Act, nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. In longstanding guidance, however, the EPA has interpreted the RACM requirement to include any potential control measure for a point, area, on-road and non-road emission source that is technologically and economically feasible (General Preamble at 13540) and is not ''absurd, unenforceable, or impracticable'' (General Preamble at 13560). The EPA has historically defined RACT as the lowest emission limitation that a particular stationary source is capable of meeting by the application of control technology (*e.g.,* devices, systems, process modifications, or other apparatus or techniques that reduce air pollution) that is reasonably available considering technological and economic feasibility. *See* General Preamble at 13541 and 57 FR 18070, 18073–74 (April 28, 1992).

The EPA recommends that states use the following process to identify RACM/RACT:

1. Develop a comprehensive list of available control measures for all source categories in the nonattainment area. In developing this list, the state should identify existing control measures currently being implemented in the area and also include any control measures suggested in public comments.

2. Remove from the list any measure that is unreasonable because emissions from the affected source or source category are insignificant (*i.e.,* de minimis). The state should appropriately document any determination that a source or source category is insignificant.

3. Evaluate each remaining available control measure for its ''reasonableness,'' considering technological and economic feasibility and any potentially adverse impacts. The state should provide a reasoned justification if it rejects a listed control measure as unreasonable.

4. Include in its submitted Moderate area attainment plan, in enforceable form, each control measure found to be reasonable unless the measure is already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs. In areas that demonstrate attainment by the Moderate area attainment date, the state may justify rejection of an otherwise reasonable measure by demonstrating that the measure would not, individually or collectively with other reasonable measures being rejected, advance attainment by one year or more. For areas that demonstrate that attainment by the Moderate area attainment date is impracticable, the state must provide for the implementation of all available control measures that are technologically and economically feasible.

[44] See VOC columns of WOEA Tables 6 and 7 (p. 65) for Bakersfield, Visalia, Corcoran, and Merced.

[45] WOEA Figure 54 (p. 67) shows the model $PM_{2.5}$ response at Bakersfield to reductions in various combinations of precursors. Subfigure ''b)'' shows NO_X reductions plotted against VOC reductions. For a given level of NO_X, in decreasing VOC by moving leftward along a horizontal line (representing constant NO_X), one crosses the lines of constant $PM_{2.5}$ (isopleths) into regions of increased $PM_{2.5}$. The Plan presents similar diagrams in Chapter 4, Figures 4–15 through 4–23 (pp. 4–31*ff*) for the various monitoring sites.

[46] Absent a demonstration to EPA's satisfaction that major stationary sources of ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the NAAQS in the SJV area, under CAA section 189(e) major stationary sources of ammonia are subject to the control requirements that apply to major stationary sources of direct $PM_{2.5}$, including NNSR requirements. We intend to evaluate the adequacy of SJV's NNSR program for $PM_{2.5}$ purposes in a separate rulemaking.

[47] This interpretation is consistent with guidance provided in the General Preamble at 13540.

See General Preamble at 13540–13544.

An evaluation of technological feasibility should include consideration of factors such as a source's process and operating conditions, raw materials, physical plant layout, and non-air quality and energy impacts (*e.g.,* increased water pollution, waste disposal, and energy requirements) (57 FR 18070, 18073).

An evaluation of economic feasibility should include consideration of factors such as cost per ton of pollution reduced (cost-effectiveness), capital costs, and annualized cost (57 FR 18070, 18074). Absent other indications, the EPA presumes that it is reasonable for similar sources to bear similar costs of emissions reductions. Economic feasibility of RACM and RACT is thus largely informed by evidence that other sources in a source category have in fact applied the control technology, process change, or measure in question in similar circumstances. *Id.*

2. RACM/RACT Analysis in the 2012 $PM_{2.5}$ Plan

The 2012 $PM_{2.5}$ Plan's RACM/RACT evaluation for direct $PM_{2.5}$, NO_X and SO_2 sources is summarized in section 9.2 (p. 9–3) and detailed in Appendices C (''Mobile Source Control Strategies'') and D (''Stationary and Area Source Control Strategy Evaluation''). RACM for ammonia sources is discussed in Attachment A of the Supplement. The Plan includes a short discussion of the District's current VOC control measures (p. 5–17 and Supplement, p. 13) but includes no detailed evaluation of them. The treatment of VOCs is thus consistent with the District's determination that additional VOC controls are not necessary in the SJV area for purposes of attaining the $PM_{2.5}$ NAAQS.

The evaluation of potential controls in the 2012 $PM_{2.5}$ Plan is presented by source category. For stationary and area source categories, the evaluation is broken down by the current District rule or rules that apply to that source category. The evaluation also addresses a number of source categories that are not currently subject to emission controls (*e.g.,* fireworks). *See* 2012 Plan, Appendix D, p. D–163.

The following information is provided in Appendix D for each stationary or area source category or District rule or, for ammonia sources, in Attachment A to the Supplement:

- A description of the sources within the category or sources subject to the rule;
- base year (2007), current year (2012), and projected baseline year emissions (for every year from 2014 to 2019) in the source category or affected by the rule;
- a discussion of the current rule requirements and/or listing and discussion of existing rules, regulations, or other control efforts that address the source category; and
- identification and discussion of potential new controls, including in many cases, a discussion of the technological and economic feasibility of the new controls. Rules adopted by other agencies (including the EPA, South Coast AQMD, and Bay Area AQMD) are discussed and compared to existing SJV rules. Measures proposed by the public for the source category/rule are also identified and discussed. In addition, non-regulatory approaches to reducing emissions in each stationary and area source category are discussed, including the use of incentives, opportunities for technology advancement programs, policy initiatives, and education/outreach programs.

The following information is provided in Appendix C for each major on- and off-road mobile source category:

- A description of the type of sources in the category;
- base year (2007), current year (2012), and projected baseline year emissions (for every year from 2014 to 2019) in the source category;
- a discussion of the current rule requirements and/or listing and discussion of existing rules, regulations, or other control efforts that address the source category; and
- identification and discussion of potential new controls. Measures proposed by the public for the source category/rule are also identified and discussed with the majority of this discussion presented in the responses to comments in Appendix I, pp. I–10 to I–13.

Through this evaluation process, the District identified 5 new control measures for adoption. The 2012 $PM_{2.5}$ plan includes enforceable commitments to adopt these measures. *See* 2012 $PM_{2.5}$ Plan, section 5.3.1 (p. 5–21) and Table 2 below.

TABLE 2—SJVAPCD 2012 $PM_{2.5}$ PLAN SPECIFIC RULE AMENDMENT COMMITMENTS

District rule No.	Measure number and description	Amend date	Comply date	Rule amendment commitment
4308	Boilers, Steam Generators, and Process Heaters 0.075 to <2 MMBtu/hr.	2013	2015	Lower the NO_X emission limit for instantaneous water heaters in the size range of 0.075–0.4 MMBtu/hr from the current level of 55 ppmv to 20 ppmv.
4692	Commercial Charbroiling	2016	2017	Add requirements for under-fired charbroilers.
4901	Wood Burning Fireplaces and Wood Burning Heaters.	2016	2016/2017	1. Lower the threshold level for calling wood-burning curtailments from 30 μg/m³ to ≥20 μg/m³. 2. Review the meteorological conditions that lead to elevated $PM_{2.5}$, to prevent the buildup of $PM_{2.5}$ that may lead to a potential exceedance day. 3. Consider expanding the wood burning season to include October and/or March. 4. Analyze the feasibility of allowing the use of the cleanest certified wood burning devices at specified curtailment levels.
4905	Natural Gas-Fired, Fan Type Residential Central Furnaces.	2014	2015	Lower the NO_X emission limits for residential furnaces and examine the possibility of incorporating NO_X limits for natural gas-fired, fan-type, commercial central furnaces into the rule.
9610	SIP Creditability of Incentives	2013	2013	Establish appropriate mechanisms for the District to take SIP credit for eligible incentive programs.

Source: 2012 $PM_{2.5}$ Plan, p. 5–21, Table 5–3, and section 5.3.1.

The District also identified a number of source categories for which existing information is inadequate to determine the feasibility of additional controls. These categories and the additional controls to be studied are discussed in section 5.3.3. (p. 5–24). The schedule for these studies is given in Table 5–4 (p. 5–24).

The Plan also includes descriptions of the District's incentive programs

(Chapter 6); its technology advancement program (Chapter 7), and its public outreach program (Chapter 8).

The efforts by the SJV's eight metropolitan planning organizations (MPO) [48] to implement cost-effect transportation control measures (TCM) are described in Appendix C, section C–11–4 (p. C–33). While no additional TCMs were identified by the MPOs, the Plan includes a discussion of the on-going implementation of a broad range of TCMs in the Valley. There is also a discussion of the MPOs' Congestion Management and Air Quality (CMAQ) funding policy which is a standardized process across the Valley for distributing 20 percent of the CMAQ funds to projects that meet a minimum cost-effectiveness. During the comment period for the 2012 $PM_{2.5}$ Plan, a number of TCMs were suggested by the public for consideration. *See* Appendix I, pp. I–10 to I–13. The feasibility of these measures is discussed in the District's responses to comments. *Id.*

The Supplement identifies three categories of ammonia (NH_3) emission sources in the SJV, which are estimated to account for 96% of ammonia air emissions in the Valley—farming operations, including confined animal facilities (239.2 tpd), evaporation from agricultural fertilizers (66.1 tpd), and composting solid waste operations (20.5 tpd) (*see* Supplement at 11). Information presented in the Supplement then compares District rules for confined animal facility (CAF) and composting operations to analogous requirements in other areas and discusses water quality measures for agricultural fertilizer application that may also reduce air emissions (*see generally* Supplement at Attachment A).

Farming operations: The Supplement states that the control measures in SIP-approved Rule 4570 (Confined Animal Facilities, adopted 2010) [49] have a secondary benefit of limiting NH_3 emissions and have reduced ammonia emissions by more than 100 tpd (*see* Supplement at A–2, citing Staff Report for June 2009 re-adoption of Rule 4570 (June 2009) at Appendix F). Rule 4570 is a work practice rule that requires farmers to implement management practices (*e.g.,* feed according to NRCS guidelines, remove manure from corrals at least four times per year) for different components of the CAF operation, such as feeding, milking parlors, housing/bedding, manure management and land application. Rule 4570 applies to livestock operations, including dairy, beef, poultry and swine, above certain size thresholds. The District assumes in its RACM analysis that, for most control measures, the ammonia control efficiencies are the same as the VOC control efficiencies. The District compares Rule 4570 to livestock rules in seven other California air districts, including the South Coast Air Quality Management District (SCAQMD), Bay Area Air Quality Management District (BAAQMD), and the Sacramento Metropolitan Air Quality Management District (SMAQMD). Based on a review of the number of work practices required by the other California rules, the District concludes that Rule 4570 is at least as stringent as the air quality rules for livestock operations in these other areas. In cases where the work practice standards in other rules may be more stringent than the requirements in Rule 4570, the District considers these measures beyond RACT or the emissions differences not significant (*see, e.g.,* Supplement at A–7, noting frequency of mitigation requirements in South Coast Rule 223, adopted June 2, 2006).

The Supplement also compares Rule 4570 to the Idaho Department of Environmental Quality's (IDEQ) dairy ammonia permit by rule, adopted in 2009 (Idaho rule).[50] While Rule 4570 is based on implementing a certain number of BMPs in specific categories, the Idaho rule is based on a ''points'' system, where each BMP is assigned a certain number of points based on control effectiveness. The District states that Rule 4570 is more stringent than the Idaho rule based on Rule 4570's lower applicability threshold (*e.g.,* 500 milking cows v. 1,638 cows (@1,400 lbs) for free stall/flush dairies), more stringent requirements and greater number of required mitigation measures (*see* Supplement at A–25 and A–29). The District also states that Rule 4570 is more stringent regarding temporary suspension and substitution of mitigation measures, and contains more stringent testing, monitoring and recordkeeping requirements. It also states that Rule 4570 is more stringent because it provides specific mitigation measures for various operations at dairies, while the Idaho rule is based on what the District characterizes as an ''arbitrary'' point system that does not guarantee a specific degree of control (*see* Supplement at A–24 to A–29).[51]

Fertilizer application: The Supplement identifies fertilizer application to crops as the second largest source of ammonia emissions in the Valley and suggests that research to identify maximum efficiency of nitrogen use for various crop types could lead to a reduction of excess nitrogen in the soil that is susceptible to leaching and volatilization. The Supplement also refers to a ''Regional Board General Order'' issued by the Central Valley Regional Water Quality Control Board as a control measure that has ''significantly reduced losses of nitrogen compounds to the environment, including leaching of nitrogen compounds to groundwater and air emissions such as ammonia and nitrous oxide'' (Supplement at A–25 to A–27).[52] The Supplement does not, however, identify any state or local air pollution control measure that limits ammonia emissions from fertilizer application operations.

Composting: The District compares its two SIP-approved composting rules, Rule 4566 (Organic Water Materials, adopted in 2011) [53] and Rule 4565 (Biosolids, Animal Manure, and Poultry Litter Operations, adopted in 2007),[54] to analogous rules adopted by the SCAQMD, Rule 1133.3 (Emission Reductions from Greenwaste Composting Operations, adopted in 2011) and Rule 1133.2 (Emission Reductions from Co-Composting Operations, adopted in 2003). For this analysis, the District assumes that ammonia control efficiencies achieved by these rules are the same as the VOC

[48] These eight MPOs represent the eight counties in the San Joaquin Valley air basin: the San Joaquin Council of Governments, the Stanislaus Council of Governments, the Merced County Association of Governments, the Madera County Transportation Commission, the Council of Fresno County Governments, Kings County Association of Governments, the Tulare County Association of Governments and the Kern Council of Governments.

[49] *See* 77 FR 2228 (January 17, 2012) (final rule approving Rule 4570 into the California SIP).

[50] The Idaho rule requires dairy farms above specified threshold numbers of cows or animal units to register with Idaho DEQ and to implement industry best management practices (BMPs) to control ammonia emissions. A list of BMPs is contained in the rule. Each BMP is assigned a point value based on relative effectiveness in reducing ammonia. Dairy farms must employ BMPs totaling 27 points. *See* Idaho Administrative Procedure Act (IDAPA) 58.01.01 Sections 760–764: Rules for the Control of Ammonia from Dairy Farms (adopted March 30, 2007; amended May 8, 2009).

[51] Citing IDEQ's technical documentation for the Idaho rule, the Supplement states that the Idaho rule's point system is ''arbitrary'' and that overall ammonia emission reductions from the rule may not be substantial given the flexibility in the rule and the absence of a direct correlation between the points required and the amount of emission reductions achieved (*see* Supplement at A–25).

[52] *See* Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, California Regional Water Quality Control Board Central Valley Region Order R5–2013–0122, October 3, 2013, available at *http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf*

[53] *See* 77 FR 71129 (November 29, 2012) (final rule approving Rule 4566 into California SIP).

[54] *See* 77 FR 2228 (January 17, 2012) (final rule approving Rule 4565 into California SIP).

control efficiencies. In its comparison of Rule 4566 with SCAQMD Rule 1133.3, the District acknowledges that Rule 1133.3 has a much lower size threshold for implementing most stringent controls (80% control efficiency) but notes that neither SCAQMD nor the District currently has any facilities that trigger the most stringent controls. Therefore, the District states that, in practice, the controls are equivalent. In its comparison of Rule 4565 with SCAQMD Rule 1133.2, the District finds that the controls in Rule 4565 are generally more stringent than Rule 1133.2 for small facilities but less stringent than Rule 1133.2 for large facilities. The Supplement states that the most stringent measures in Rule 1133.2 are not cost-effective for facilities in the Valley.

3. Evaluation and Proposed Action

The process followed by the District in the 2012 $PM_{2.5}$ Plan and Supplement to identify RACM/RACT is generally consistent with the EPA's recommendations in the General Preamble. The process included compiling a comprehensive list of potential controls measures for sources of direct $PM_{2.5}$, NO_X, SO_2, and ammonia in the SJV. This list included measures suggested in public comments on the Plan. *See* 2012 $PM_{2.5}$ Plan, Appendices C, D, and I. No source categories were identified as insignificant except by implication for a few source categories of ammonia which collectively contributed less than 5 percent to the base year ammonia inventory (Supplement, p. A–1.) As part of this process, the District evaluated potential controls for all relevant source categories for economic and technological feasibility and provided justifications for the rejection of certain identified measures. *Id.* After completing this evaluation, the District included enforceable commitments to adopt and expeditiously implement those measures it found to be reasonable. *See* 2012 $PM_{2.5}$ Plan, Table 5–3, p. 21 and Table D–1 above. Since submittal of the 2012 $PM_{2.5}$ Plan in March 2013, the District has adopted all but two of these measures. One measure, amendments to Rule 4905 (Natural Gas-Fired, Fan Type Residential Central Furnaces) is scheduled for adoption this winter. The second measure, amendments to Rule 4692 (Commercial Charbroiling), is not scheduled until 2016. Research and development of cost-effective control technology are currently underway for certain measures in Rule 4692, the addition of $PM_{2.5}$ emission limits for under-fired charbroilers (Plan, p. 5–22 and Supplement, p. 8).

We have reviewed the District's determination in the 2012 $PM_{2.5}$ Plan that its stationary and area source control measures represent RACM/RACT for direct $PM_{2.5}$, NO_X, and SO_2. As discussed in Section II.C. of the TSD, the EPA is proposing to determine that at this time, VOCs do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 $PM_{2.5}$ standard in the SJV and that a VOC control evaluation therefore is not necessary for purposes of this standard in this area.[55] In our review, we relied mainly on our previous evaluations of the District's rules in connection with our approval of the SJV RACT SIP for the 1997 8-hour ozone standard, our comments on the 2012 $PM_{2.5}$ Plan, and our comments on the District's RACT SIP for the 2008 8-hour ozone standard.[56] We also reviewed measures suggested by the public in comments on the 2012 $PM_{2.5}$ Plan. Based on this review, we believe that the District's rules provide for the implementation of RACM/RACT for stationary and area sources of direct $PM_{2.5}$, NO_X, and SO_2.[57]

We have also reviewed the District's analysis of current and potentially available ammonia controls for the three largest sources of ammonia emissions in the SJV: CAF operations, agricultural fertilizer application, and composting operations. Collectively these sources account for 96 percent of total base year (2007) ammonia emissions.[58] *See* 2012 $PM_{2.5}$ Plan, Appendix B, Table B–5.

Farming Operations and Composting: The District adopted Rule 4565, Rule 4566 and Rule 4570 primarily to control VOC emissions, and EPA has determined that the control requirements in each of these rules represent RACT-level controls for VOCs. *See* 77 FR 2228 (January 17, 2012) (final rule approving Rule 4565 and Rule 4570 into California SIP) and 77 FR 71129 (November 29, 2012) (final rule approving Rule 4566 into California SIP). Although the Supplement does not provide a detailed analysis of the extent to which these rules also reduce ammonia emissions, the District's general conclusion that the work practice standards in these rules reduce ammonia emissions appears to be factually correct. The District's evaluation of Rule 4565, Rule 4566 and Rule 4570 generally supports a conclusion that these SIP-approved rules for CAFs and composting operations are as stringent as analogous rules implemented in other California districts.

With respect to the Idaho rule, because it is based on a point system and Rule 4570 is based on numbers of BMPs for different components of the CAF operation, it is difficult to compare the requirements in these two rules

[55] VOC sources in the San Joaquin Valley are currently subject to a broad range of controls measures adopted by the District and CARB as part of their strategy to attain the ozone standards in the area. The SJV is currently designated nonattainment and classified as extreme for the 1-hour ozone standard and for both the 1997 and 2008 8-hour ozone standards. *See* 40 CFR 81.305. Extreme ozone nonattainment areas are required by CAA section 172(c)(1) to implement RACM for VOC sources and by section 182(b)(2) to the implement RACT for all major sources of VOC and certain other sources of VOC. A major source of VOC in an extreme ozone nonattainment area is a source that emits or has the potential to emit 10 tons per year or more of VOC (CAA section 182(e)) which is much lower than the 100 tpy threshold for major stationary sources in Moderate $PM_{2.5}$ nonattainment areas (CAA section 302(j)). In 2012, the EPA approved the RACM demonstration in SJV's SIP for attainment of the 1997 8-hour ozone standard (77 FR 12652, 12670 (March 1, 2012)) and found that the State had met the section 182(b)(2) RACT control requirement for the 1997 8-hour ozone standards (limited approval, 77 FR 1417 (January 10, 2012); final corrective rule approval, 77 FR 71129 (November 29, 2012)).

As noted in the General Preamble, Congress recognized that PM precursors may be otherwise controlled and expressly recommended that the EPA consider other provisions of the CAA in addressing precursors (General Preamble at 13542, n. 22). Accordingly, the General Preamble provides that a state may demonstrate in a SIP submittal that control of VOC under other CAA requirements relieves it from the need to adopt additional controls for VOC as a precursor under section 189(e). *Id.* at 13542.

[56] *See* 77 FR 1417 (January 10, 2012); EPA Region 9, Technical Support Document for EPA's Notice of Proposed Rulemaking for the California State Implementation Plan—EPA's Evaluation of San Joaquin Valley Unified Air Pollution Control District's Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP), Adopted April 16, 2009 (dated August 29, 2011); letter dated October 19, 2012, from Kerry Drake, Associate Director, Air Division EPA-Region 9 to Samir Sheikh, SJVAPCD; and letter dated June 4, 2014, from Andrew Steckel, Chief, Rules Office, EPA Region 9 to Errol Villegas, Planning Manager, SJVAPCD.

[57] A full list of the District's rules, including cites to our most recent final or proposed rulemaking on each can be found in Appendix B to the TSD.

[58] The balance of the ammonia inventory is spread among a number of source categories from electric utilities to gasoline-powered on-road vehicles. The largest of these sources, at 6.3 tpd in 2007 (1.7 percent of the total ammonia inventory), is the area source category ''Other (Miscellaneous Processes).'' *See* 2012 $PM_{2.5}$ Plan, Appendix B, Table B–5. Ammonia emissions in this category are from domestic sources including pets, untreated human waste (*e.g.,* diapers), and perspiration. *See* ENVIRON International Corporation, ''Final Work Plan California Regional $PM_{10}/PM_{2.5}$ Air Quality Study—Ammonia Emissions Improvement Projects in Support of CRPAQS Aerosol Modeling and Data Analyses: Draft Ammonia Inventory Development,'' April 13, 2001, p. 2–16, found at *http://www.arb.ca.gov/ei/areasrc/nh3environworkplan.pdf.*

We note that two of the remaining source categories (open burning and residential wood burning at a combined 2.9 tpd in 2007) are covered by SIP-approved rules that prohibit and/or curtail burning and therefore also reduce ammonia emissions from these sources.

directly. Both rules contain options for controlling ammonia emissions in different parts of the CAF operation, but Rule 4570 may be more prescriptive in requiring a certain number of BMPs for each component, while the Idaho rule does not set a specific number of BMPs and instead requires that the points associated with the selected BMPs total to at least 27. It appears that in some respects Rule 4570 has more stringent provisions than the Idaho rule (*e.g.,* rule applicability threshold, and provisions for temporary suspension/substitution, testing and records retention). On the other hand, the Idaho rule contains options (*e.g.,* chemical amendments, lagoon nitrification/de-nitrification systems, lagoon covers, tunnel ventilation with biofilter, incorporation of manure within 24 hours of land application) that do not appear to be included in Rule 4570. It is not clear whether these control options are commonly implemented in Idaho or reasonably available or appropriate for use in the SJV.

In the absence of specific information regarding more stringent ammonia air emission control measures that may be technologically and economically feasible for implementation in the SJV area, we find the District's evaluation of Rule 4565, Rule 4566 and Rule 4570 in comparison to analogous rules adopted elsewhere is adequate to demonstrate that the District is implementing all available control measures for ammonia emissions from CAFs and composting operations that are technologically and economically feasible for implementation in the SJV at this time. We note, however, that the District's analyses of these rules appear to rest on certain assumptions concerning ammonia emissions reductions that are not supported by specific documentation or analyses (*e.g.,* assumptions concerning ammonia control efficiencies based on VOC control efficiencies). The point system in the Idaho rule appears to be based upon detailed scientific studies on the ammonia control efficiencies of the identified BMPs,[59] some of which may be available for implementation in the SJV. We note also that the timing of the *NRDC* decision in early 2013 may have constrained the State's and District's ability to fully evaluate additional ammonia control measures as part of a RACM/RACT control strategy ahead of the applicable Moderate area attainment date (December 31, 2015). Taking these unique circumstances into account, we find the District's ammonia control evaluation adequate for RACM/RACT purposes at this time but recommend that the State and District conduct a more thorough evaluation of all available ammonia control measures for farming and composting operations as part of its development of a Serious area plan. Specifically, we encourage the District to revisit its control evaluation for CAFs and composting operations at its earliest opportunity, both to specifically consider the ammonia control efficiencies and cost effectiveness of Rule 4565, Rule 4566 and Rule 4570, and to address any additional control options that may be technologically and economically feasible for implementation in the SJV, *e.g.,* the BMPs identified in the Idaho rule and other control options identified by EPA or by citizens during the District's rulemaking processes.

Fertilizer application: Although certain water pollution control and other requirements contained in the ''Regional Board General Order'' cited in the Supplement may indirectly reduce ammonia emissions to the air from fertilizer application operations, these requirements have not been approved into the SIP for purposes of attainment of the NAAQS and therefore cannot provide a basis for approval of a RACM demonstration under the CAA. We are not aware, however, of ammonia air emission control measures that have been adopted and implemented for fertilizer application operations elsewhere. In the absence of information regarding air emission control measures for agricultural fertilizer application that may be technologically and economically feasible for implementation in the SJV area, we find the District's analysis in the Supplement acceptable for RACM purposes at this time. We note also that the timing of the *NRDC* decision in early 2013 may have constrained the State's and District's ability to fully evaluate additional ammonia control measures as part of a RACM/RACT control strategy ahead of the applicable Moderate area attainment date (December 31, 2015). Taking these unique circumstances into account, we find the District's ammonia control evaluation adequate for RACM/RACT purposes at this time, but we encourage the District to revisit its control evaluation for fertilizer application at its earliest opportunity to specifically evaluate the technical and economic feasibility of potential air pollution control measures that may reduce ammonia emissions from fertilizer application in the SJV.

Mobile Sources: Finally, we have reviewed the analysis of current and potentially available controls for both on and off-road mobile sources in Chapter 5 and Appendix C. As we have noted in previous actions on SJV plans,[60] California is a leader in the development and implementation of stringent control measures for on-road and off-road mobile sources. Its current program addresses the full range of mobile sources in the SJV through regulatory programs for both new and in use vehicles and through incentive grant programs. *See* 2012 $PM_{2.5}$ Plan, Table 5–2 and Appendix A of the TSD. The District has also adopted measures to reduce emissions from mobile sources including its indirect source review rule (Rule 9510) and employer trip reduction rule (Rule 9410) and has a well-funded incentive grants program focused on mobile sources. *See* Chapter 6. The MPOs also have a program to fund cost-effective TCMs. *See* Appendix C, p. C–33. Overall, we believe that the State, District, and MPO programs provide for the implementation of RACM for $PM_{2.5}$ and its precursors from mobile sources in the SJV.

For the foregoing reasons, we propose to find that the 2012 $PM_{2.5}$ Plan and Supplement provide for the implementation of all RACM/RACT that can be implemented prior to the applicable Moderate area attainment date as required by CAA sections 189(a)(1)(C) and 172(c)(1) and to approve the RACM/RACT demonstration in the Plan.[61]

E. Major Stationary Source Control Requirements Under CAA Section 189(e)

CAA section 189(e) specifically requires that the control requirements applicable to major stationary sources of

[59] IDEQ's technical documentation indicates that under the Idaho rule, BMP points are awarded based on a detailed assessment of each BMP's relative effectiveness in controlling ammonia emissions. *See* IDEQ, ''Scientific Basis for the Control of Ammonia from Dairy Farms Best Management Practices,'' July 18, 2006, *available at http://www.deq.idaho.gov/media/635665-58_0101_0502_scientific_basis_final.pdf.*

[60] The proposed approvals of the SJV 2007 [8-hour] Ozone Plan at 76 FR 57846, 57852 (September 16, 2011) and the 2008 $PM_{2.5}$ Plan at 76 FR 41338, 41345 (July 13, 2011) include discussions of California's control programs for mobile sources.

[61] The 2012 $PM_{2.5}$ Plan is the latest in a series of air quality plans and control strategies that the District and CARB have adopted to provide for attainment of the NAAQS in the SJV. These plans include the 2003 PM_{10} Plan (approved 69 FR 30005 (May 26, 2004)); the 2004 Extreme [1-hour] Ozone Attainment Plan (approved 75 FR 10420 (March 8, 2010), approval withdrawn 77 FR 70376 (November 26, 2012)); the 2007 [8-hour] Ozone Plan (approved 77 FR 12652 (March 1, 2012)); the 2008 $PM_{2.5}$ SIP (approved 76 FR 69896 (November 9, 2011)); and the 2009 RACT SIP (limited approval January 10, 2012 (77 FR 1417); last corrective rule approval November 29, 2012 (77 FR 71129)).

direct $PM_{2.5}$[62] also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (General Preamble at 13539 and 13541 to 42). The Supplement contains a discussion of the District's Rule 2201 (New and Modified Stationary Source Review Rule) (Supplement at 17–20) and three potential major stationary sources of ammonia operating in the SJV (Supplement at A–39 to A–41). The EPA is not proposing to act on these components of the Plan at this time and will do so in a separate rulemaking to address the control requirements specific to major stationary sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors under section 189(e) in the SJV.

F. Adopted Control Strategy

1. Requirements for Control Strategies and Enforceable Commitments

CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A).[63] Measures necessary to meet RACM/RACT requirements should also be adopted by the State in an enforceable form (General Preamble at 13541).

Generally, the EPA will approve a State plan that takes emissions reduction credit for a control measure only where the EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad measures, where the EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). The EPA has, however, approved enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures. Commitments approved by the EPA under CAA section 110(k)(3) are enforceable by the EPA and citizens under CAA sections 113 and 304, respectively. In the past, the EPA has approved enforceable commitments and courts have enforced actions against states that failed to comply with them.[64] Additionally, if a state fails to meet its commitments, the EPA could make a finding of failure to implement the SIP under CAA section 179(a)(4), which starts an 18-month period for the state to correct the non-implementation before mandatory sanctions are imposed.

Once the EPA determines that circumstances warrant use of an enforceable commitment, the EPA considers three factors in determining whether to approve the use of an enforceable commitment to meet a CAA requirement: (a) Does the commitment address a limited portion of the CAA-required program; (b) is the state capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.[65]

2. Control Strategy in the 2012 $PM_{2.5}$ Plan

For purposes of evaluating the 2012 $PM_{2.5}$ Plan, we have divided the measures relied on to satisfy the applicable control requirements into two categories: baseline measures and control strategy measures.

As the term is used here, baseline measures are federal, State, and District rules and regulations adopted prior to January 2012 (*i.e.,* prior to the development of 2012 $PM_{2.5}$ Plan) that continue to achieve emissions reductions through the current attainment year of 2015 and beyond.[66] The Plan describes many of these measures in Chapter 5, Section 5.1.1 and 5.1.2 and in Appendices C and D. Reductions from these measures are incorporated into the baseline inventory and, for the most part, not individually quantified. According to the Plan, these measures provide all the emissions reductions projected to occur between the base year of 2007 and the current attainment year of 2015 and, based on the model-predicted level of emission reductions needed to meet the 2006 $PM_{2.5}$ standard in the SJV in 2019, most of the direct $PM_{2.5}$, NO_X, SO_2, and ammonia reductions needed to meet the $PM_{2.5}$ standard. *See* Table F–1 in the TSD and Appendices A and B in the TSD.

Control strategy measures are the new rules, rule revisions, commitments, and other measures that provide the additional increment of emissions reductions needed beyond the baseline measures to provide for attainment (when applicable), to demonstrate RFP, to meet the RACM/RACT requirement, or to provide for contingency measures.

For the Plan, the District identified and committed to adopt, submit, and implement amendments to four District prohibitory rules as well as to adopt and submit a rule to provide a process for quantifying emission reductions from the use of incentive funds (Rule 9610) (2012 $PM_{2.5}$ Plan, p. 5–21, Table 5–3 and SJV Governing Board Resolution 2012–12–19, p. 4). The District also committed to achieve an aggregate reduction of 1.9 tpd of direct $PM_{2.5}$ by 2019 (*id*). These commitments and their current status are shown in Table 3 below.[67]

[62] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Moderate area include, at minimum, the requirements of a nonattainment new source review (NNSR) permit program meeting the requirements of CAA section 172(c)(5) (*see* CAA 189(a)(1)(A)).

[63] The language in sections 110(a)(2)(A) and 172(c)(6) is quite broad, allowing a SIP to contain any enforceable ''means or techniques'' that EPA determines are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

[64] *E.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999).

[65] The U.S. Court of Appeals for the Fifth Circuit upheld the EPA's interpretation of CAA section 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the Houston-Galveston ozone SIP in *BCCA Appeal Group et al.* v. *EPA et al.,* 355 F.3d 817 (5th Cir. 2003).

[66] These measures are typically rules that have compliance dates that occur after the adoption date of a plan and mobile source measures that achieve reductions as older engines are replaced through attrition (*e.g.,* through fleet turnover).

[67] The current status of each commitment is presented for informational purposes only. We are not at this time proposing to make any finding regarding the District's compliance with these commitments.

TABLE 3—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2012 $PM_{2.5}$ PLAN SPECIFIC RULE AMENDMENT COMMITMENTS

District rule No.	Measure number & description	Amendment date	Compliance date	Emission reductions	Status of the amended rule
4308	Boilers, Steam Generators, and Process Heaters 0.075 to <2 MMBtu/hr.	2013	2015	TBD	Adopted November 14, 2013; submitted May 13, 2014.
4692	Commercial Charbroiling	2016	2017	0.4 tpd $PM_{2.5}$	Adoption scheduled for 2016.
4901	Wood Burning Fireplaces and Wood Burning Heaters.	2016	2016/2017	1.5 tpd of $PM_{2.5}$	Adopted September 18, 2014.
4905	Natural Gas-Fired, Fan Type Residential Central Furnaces.	2014	2015	TBD	Adoption scheduled for January 22, 2015.
9610	SIP Creditability of Incentives	2013	2013	TBD	Adopted June 20, 2013; proposed for approval May 19, 2014 (79 FR 28650).

Source: 2012 $PM_{2.5}$ Plan, p. 5–21, Table 5–3.

3. Evaluation and Proposed Actions

As discussed above, the Plan provides for the vast majority of the emissions reductions necessary for attainment to be achieved by baseline measures. These reductions come from a combination of District, State, and federal stationary and mobile source measures. Over the past two decades, the District has adopted or revised almost 40 prohibitory rules that limit emissions of NO_X, SO_2 and/or particulate matter from stationary and area sources in the SJV area (*see* Appendix B of the TSD). All but a few of these rule are currently SIP approved and as such their emissions reductions are fully creditable in attainment-related SIPs. California has also adopted standards for many categories of on- and off-road vehicles and engines as well as standards for gasoline and diesel fuels (2012 $PM_{2.5}$ Plan, Chapter 5).

The State's mobile source measures fall into two categories: Measures for which the State has obtained or has applied to obtain a waiver of federal pre-emption or authorization under CAA section 209 (''section 209 waiver measures'' or ''waiver measures'') and those for which the State is not required to obtain a waiver or authorization (''non-waiver measures'' or ''SIP measures''). We believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers or authorizations (*i.e.,* ''waiver measures'') is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. Historically, the EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, the EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which the EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision.

Credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: ''* * * enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), * * *, as may be *necessary or appropriate* to meet the applicable requirements of this chapter.'' (emphasis added). Federal measures are permanent, independently enforceable (by the EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus the EPA has never found such measures to be ''necessary or appropriate'' for inclusion in SIPs to meet the applicable requirements of the CAA. Section 209 of the CAA establishes a process under which the EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, the EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not ''necessary or appropriate'' for California to include in its SIP to meet the applicable CAA requirements.

First, with respect to permanence, we note that, to maintain a waiver, CARB's on-road waiver measures can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP). (CAA section 209(b)(1)). In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (*i.e.,* absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a partial backstop for corresponding California nonroad waiver measures. (CAA section 209(e)(2)(A)). The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emissions reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to most parts of the California program.

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which the EPA has issued the waiver or authorization. CARB has as long a history of enforcement of vehicle/engine

emissions standards as the EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as the EPA's mobile source enforcement program lends assurance to other states' SIPs in their reliance on emissions reductions from the FMVCP. While it is true that citizens and the EPA are not authorized to enforce California waiver measures under the Clean Air Act (*i.e.,* because they are not in the SIP), citizens and the EPA are authorized to enforce EPA standards in the event that vehicles operate in California without either California or EPA certification.

As to quantifiability, the EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. The EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from the EPA's motor vehicle standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from the EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. See the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (*see* 48 FR 5074, February 3, 1983, for the proposed rule and 48 FR 57130, December 28, 1983, for the final rule) as an example of how the waiver measures have been treated historically by the EPA in California SIP actions. The 2012 $PM_{2.5}$ Plan was developed using a version of the EMFAC model referred to as EMFAC2011, which the EPA has approved for use in SIP development in California (78 FR 14533, March 6, 2013). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

Moreover, the EPA's waiver (and authorization) review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to the EPA as part of its waiver request. When the EPA receives new waiver or authorization requests from CARB, the EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver/authorization process) is all Congress intended for California standards, not two (waiver/authorization process plus SIP approval process). Second, just as SIP revisions are not effective until approved by the EPA, changes to CARB's rules (for which a waiver or authorization has been granted) are not effective until the EPA grants a new waiver or authorization, unless the changes are ''within the scope'' of a prior waiver or authorization and no new waiver or authorization is needed. Third, both types of final actions by the EPA— *i.e.,* final actions on California requests for waivers or authorizations and final actions on state submittals of SIPs and SIP revisions—may be challenged under CAA section 307(b)(1) in the appropriate United States Court of Appeals.

For additional explanation of the EPA's long-standing practice of allowing credit for California ''waiver measures'' notwithstanding the fact that the measures are not approved into the SIP, please see the EPA's responses to comments challenging this practice in the following final rules: 77 FR 12652, at 12655–12658, March 1, 2012 (final action on San Joaquin Valley 1997 8-Hour Ozone SIP); 77 FR 12674, at 12677–12682, March 1, 2012 (final action on South Coast 1997 8-Hour Ozone SIP); 76 FR 69896, at 69906–69910, November 9, 2011 (final action on San Joaquin Valley 1997 $PM_{2.5}$ SIP); 76 FR 69928, at 69930–69932, November 9, 2011 (final action on South Coast 1997 $PM_{2.5}$ SIP).

In addition to baseline measures, which according to the District will achieve the vast majority of the direct $PM_{2.5}$, NO_X, and SO_x emission reductions needed to attain the 2006 $PM_{2.5}$ standard in the SJV, the Plan also contains District commitments to adopt several amendments to its rules by specific dates and to achieve specified amounts of emissions reductions by 2019 (2012 $PM_{2.5}$ Plan, p. 5–21, Table 5–3 and SJV Governing Board Resolution 2012–12–19, p. 4; see also Table 2 above).

As discussed above, we generally consider three factors in determining whether to approve the use of an enforceable commitment to meet a CAA requirement. In this case, however, the 2012 $PM_{2.5}$ Plan does not rely on either the rule amendment commitments or the emission reduction commitments in the impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement; therefore, we do not need to apply this three factor test before proposing to approve the District's commitments into the SIP. Approval of these commitments will strengthen the SIP and contribute to the SIP's purpose of ''eliminating or reducing the severity and number of violations of the [$PM_{2.5}$ NAAQS] and achieving expeditious attainment of such standards.'' (CAA section 176(c)(1)(A)). For these reasons, the EPA proposes to approve the SJVAPCD Governing Board District's commitments as given in p. 5–21, Table 5–3 of the 2012 $PM_{2.5}$ Plan and on page 4 of SJV Governing Board Resolution 2012–12–19.

G. Demonstration That Attainment by the Moderate Area Attainment Date Is Impracticable

1. Requirements for Attainment/Impracticability of Attainment Demonstrations

CAA section 189(a)(1)(B) requires that each Moderate area attainment plan include a demonstration that the plan provides for attainment by the latest applicable Moderate area deadline or, alternatively, that attainment by the latest applicable attainment date is impracticable. A demonstration that the plan provides for attainment must be based on air quality modeling, and the EPA generally recommends that a demonstration of impracticability also be based on air quality modeling consistent with the EPA's modeling guidance (General Preamble at 13538). *Id.*[68]

CAA section 188(c) states, in relevant part, that the Moderate area attainment date ''shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment. . . .'' For the San Joaquin Valley, which was

[68] For more information on the applicable air quality modeling requirements, please *see* section IV.B. above.

initially designated as nonattainment for the 2006 $PM_{2.5}$ NAAQS effective December 14, 2009, the applicable Moderate area attainment date under section 188(c) is as expeditiously as practicable, but no later than December 31, 2015.

In SIP submissions to demonstrate impracticability, the state should document that its required control strategy in the attainment plan represents the application of RACM/RACT to existing sources. The EPA believes it is reasonable to require adoption of all available control measures that are technologically and economically feasible in areas that do not demonstrate timely attainment. The impracticability demonstration will then be based on a showing that the area cannot attain by the applicable date, notwithstanding implementation of the required controls.

2. Impracticability Demonstration in the 2012 $PM_{2.5}$ Plan

The 2012 $PM_{2.5}$ Plan and Supplement include a demonstration, based on air quality modeling that even with the implementation of all reasonably available control measures for all appropriate sources, attainment by December 31, 2015 is not practicable. *See* 2012 $PM_{2.5}$ Plan, section 9.1 and Supplement, section 2.1. This demonstration is specific to Kern County (in particular the California Street-Bakersfield monitor) because the air quality modeling performed for the 2012 $PM_{2.5}$ Plan showed that this area would be the last to attain the 2006 $PM_{2.5}$ standard. *Id.* The demonstration is summarized in Table 4 below.

TABLE 4—IMPRACTICABILITY OF ATTAINMENT DEMONSTRATION, KERN COUNTY

[Tons per winter day]

Year	2015
Baseline NO_X inventory	58.6
New control measures	0
NO_X inventory after new controls	58.6
NO_X emissions level needed for attainment	46.8
Shortfall in NO_X emissions reductions needed for attainment	11.8
Baseline direct $PM_{2.5}$ inventory	11.5
New control measures	0
Direct $PM_{2.5}$ inventory after new controls	11.5
Direct $PM_{2.5}$ level needed for attainment	11.1
Shortfall in direct $PM_{2.5}$ emissions reductions needed for attainment	0.4
Baseline SO_2 inventory	1.8

TABLE 4—IMPRACTICABILITY OF ATTAINMENT DEMONSTRATION, KERN COUNTY—Continued

[Tons per winter day]

Year	2015
New control measures	0
SO_2 inventory after new controls	1.8
SO_2 emissions level needed for $PM_{2.5}$ attainment	1.8
Shortfall in SO_2 emission reductions needed for attainment	0

Source: 2014 Supplement, p. 6.

3. Evaluation and Proposed Action

The impracticability demonstration in the 2012 $PM_{2.5}$ Plan is based on air quality modeling which is generally consistent with applicable EPA guidance. We find the modeling adequate to support the impracticability demonstration in the Plan. *See* section VI.B.

We have also evaluated the RACM/RACT demonstration and find that it provides for the expeditious implementation of all RACM/RACT that may feasibly be implemented at this time, consistent with the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) for the 2006 $PM_{2.5}$ NAAQS in the SJV. *See* section IV.D.

Finally, we have evaluated the demonstration in the 2012 $PM_{2.5}$ Plan that the implementation of the State/District's SIP control strategy, including RACM/RACT measures, is insufficient to bring the San Joaquin Valley into attainment by December 31, 2015 and agree that attainment by that date is thus impracticable.

In addition to the information in the 2012 $PM_{2.5}$ Plan and Supplement, we have reviewed recent $PM_{2.5}$ monitoring data from the San Joaquin Valley. These data show that 24-hour $PM_{2.5}$ levels in the SJV, with a current design value (2011–2013) of 65 $\mu g/m^3$, continue to be well above the 35 $\mu g/m^3$ level of the 2006 $PM_{2.5}$ standard, and the recent trends in the Valley's 24-hour $PM_{2.5}$ levels are not consistent with a projection of attainment by the end of 2015.[69]

Based on this evaluation, we propose to approve the State's demonstration in the 2012 $PM_{2.5}$ Plan and Supplement that attainment of the 2006 $PM_{2.5}$ NAAQS by the Moderate area attainment date in the SJV is impracticable, consistent with the requirements of CAA section 189(a)(1)(B)(ii). Based on this proposal, we also propose to reclassify the SJV as Serious nonattainment, which would trigger requirements for the State to submit a Serious area plan consistent with the requirements of subparts 1 and 4 of part D, title I of the Act (*see* Section V).

H. Reasonable Further Progress and Quantitative Milestones

1. Requirements for Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment area plans to provide for reasonable further progress (RFP). In addition, CAA section 189(c) requires $PM_{2.5}$ nonattainment area SIPs to include quantitative milestones to be achieved every 3 years until the area is redesignated to attainment and which demonstrate reasonable further progress (RFP), as defined in CAA section 171(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that a set percentage of emissions reductions be achieved in any given year for purposes of satisfying the RFP requirement.

RFP has historically been met by showing annual incremental emission reductions sufficient generally to maintain at least linear progress toward attainment by the applicable deadline (Addendum at 42015). As discussed in EPA guidance in the Addendum, requiring linear progress in reductions of direct $PM_{2.5}$ and any individual precursor in a $PM_{2.5}$ plan may be appropriate in situations where:

- The pollutant is emitted by a large number and range of sources,
- the relationship between any individual source or source category and overall air quality is not well known,
- a chemical transformation is involved (*e.g.,* secondary particulate significantly contributes to $PM_{2.5}$ levels over the standard), and/or
- the emission reductions necessary to attain the $PM_{2.5}$ standard are inventory-wide. Id.

The EPA's guidance in the Addendum recommends that requiring linear

[69] *See* Memorandum dated December 15, 2014 from Elfego Felix and Scott Bohning, U.S. EPA, Region 9 Air Quality Analysis Office, to San Joaquin Valley Reclassification Docket, Subject: Practicability of SJV 2015 attainment of the 2006 24-hour PM NAAQS (''Felix-Bohning Memo'') and U.S. EPA, 2013 Design Value Reports, $PM_{2.5}$ Detailed Information Updated 8/24/14, available at *http://www.epa.gov/airtrends/values.html* (''PM25_DesignValues_20112013_FINAL_08_28_14).''

progress is less appropriate in other situations, such as:

- Where there are a limited number of sources of direct $PM_{2.5}$ or a precursor,
- where the relationships between individual sources and air quality are relatively well defined, and/or
- where the emission control systems utilized (*e.g.,* at major point sources) will result in swift and dramatic emission reductions.

In nonattainment areas characterized by any of these latter conditions, RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major sources, EPA guidance indicates that ''RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions of direct $PM_{2.5}$ or a $PM_{2.5}$ precursor'' (Addendum at 42015).

Plans for $PM_{2.5}$ nonattainment areas should include detailed schedules for compliance with emission regulations in the area and provide corresponding annual emission reductions to be realized from each milestone in the schedule (Addendum at 42016). In reviewing an attainment plan under subpart 4, EPA evaluates whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. We believe that it is appropriate to require early implementation of the most cost-effective control measures while phasing in the more expensive control measures (Id.).

Section 189(c) provides that the quantitative milestones submitted by a state for an area also must be consistent with RFP for the area. Thus, the EPA determines an area's compliance with RFP in conjunction with determining its compliance with the quantitative milestone requirement. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every 3 years, when a state demonstrates compliance with the quantitative milestone requirement, it will demonstrate that RFP has been achieved during each of the relevant 3 years. Quantitative milestones should consist of elements that allow progress to be quantified or measured objectively. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date (Addendum at 42016).

The CAA does not specify the starting point for counting the 3-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and Addendum, EPA interpreted the CAA to require that the starting point for the first 3-year period be the due date for the Moderate area plan submittal (General Preamble at 13539, Addendum at 42016). In keeping with this historical approach, the EPA is proposing to establish December 31, 2014 as the starting point for the first 3-year period under CAA section 189(c) for the 2006 $PM_{2.5}$ standard in the SJV. This date is the due date for the state's submittal of attainment-related SIPs necessary to satisfy the subpart 4 Moderate area requirements applicable to the SJV area.[70] Accordingly, the first quantitative milestone date for the SJV area would be December 31, 2017 (3 years after December 31, 2014). Following reclassification of the SJV area as Serious for the 2006 $PM_{2.5}$ standard, later milestones would be addressed by the Serious area plan (Addendum at 42016).

2. RFP Demonstration and Quantitative Milestones in the 2012 $PM_{2.5}$ Plan

The RFP demonstration is in Chapter 9, section 9.3 (pp. 9–4 to 9–7) of the 2012 $PM_{2.5}$ Plan. The District included this same demonstration and provided a brief discussion of quantitative milestones in section 4 (p. 14) of the Supplement. The demonstration addresses direct $PM_{2.5}$, NO_X, and SO_2 and uses the 2007 winter daily average inventory as the base year inventory and the 2019 winter daily average baseline inventory as the attainment year inventory. The 2012 $PM_{2.5}$ Plan does not explicitly provide an RFP demonstration for ammonia but does include a base year ammonia inventory as well as 2014, 2017, and 2019 ammonia baseline inventories, which account for reductions from existing ammonia control measures. (2012 $PM_{2.5}$ Plan at Appendix B).

The Plan shows that emissions of direct $PM_{2.5}$, NO_X and SO_X will decline from the 2007 base year through 2015 and states that emissions will remain below the levels needed to show ''generally linear progress'' from 2007 to 2019—the year that the Plan projects to be the earliest practicable attainment date (2012 $PM_{2.5}$ Plan, section 9.3). Direct $PM_{2.5}$, NO_X and SO_2 are emitted by a large number and range of sources in the SJV and the emission reductions needed for these pollutants are inventory wide (2012 $PM_{2.5}$ Plan, Appendix B). The District followed the procedures in the 2007 $PM_{2.5}$ Implementation Rule (40 CFR 51.1009(f)) to calculate its RFP targets for 2014 and 2017 in both the 2012 $PM_{2.5}$ Plan[71] and the Supplement. (2012 $PM_{2.5}$ Plan, pp. 9–5 to 9–7 and Supplement at 14). It then showed that projected emission levels based on its adopted control strategy would be below those targets in both milestone years. Id. With respect to quantitative milestones, the Supplement states that the Plan ''identifies target emissions levels for generally linear progress that can serve as the quantitative milestones for subpart 4'' and that the adopted control strategy in the Plan meets these quantitative milestones. Supplement at 14 (citing 2012 $PM_{2.5}$ Plan at Table 9–4).

3. Evaluation and Proposed Actions

We are deferring action on the quantitative milestones described on pg. 14 of the Supplement but we are evaluating the Plan with respect to the RFP requirement. Because the District's methodology for calculating ''RFP target emission levels'' and evaluating ''generally linear progress'' is premised on a 2019 attainment date, these evaluations are not consistent with the requirements of the Act.[72] The Plan demonstrates, however, that all RACM/RACT are being implemented as expeditiously as practicable and identifies projected emission levels for 2014 and 2017 that reflect full implementation of the State's and District's RACM/RACT control strategy for the area. See 2012 $PM_{2.5}$ Plan, section 9.3 and Appendix B; see also discussion in Section II.D (''Reasonably Available Control Measures/Reasonably Available Control Technology''). In an area that cannot practicably attain the $PM_{2.5}$ standard by the applicable Moderate area attainment date, we believe it is reasonable to find that full

[70] Subpart 4 requires states to submit attainment plans within 18 months after nonattainment designations (CAA 189(a)(2)). Due to unusual circumstances, however, the EPA has by rule created a later attainment plan submission date for the 2006 $PM_{2.5}$ NAAQS in order to provide states and the EPA an opportunity to address the requirements for attainment plans consistent with a court decision. *See* 79 FR 31566 (June 2, 2014).

[71] The 2012 $PM_{2.5}$ Plan was developed and adopted by the District in accordance with the methodology for calculating RFP targets in the 2007 $PM_{2.5}$ Implementation Rule, prior to the D.C. Circuit's decision in *NRDC* remanding this rule.

[72] Under subpart 4, the latest permissible attainment date for a Moderate $PM_{2.5}$ nonattainment area is the end of the sixth calendar year after the area's designation as nonattainment. CAA 188(c)(1). Because the SJV area was designated nonattainment for the 2006 $PM_{2.5}$ NAAQS effective December 2009, the area is currently subject to a Moderate area attainment date no later than December 31, 2015.

implementation of a control strategy that satisfies the Moderate area control requirements (*i.e.,* RACM/RACT at a minimum) represents reasonable further progress toward attainment. We propose, therefore, to approve the RFP demonstration for direct $PM_{2.5}$, NO_X and SO_2 as meeting the requirements of CAA section 172(c)(2).

The 2012 $PM_{2.5}$ Plan also shows a substantial reduction in total ammonia emissions in the period 2007 to 2012 with emissions increasing each following year but still remaining below 2007 base year levels in 2015 and 2019. See Appendix B, Table B–5. Unlike the wide range of sources emitting $PM_{2.5}$, NO_X and SO_2 in the Valley, emissions of ammonia are almost entirely from three source categories: CAF, fertilizer application, and composting, with more than two-thirds of all emissions coming from CAF.[73] Collectively, these three categories emit 96 percent of all ammonia emissions in the 2007 base year inventory.

Reductions in ammonia emissions from CAF between 2007 and 2012 resulted from the implementation of District Rule 4570 ''Confined Animal Operations,'' which required implementation of control measures to reduce ammonia in 2008 and required full compliance by affected sources by mid-2012. Although emissions in this category increase after 2012 due to continuing growth in the Valley's dairy industry, overall emissions in 2015 and 2019 remain below the 2007 base year level. The implementation of the District's Rule 4655 ''Organic Material Composting Operations'' (adopted August 18, 2011) beginning in 2012 most likely resulted in some ammonia reductions (Supplement, p. A–27), but these reductions are not included in the base year or baseline inventories. As discussed in the Supplement (p. A–25), ammonia emissions from manure fertilizer application by dairies may be reduced as a co-benefit from the Central Valley Regional Water Quality Control Board's requirements for reducing nitrate in ground water adopted in 2007. However, because these reductions are not quantified and the control requirements are not in the SIP, no reductions from these controls are included in the inventories at this time.

As discussed above, generally linear reduction in emissions on a yearly basis may not be necessary for RFP where there are a limited number of sources of a precursor and where the emission control systems utilized will result in swift emission reductions. Both of these considerations are relevant for ammonia emissions in the San Joaquin Valley. In such cases, the EPA believes that RFP can be shown by adherence to an ambitious compliance schedule (Addendum at 42015). In this case all ammonia reductions included in the 2012 $PM_{2.5}$ Plan were achieved through the implementation of controls before the Plan was adopted. We believe that this represents an ambitious compliance schedule. Additionally, despite the growth in total ammonia emissions in the Valley after 2012, the District's implementation of its existing RACM/RACT control strategy for ammonia emissions is projected to result in total ammonia emissions that are lower in the Moderate area attainment year of 2015 and in 2019 than in the base year of 2007 (Table 5 below). We propose, therefore, to conclude that the 2012 $PM_{2.5}$ Plan provides for RFP for ammonia as required by CAA section 172(c)(2).

TABLE 5—AMMONIA EMISSIONS BY YEAR

[Winter daily average in tons]

	2007	2012	2014	2015	2017	2019
A. Farming Operations (CAF)	264.5	225.4	234.6	239.2	248.4	257.6
B. Pesticide/Fertilizers	68.4	66.9	66.3	66.1	65.5	64.9
C. Other (Waste Disposal) (Composting)	17.9	19.3	20.1	20.5	21.3	22.2
D. All other sources	16.5	15.0	15.0	14.9	15.2	15.4
E. Total ammonia emissions	367.3	326.6	336.0	340.7	350.4	360.1

Source: 2012 $PM_{2.5}$ Plan, Appendix B, Table B–5.

We are proposing to determine that VOCs do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 $PM_{2.5}$ standard in the SJV and that a VOC control evaluation therefore is not necessary for RFP or quantitative milestones for purposes of the 2006 $PM_{2.5}$ standard in the SJV (see section II.C. of the TSD). CAA section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant . . . that may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Based on our proposal to determine that VOCs do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the standard, we propose to conclude that no RFP demonstration or quantitative milestones are necessary for purposes of the 2006 $PM_{2.5}$ standard in the SJV.

In evaluating RFP, we are relying in part on the Plan's analysis of both adopted control measures and additional control measures for wood burning and charbroiling to be adopted in future years, which the Plan indicates will collectively bring the SJV into attainment of the 2006 $PM_{2.5}$ standard by the end of 2019. We are not, however, proposing to approve this demonstration of attainment by 2019 for any purpose at this time. Following reclassification of the SJV area to Serious nonattainment for the 2006 $PM_{2.5}$ standard, the SJV area will be subject to Serious Area planning requirements under subpart 4 and will need to reevaluate and strengthen its SIP control strategy as necessary to meet the Serious area requirement for best available control measures (BACM) and Best Available Control Technology (BACT), among other requirements. The State will also need to demonstrate attainment as expeditiously as practicable, but no later than December 31, 2019, and provide a revised RFP demonstration, both taking into consideration the implementation of the Serious Area control strategy. Today, we are proposing to approve most of the 2012 $PM_{2.5}$ Plan and Supplement for the limited purpose of satisfying the statutory control requirements that apply to Moderate areas demonstrating that attainment by the Moderate Area attainment date under subpart 4 is

[73] In the inventories provided in Appendix B of the Plan, emissions from these sources are found in the categories ''Farming Operations,'' ''Pesticides/Fertilizers,'' and ''Other (Waste Disposal),'' respectively.

impracticable (*see* Section II.D. of the TSD).

I. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), $PM_{2.5}$ plans must include contingency measures to be implemented if an area fails to meet RFP (''RFP contingency measures'') or fails to attain the $PM_{2.5}$ standards by the applicable attainment date (''attainment contingency measures''). Under subpart 4, however, the EPA interprets section 172(c)(9) in light of the specific requirements for particulate matter nonattainment areas. Section 189(b)(1)(A) differentiates between attainment plans that provide for timely attainment and those that demonstrate that attainment is impracticable. Where the SIP includes a demonstration that attainment by the applicable attainment date is impracticable, the state need only submit contingency measures to be implemented if an area fails to meet RFP.[74]

The purpose of contingency measures is to continue progress in reducing emissions while the SIP is being revised to meet the missed RFP milestone or correct continuing nonattainment.

The principle requirements for contingency measures are:

- Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date.
- The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without further action by the state or by the EPA. In general, we expect all actions needed to affect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure.
- The contingency measures should consist of other control measures for the area that are not relied on to demonstrate attainment or RFP.
- The measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year.

(General Preamble at 13543 and Addendum at 42014).

Contingency measures can include Federal, state and local measures already scheduled for implementation or already implemented. The CAA requires contingency measures that provide for additional emissions reductions that are not relied on to demonstrate RFP or attainment and thus not included in these demonstrations. In other words, contingency measures are intended to achieve reductions over and beyond those relied on in the RFP and attainment demonstrations. Nothing in the CAA precludes a state from implementing such measures before they are triggered. EPA has approved numerous SIPs under this interpretation. *See,* for example, 62 FR 15844, April 3, 1997 (direct final rule approving Indiana ozone SIP revision); 62 FR 66279, December 18, 1997 (final rule approving Illinois ozone SIP revision); 66 FR 30811, June 8, 2001 (direct final rule approving Rhode Island ozone SIP revision); 66 FR 586, January 3, 2001 (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634, January 3, 2001 (final rule approving Connecticut ozone SIP revision); *see also LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

2. Contingency Measures in the 2012 $PM_{2.5}$ Plan

Contingency measures for failure to meet RFP milestones are described in Section 9–4 of the Plan. The Supplement also discusses the RFP contingency measures in section 5.

3. Evaluation and Proposed Action

We are deferring action on the RFP contingency measures in the 2012 $PM_{2.5}$ Plan and Supplement. We note that once SJV is reclassified to Serious, the State will be obligated to demonstrate that its SIP provides for the implementation of BACM and BACT and for attainment as expeditiously as practicable, and no later than 2019. As part of this demonstration, the State will need to revise its RFP demonstration to establish new RFP targets, quantitative milestones, and RFP contingency measures for the 2006 $PM_{2.5}$ NAAQS.

Because we are proposing to approve the State's demonstration that attainment by the applicable Moderate area attainment date of December 31, 2015 is impracticable in the SJV and to reclassify the area to Serious, contingency measures for failure to attain are not required as part of this Moderate area plan. Upon reclassification of the SJV area as a Serious area, California will be required to adopt failure-to-attain contingency measures as part of the Serious area attainment plan for the 2006 $PM_{2.5}$ NAAQS.

J. Interpollutant Trading Ratios for Nonattainment New Source Review Permits

The CAA's Nonattainment New Source Review (NNSR) permitting provisions require that emissions from new or modified major stationary sources proposing to construct or modify in a nonattainment area be ''offset'' by reductions from the same or other sources in the area (CAA section 173(c)). This ''offset'' requirement ensures that progress toward attaining the NAAQS is maintained while still allowing for the construction and modification of major stationary sources. Generally, the pollutant emitted at the new or modified source must be offset by reductions of the same pollutant. Under certain circumstances, however, the EPA may allow for ''interpollutant'' offsets—*i.e.,* increased emissions of one pollutant (or a precursor to that pollutant) may be offset by reductions in a different precursor to the pollutant, or emissions of a certain precursor may be offset by reductions in the pollutant to which it is a precursor.

Where a state intends to provide for such interpollutant trading, the state must provide a technical demonstration that shows the net air quality benefits of the interpollutant trade in the $PM_{2.5}$ nonattainment area, to ensure the trade does not jeopardize the attainment demonstration or progress toward attainment of the NAAQS. We refer to the rate of emission reduction in tons per day (tpd) that would offset the ambient effect of a 1 tpd increase in new source emissions as an ''interpollutant trading (IPT) ratio'' or an ''interpollutant equivalency ratio''. In a July 2011 policy memorandum (''IPT memo''), EPA stated that ''any ratio involving $PM_{2.5}$ precursors submitted to the EPA for approval for use in a state's interpollutant offset program for $PM_{2.5}$ nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such ratio for the $PM_{2.5}$ nonattainment area in which it

[74] The EPA does not interpret the requirement for failure-to-attain contingency measures to apply to Moderate $PM_{2.5}$ nonattainment areas that cannot practicably attain the NAAQS by the statutory attainment date. Rather, the EPA believes it is appropriate for the state to identify and adopt attainment contingency measures as part of the Serious area attainment plan that it will develop once the EPA reclassifies the area (Addendum at 42015).

will be applied.'' [75] The IPT memo provides general guidance on developing interpollutant offset ratios, which includes sensitivity simulations with a photochemical model when $PM_{2.5}$ precursors are involved. In rough terms, the memorandum describes the process for calculating a ratio as taking the modeled impact in micrograms per cubic meter (μg/m³) per tpd of the pollutant whose emissions are to be offset, and dividing by the μg/m³ impact per tpd of the offsetting pollutant, *i.e.* the ratio of the sensitivities of ambient $PM_{2.5}$ levels to emission changes in the pollutants.[76]

The 2012 $PM_{2.5}$ Plan includes proposed interpollutant trading ratios for use in the District's NSR program. (Appendix H, p. H–3). The proposed ratios are 5.3 tpd of NO_X emission reductions to offset 1 tpd of direct $PM_{2.5}$ emission increase and 4.1 tpd of SO_X emission reductions to offset 1 tpd of direct $PM_{2.5}$ emission increase. *Id.* Attachment 1 to Appendix H includes a description of the approach used for determining these ratios. The 2012 $PM_{2.5}$ Plan refers to ''EPA's preferred method'' for estimating ratios (pp. H–4 and H–88). As discussed above, however, the EPA has provided only general guidance and has not identified a preferred method. The method described in the Plan does use the general concept in the EPA's IPT memo for computing a ratio of modeled sensitivities, but it contains internal inconsistencies and an insufficient rationale for the specific approach used to develop the ratios.

An internal inconsistency of the approach used is that dividing the pollutant sensitivities provided in the sensitivity table gives ratios that do not match those provided in the trading ratio table (Appendix H, Tables 1 and 2, p. H–87). For example, for Fresno—1st Street site, the sensitivities given are 0.14 μg/m³ per tpd of direct $PM_{2.5}$, and 0.03 for NO_X; the ratio of these is 4.7, but the corresponding trading ratio given is 4.0. Overall the differences in ratios range from +17 percent to −17 percent. These discrepancies may be a result of rounding within the sensitivity table, but there is not enough documentation to make this determination. Another inconsistency is that the interpollutant ratios provided in Appendix H do not match those provided in the WOEA (Staff Report Appendix B). For example, the WOEA sensitivities for Bakersfield-California site imply that the NO_X:$PM_{2.5}$ and SO_X:$PM_{2.5}$ ratios are both 4.25,[77] but the corresponding Appendix H ratios are given as 7.0 and 5.2. This discrepancy may be due to different modeling runs having been used to establish the ratios, but this is not explained.

The specifics of the Plan's approach pose several difficulties. The Plan states that the sensitivity simulations used 50 percent reductions in emissions from ''NSR source categories'' (p. H–86). The latter is not defined. If ''NSR source categories'' are major stationary sources, then a 50 percent reduction in the overall category would be far larger than any likely emission increase or offset. It is not clear that the response of the model to this large a change is representative of the ambient effects that would occur from an actual interpollutant trade or for the aggregate of trades expected to occur. The Plan states that a 50 percent reduction in annual average emissions was used, but it is not clear why this is appropriate for a NAAQS based on a 24-hour average. The Plan provides no rationale for why a 50 percent reduction is appropriate to use for assessing interpollutant ratios, including consideration of the robustness of the ratios under alternative reduction percentages.

Another issue is that in general, the ambient effect of a trade will depend on the location of both the new source and the offset, since transport and atmospheric chemistry depend on location. The Plan implicitly recognizes this by providing ratios for multiple monitor locations, ranging from 3.4 to 8.1. However, the Plan then averages the ratios together, which would seem to guarantee that the final ratio does not reflect any actual trade or impacts at any particular location. A scheme in which the ratio varied by general geographic zone of source and of offset would better address the effect of actual trades. Alternatively, the use of the maximum of the available ratios would have provided a conservative analysis. The Plan's approach examined only design values and only at monitor locations, employing the same general procedure used for the attainment demonstration, *i.e.,* the application of RRFs to monitored concentrations. It is not clear why this approach is appropriate for deriving interpollutant trading ratios for NSR. Trades will affect all concentrations, not just the 98th percentile and not just their three-year average as used in design value calculations. They will also affect all locations, not just those with monitors. The procedure used does not employ information about concentrations away from monitors that are available from the modeling; these concentrations show the outcome of a trade at unmonitored locations, but are not reflected in the procedure.

A more general concern with the Plan procedure is that it does not provide an overall rationale for the methodology grounded in the statutory purpose of NSR offsets. The CAA requires that emissions from new or modified major stationary sources be sufficiently offset ''so as to represent . . . reasonable further progress'' toward attainment of the NAAQS (CAA 173(a)(1)(A)), and the EPA's implementing regulations require that emission offsets provide a ''net air quality benefit in the affected area'' (40 CFR part 51, Appendix S, sec. IV. A.). The Plan does not explain how this requirement is satisfied when interpollutant trading is used. As mentioned above, the justification for an interpollutant ratio requires a technical demonstration that the new source emission increase and the offset are equivalent in their ambient effect. However, the precise sense in which changes in precursor emissions must be ''equivalent'' has not been defined; equivalency could be defined in terms of the maximum concentration from the model, the average over time and space of modeled concentrations above the NAAQS, or some other metric. The criteria for assessing equivalency should be provided with a rationale grounded in the underlying goals of NSR offsetting.

Given these inadequacies in the technical demonstration and related documentation for the $PM_{2.5}$ NSR interpollutant trading ratios provided in Appendix H of the 2012 $PM_{2.5}$ Plan, we are proposing to disapprove these interpollutant trading ratios for NSR purposes.

K. Motor Vehicle Emission Budgets

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such

[75] Memorandum, dated July 21, 2011, Gina McCarthy, Assistant Administrator, to Regional Air Division Directors, Regions 1–10, Subject: Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$) (''IPT memo'').

[76] If 1 tpd of pollutant A is to be offset by R tpd of pollutant B, and the sensitivity of $PM_{2.5}$ to emissions in μg/m³ per tpd are respectively S_A and S_B, then the pollutant and its offset have an equal ambient $PM_{2.5}$ effect in μg/m³ when S_A*1= S_B*R so R = S_A/S_B.

[77] For example, NO_X:$PM_{2.5}$ ratio = $PM_{2.5}$ sensitivity/NO_X sensitivity = 0.34/0.08 = 4.25 (Table 7, CARB Staff Report App. B., p.65).

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 involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 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 (budgets) contained in all control strategy SIPs. An attainment, maintenance, or RFP SIP should include budgets for the attainment year, each required RFP year, or the last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations (40 CFR 93.118(e)(4)(v)).

$PM_{2.5}$ plans should identify budgets for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors whose on-road emissions are determined to significantly contribute to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipe, brake wear, and tire wear. A state must also consider whether re-entrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct $PM_{2.5}$ budget. (40 CFR 93.102(b) and § 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004)).

Transportation conformity trading mechanisms are allowed under 40 CFR 93.124 where a SIP establishes appropriate mechanisms for such trades. The basis for the trading mechanism is the SIP attainment modeling which established the relative contribution of each $PM_{2.5}$ precursor pollutant.

In general, only budgets in approved SIPs can be used for transportation conformity purposes; however, section 93.118(e) of the transportation conformity rule allows budgets in a submitted SIP to apply for conformity purposes before the SIP is approved under certain circumstances. First, there must not be any other approved SIP budgets that have been established for the same time frame, pollutant, and CAA requirement. Second, the EPA must find that the submitted SIP budgets are adequate for transportation conformity purposes. To be found adequate, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4). The criteria for determining adequacy of submitted motor vehicle emissions budgets are provided at 40 CFR § 93.118(e)(4) and (5). The transportation conformity rule, however, does allow submitted motor vehicle emissions budgets that have been found adequate to replace approved budgets if the EPA has limited the duration of its approval to last only until it finds replacement budgets adequate (40 CFR § 93.118(e)(1)).

2. Motor Vehicle Emissions Budgets in the 2012 $PM_{2.5}$ Plan

The 2012 $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ and NO_X for the RFP years of 2014 and 2017 and the projected attainment year of 2019. (2012 $PM_{2.5}$ Plan, Appendix C, section C.11). The SJV has eight separate county-based MPOs; therefore, separate budgets are provided for each MPO as well as a total for the nonattainment area as a whole. The budgets reflect winter daily average emissions and are calculated using EMFAC2011, the currently approved emission model for California (78 FR 14533 (March 6, 2013)).[78] Winter annual day emissions are used in the Plan and the budgets because SJV's exceedances of the 24-hour $PM_{2.5}$ standard occur almost exclusively during the winter months (2012 $PM_{2.5}$ Plan, p. 3–4 and Appendix G, p. 7).

The direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions but exclude paved road, unpaved road, and road construction dust based on the District's conclusion that these source categories are insignificant contributors to $PM_{2.5}$ levels in the Valley (Appendix C, section C.11.2.). The Plan states it does not include budgets for SO_2 because on-road mobile exhaust estimates of SO_x are less than 1 ton per day Valley-wide in 2014 and 2017, which equates to less than 10 percent of the total SO_x emissions inventory for those years (*id.*). Additionally, the Plan states that it does not include budgets for VOC because VOC emissions do not contribute significantly to the formation of secondary $PM_{2.5}$ in the SJV (*id.*). The Plan does not specifically address ammonia emissions for MVEB purposes but shows that ammonia emissions from on-road mobile sources contribute just over 1 percent of the total ammonia inventory in 2014 and 2017 (*see* Plan at Appendix B, Table B–5).

The truck activity estimates in EMFAC2011 used to develop the budgets in the 2012 $PM_{2.5}$ Plan are consistent with those used by CARB in its 2010 revisions to the In-Use Truck and Bus Rule. Since the 2010 updates, new economic data (*e.g.,* statewide diesel fuel usage, truck sales) has become available which suggests that truck emissions will be lower in future years in the San Joaquin Valley than currently estimated in EMFAC2011. In order to account for this reduction in emissions from trucks in the budgets, results from EMFAC2011 are scaled by year-specific factors (SJV $PM_{2.5}$ Plan, Appendix C, section C.11.3 and Table C–1). The MPOs will also use these scaling factors in their conformity determinations.[79] Reductions from certain State and local control measures are not included in the on-road emission inventories generated from EMFAC2011 and must be subtracted from EMFAC2011 inventories used as the basis for the motor vehicle emissions budgets and the attainment demonstration.

On October 7, 2014, we received a letter from CARB stating that it intends to revise the previously-submitted 2014 and 2017 budgets to remove reductions resulting from implementation of the Carl Moyer and Proposition IB incentive grant programs but intends to make no other revisions to the budgets. The letter provided the proposed revised budgets. (Table 6 below). These changes make the budgets consistent with the attainment demonstration. The letter also stated that CARB would be taking the revised budgets to its Board in November 2014 for approval and an additional letter from CARB requested in the interim that the EPA consider these budgets under the Agency's

[78] After EMFAC2011 was released in 2011, new information on statewide diesel fuel usage and economic forecasts became available to the State. For the 2012 $PM_{2.5}$ Plan, CARB adjusted EMFAC2011 emissions estimates for heavy-duty trucks to reflect this new information (p. B–26). The EPA allowed the use of these adjustment factors in transportation conformity determinations in the SJV. See footnote 14 of this notice.

[79] On January 14, 2014, we approved the use of these scaling factors by the SJV MPOs in the regional emissions analyses in their transportation conformity determinations. *See* letter dated January 14, 2014, Matthew Lakin, Chief, Air Planning Office, EPA-Region 9 to John Taylor, Branch Chief, Transportation Planning Branch, CARB; Subject: Use of San Joaquin Valley Heavy Duty Diesel Vehicle Recession Adjustment Methodology.

parallel processing procedures for SIP submittals.[80 81]

TABLE 6—2006 $PM_{2.5}$ STANDARD MVEB FOR THE SAN JOAQUIN VALLEY

[Winter daily average in tons]

County	2014		2017	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	1.0	31.6	0.9	25.2
Kern (SJV)	1.2	43.2	1.0	34.4
Kings	0.2	8.8	0.2	7.2
Madera	0.3	8.7	0.2	7.0
Merced	0.5	17.2	0.4	13.7
San Joaquin	0.7	20.0	0.6	15.9
Stanislaus	0.5	15.1	0.5	12.0
Tulare	0.5	14.3	0.4	10.7
Total *	4.9	159.0	4.2	126.0

Source: Letter, Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, Region 9, dated October 7, 2014, Attachment, Table C–4.

* Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding. Attachment, Letter, Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, Region 9, dated October 7, 2014, with Attachment, revised Table C–4, ''Transportation Conformity Budgets'' to 2012 $PM_{2.5}$ Plan.

The 2012 $PM_{2.5}$ Plan also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X:$PM_{2.5}$ ratio of 8:1. (Appendix C, section C.11.3 and Table C–2).

3. Evaluation and Proposed Actions

We have evaluated the revised budgets against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the budgets' approvability (*see* section II.I (Table I–3) in the TSD for this proposal) and expect to have completed the adequacy review of these budgets before or concurrent with our final action on the 2012 $PM_{2.5}$ Plan.[82] We posted the budgets on EPA's adequacy review Web page at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* from October 23, 2014 to November 24, 2014 and did not receive any comments on them.

Based on the information about re-entrained road dust in the Plan and in accordance with 40 CFR 93.102(b)(3), we propose to concur with the District's finding that re-entrained road dust emissions from paved roads, unpaved roads, and road construction are not significant contributors to the $PM_{2.5}$ nonattainment problem in the Valley and that these emissions therefore do not need to be addressed in the MVEBs. Additionally, based on the information about VOC, SO_2, and ammonia emissions in the Plan and in accordance with 40 CFR 93.102(b)(2)(v), we propose to find that transportation-related emissions of VOC, SO_2, and ammonia emissions are not significant contributors to the $PM_{2.5}$ nonattainment problem in the SJV area and, accordingly, that MVEBs for these pollutants are not necessary.

For the reasons discussed in section IV.G., above, we are proposing to approve the State's demonstration that it is impracticable to attain the 2006 $PM_{2.5}$ standard in the San Joaquin Valley by the applicable Moderate area attainment date of December 31, 2015 and proposing to reclassify the area as Serious. Because the 2012 $PM_{2.5}$ Plan does not demonstrate attainment, we do not address in this proposal any budgets for the attainment year of 2015 or 2019.

For reasons discussed in section IV.H. above, we are proposing to approve the RFP demonstration for 2014 and 2017 in the 2012 $PM_{2.5}$ Plan. The budgets, as given in Table 6 above, are consistent with the demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including meeting the adequacy criteria in 93.118(e)(4). For these reasons, the EPA proposes to approve the budgets listed in Table 6 above. We provide a more detailed discussion in Section II.H of the TSD, which can be found in the docket for today's action.

CARB has requested that we limit the duration our approval of the budgets only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. (Letter, James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, March 4, 2013). The transportation conformity rule allows us to limit the approval of budgets. (40 CFR 93.118(e)(1)). However, we can consider a state's request to limit an approval of its MVEB only 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 the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

(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 review the information and take appropriate action. If we propose to limit the duration of our approval of the MVEB in the 2012 $PM_{2.5}$ Plan, we will provide the public an opportunity to

[80] Letter from Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, Region 9, dated October 7, 2014.

[81] Letter from Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, Region 9, dated November 6, 2014, requesting parallel processing of the motor vehicle emissions budgets in the 2012 $PM_{2.5}$ Plan.

[82] Under the Transportation Conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

comment. The duration of the approval of the budgets, however, would not be limited until we complete such a rulemaking.

We have previously approved motor vehicle emissions budgets for the 1997 annual and 24-hour $PM_{2.5}$ standards (76 FR 69896, 69923 (November 9, 2011)). These budgets will continue to apply for the 2006 24-hour standard until we finalize our approval of the budgets in the 2012 $PM_{2.5}$ Plan or find these budgets adequate. The budgets approved in 2011, however, will continue to apply in the SJV for determining transportation conformity for the 1997 $PM_{2.5}$ annual and 24-hour standards.

As noted above, the State included a trading mechanism to be used in transportation conformity analyses that would use the proposed budgets in the 2012 Plan [83] as allowed for under 40 CFR 93.124. This trading mechanism would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X:$PM_{2.5}$ ratio of 8:1. To ensure that the trading mechanism does not impact the ability to meet the NO_X budget, the Plan provides that the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met. The Plan also provides that each agency responsible for demonstrating transportation conformity shall clearly document the calculations used in the trading, along with any additional reductions of NO_X or $PM_{2.5}$ emissions in the conformity analysis.

The EPA has reviewed the air quality modeling used to develop the 8:1 NO_X:$PM_{2.5}$ ratio and, while we are not proposing to take any action on it, we find that it is a reasonable method to use to develop ratios for transportation conformity purposes. We note that the ratio the State is proposing to use for transportation conformity purposes is derived from air quality modeling that evaluated the effect of reductions in local Kern County NO_X and $PM_{2.5}$ levels on ambient concentrations at the California Avenue-Bakersfield site (2012 $PM_{2.5}$ Plan, Appendix G, p. 68). The air quality modeling that the State performed to evaluate the effectiveness of regional (nonattainment wide) NO_X and $PM_{2.5}$ reductions on ambient concentrations showed NO_X:$PM_{2.5}$ ratios that range from a high of 4.7 at the Stockton monitor to a low of 2.8 at the Corcoran monitor. *See* 2012 $PM_{2.5}$ Plan, Appendix G, p. 65. Because the 8:1 trading ratio is more stringent than any determined by the regional modeling, we are proposing to approve its use to trade excess NO_X reductions for $PM_{2.5}$ increases. We are not, however, proposing to approve its use to trade excess $PM_{2.5}$ reductions for NO_X increases, as this would result in under-control of NO_X.

We believe that the 2012 $PM_{2.5}$ Plan includes an approvable 8:1 NO_X:$PM_{2.5}$ ratio trading mechanism for determining transportation conformity for the 2006 $PM_{2.5}$ standard. We therefore propose to approve the trading mechanism as described on p. C–32 in Appendix C of the 2012 $PM_{2.5}$ Plan as enforceable components of the transportation conformity program in the SJV for the 2006 $PM_{2.5}$ standard with the condition that trades are limited to substituting excess reductions in NO_X for increases in $PM_{2.5}$.

V. Reclassification as Serious Nonattainment and Serious Area SIP Requirements

A. Reclassification as Serious and Applicable Attainment Date

Section 188 of the Act outlines the process for classification of $PM_{2.5}$ nonattainment areas and establishes the applicable attainment dates. Under the plain meaning of the terms of section 188(b)(1) of the Act, the EPA has general authority to reclassify at any time before the applicable attainment date any area that the EPA determines cannot practicably attain the standard by such date. Accordingly, section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. In addition, subparagraphs (A) and (B) of section 188(b)(1) mandate that the EPA reclassify ''appropriate'' PM_{10} nonattainment areas at specified time frames (*i.e.,* by December 31, 1991 for the initial PM_{10} nonattainment areas, and within 18 months after the SIP submittal due date for subsequent nonattainment areas). These subparagraphs do not restrict the EPA's general authority but simply specify that, at a minimum, it must be exercised at certain times.[84]

We have reviewed the impracticability demonstration in the Plan and Supplement and believe the State has adequately demonstrated that the San Joaquin Valley nonattainment area cannot practicably attain the 2006 $PM_{2.5}$ standard by the applicable attainment date of December 31, 2015 (see section IV.G, above). We have also reviewed recent $PM_{2.5}$ monitoring data for the San Joaquin Valley available in the EPA's Air Quality System (AQS) database. These data show that 24-hour $PM_{2.5}$ levels in the SJV continue to be well above 35 μ/m^3, the level of the 2006 $PM_{2.5}$ standard, and the recent trends in the Valley's 24-hour $PM_{2.5}$ levels are not consistent with a projection of attainment by the end of 2015 (*see* Table 7 below and Figure III–1 and Table III–1 in the TSD).

TABLE 7—24-HOUR $PM_{2.5}$ NAAQS DESIGN VALUES [1] IN $\mu g/m^3$ FOR MONITORS IN THE SJV

Site	AQS ID	2005	2006	2007	2008	2009	2010	2011	2012	2013
Bakersfield:										
Planz	60290016	54	60	68	70	70	65	55	47	60
CA Ave	60290014	58	62	66	66	68	62	62	58	65
Golden State Hwy	60290010	60	64	69	64	66	64	n/a	n/a	n/a
Corcoran	60310004	55	58	61	52	53	49	46	43	49
Hanford	60311004	n/a	n/a	n/a	n/a	n/a	n/a	n/a	54	60
Visalia	61072002	55	56	58	57	59	51	47	47	56
Fresno:										
Pacific	60195025	57	59	61	52	50	43	48	53	63
Garland	60190011	60	58	63	58	60	54	58	59 [2]	62 [2]
Clovis	60195001	55	56	58	54	53	47	54	54	58
Tranquility	60192009	n/a	n/a	n/a	n/a	n/a	n/a	n/a	31	30

[83] The budgets and the trading program approved in 2011 will continue to apply in the SJV for determining transportation conformity for the 1997 $PM_{2.5}$ annual standard.

[84] For a general discussion of EPA's interpretation of the reclassification provisions in section 188(b)(1) of the Act, see the General Preamble, 57 FR 13498 at 13537–38 (April 16, 1992).

TABLE 7—24-HOUR $PM_{2.5}$ NAAQS DESIGN VALUES [1] IN μg/m³ FOR MONITORS IN THE SJV—Continued

Site	AQS ID	2005	2006	2007	2008	2009	2010	2011	2012	2013
Madera	60392010	n/a	n/a	n/a	n/a	n/a	n/a	n/a	51	52
Merced:										
M Street	60472510	45	45	48	50	51	45	39	40	49
Coffee	60470003	n/a	n/a	n/a	n/a	n/a	n/a	43	41	42
Turlock	60990006	n/a	n/a	n/a	n/a	n/a	55	51	49	53
Modesto	60990005	49	51	55	54	55	49	50	44	51
Manteca	60772010	n/a	n/a	n/a	n/a	n/a	n/a	n/a	38	37
Stockton	60771002	40	41	45	51	50	44	38	36	45

Source: U.S. EPA, 2013 Design Value Reports, PM2.5 Detailed Information Updated 8/24/14, available at *http://www.epa.gov/airtrends/values.html* ("PM25_DesignValues_20112013_FINAL_08_28_14"). The term "n/a" means monitoring data is not available or does not meet minimum data completeness requirements (40 CFR part 50, appendix N).

[1] The 24-hour design value for each monitor is based on the 3-year average of annual 98th percentile 24-hour $PM_{2.5}$ concentrations. See 40 CFR part 50 appendix N. For example, the 24-hour design value for 2013 is the average of the 98th percentile $PM_{2.5}$ concentrations for 2011, 2012, and 2013. The 2006 24-hour $PM_{2.5}$ NAAQS is attained when the design value is 35 μg/m³ or less.

[2] The Garland site was approved for replaced operation of the First Street site (AQS ID: 60190008) beginning with data collected in calendar year 2012. The design value reported represents a combined site record with the existing Garland site and old First Street site which ceased operation in early 2012.

In accordance with section 188(b)(1) of the Act, the EPA is proposing to reclassify the SJV area from Moderate to Serious nonattainment for the 2006 24-hour $PM_{2.5}$ standard of 35 μg/m³, based on the EPA's determination that the SJV area cannot practicably attain this standard by the applicable attainment date of December 31, 2015.

Under section 188(c)(2) of the Act, the attainment date for a Serious area "shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . ." The SJV area was designated nonattainment for the 2006 $PM_{2.5}$ standard effective December 14, 2009.[85] Therefore, upon final reclassification of the SJV area as a Serious nonattainment area, the latest permissible attainment date under section 188(c)(2) of the Act, for purposes of the 2006 $PM_{2.5}$ standard in this area, will be December 31, 2019.

Under section 188(e) of the Act, a state may apply to EPA for a single extension of the Serious area attainment date by up to 5 years, which EPA may grant if the state satisfies certain conditions. Before EPA may extend the attainment date for a Serious area under section 188(e), the state must: (1) Apply for an extension of the attainment date beyond the statutory attainment date; (2) demonstrate that attainment by the statutory attainment date is impracticable; (3) have complied with all requirements and commitments pertaining to the area in the implementation plan; (4) demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area; and (5) submit a demonstration of attainment by the most expeditious alternative date practicable.[86]

B. Clean Air Act Requirements for Serious $PM_{2.5}$ Nonattainment Area Plans

Upon reclassification as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS, California will be required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious $PM_{2.5}$ nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements that California will be required to submit are as follows:

1. Provisions to assure that the best available control measures (BACM), including best available control technology (BACT) for stationary sources, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

2. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the state is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and no later than December 31, 2024 (CAA sections 188(c)(2) and 189(b)(1)(A));

3. plan provisions that require reasonable further progress (RFP) (CAA 172(c)(2));

4. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

5. provisions to assure that 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 state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));

6. a comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));

7. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. A revision to the nonattainment new source review (NSR) program to lower the applicable "major stationary source" [87] thresholds from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)).

[85] *See* 74 FR 58688 (November 13, 2009).

[86] For a discussion of EPA's interpretation of the requirements of section 188(e), see "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) (hereafter "Addendum") at 42002; 65 FR 19964 (April 13, 2000) (proposed action on PM_{10} Plan for Maricopa County, Arizona); 66 FR 50252 (October 2, 2001) (proposed action on PM_{10} Plan for Maricopa County, Arizona); 67 FR 48718 (July 25, 2002) (final action on PM_{10} Plan for Maricopa County, Arizona); and *Vigil* v. *EPA,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004) (remanding EPA action on PM_{10} Plan for Maricopa County, Arizona but generally upholding EPA's interpretation of CAA section 188(e)).

[87] For any Serious area, the terms "major source" and "major stationary source" include any stationary source that emits or has the potential to emit at least 70 tons per year of PM_{10} (CAA section 189(b)(3)).

The EPA is currently developing a proposed rulemaking to provide guidance to states on the attainment planning requirements in subparts 1 and 4 of part D, title I of the Act that apply to areas designated nonattainment for $PM_{2.5}$. In the interim, EPA encourages the State to review the General Preamble and Addendum for guidance on how to implement these statutory requirements in the SJV $PM_{2.5}$ nonattainment area.[88]

C. Statutory Deadline for Submittal of the Serious Area Plan

Section 189(b)(2) of the Act states, in relevant part, that the state must submit the required BACM provisions ''no later than 18 months after reclassification of the area as a Serious Area'' and must submit the required attainment demonstration ''no later than 4 years after reclassification of the area to Serious.'' Thus, if a final reclassification of the area to Serious becomes effective in early 2015, the Act provides the state with up to 18 months after this date (*i.e.,* until late 2016) to submit a BACM demonstration and up to 4 years after this date (*i.e.,* until early 2019) to submit a Serious area attainment demonstration. Given the December 31, 2019 Serious area attainment date for the 2006 $PM_{2.5}$ standard in this area under CAA section 188(c)(2), EPA expects the State to adopt and submit a Serious area attainment demonstration for the 2006 $PM_{2.5}$ standard well before the statutory SIP submittal deadline in section 189(b)(2).

The Act does not specify a deadline for the State's submittal of nonattainment NSR program revisions to lower the ''major stationary source'' threshold from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)) following reclassification of a Moderate $PM_{2.5}$ nonattainment area as Serious nonattainment under subpart 4. Pursuant to EPA's gap-filling authority in CAA section 301(a) and to effectuate the statutory control requirements in section 189 of the Act, the EPA proposes to require the State to submit these nonattainment NSR SIP revisions no later than 12 months from the effective date of final reclassification of the SJV area as Serious nonattainment for the 2006 $PM_{2.5}$ standard. We believe this timeframe will give the State sufficient time to make these relatively straightforward revisions to its nonattainment NSR SIP while assuring that new or modified major sources locating in the SJV area will be subject to the lower statutory major source thresholds expeditiously. We are requesting comment on this proposed 12-month timeframe for submission of the nonattainment NSR SIP revisions. We note that nonattainment NSR SIP revisions that satisfy the requirement in CAA section 189(b)(3) for purposes of the 1997 $PM_{2.5}$ standards may also satisfy this requirement for the 2006 $PM_{2.5}$ standard.

VI. Reclassification of Indian Country

Eight Indian tribes are located within the boundaries of the San Joaquin Valley $PM_{2.5}$ nonattainment area. These tribes are listed in Table 8 below.

TABLE 8—INDIAN TRIBES LOCATED IN SAN JOAQUIN VALLEY $PM_{2.5}$ NONATTAINMENT AREA

Big Sandy Rancheria of Mono Indians (including the Big Sandy Rancheria).
Cold Springs Rancheria of Mono Indians (including the Cold Springs Rancheria).
North Fork Rancheria of Mono Indians (including the North Fork Rancheria).
Picayune Rancheria of Chukchansi Indians (including the Picayune Rancheria).
Santa Rosa Rancheria Tachi Yokut Tribe (including the Santa Rosa Rancheria).
Table Mountain Rancheria (including the Table Mountain Rancheria).
Tule River Indian Tribe (including the Tule River Reservation).
Tejon Indian Tribe.

We have considered the relevance of our proposal to reclassify the SJV nonattainment area as Serious for the 2006 $PM_{2.5}$ standard to each tribe located within the SJV area. We believe that the same facts and circumstances that support the proposal for the non-Indian country lands also support the proposal for Indian country[89] located within the SJV nonattainment area. The EPA is therefore proposing to exercise our authority under CAA section 188(b)(1) to reclassify areas of Indian country geographically located in the SJV nonattainment area. Section 188(b)(1) broadly authorizes the EPA to reclassify a nonattainment area—including any Indian country located within such an area—that EPA determines cannot practicably attain the relevant standard by the applicable attainment date.

Elevated $PM_{2.5}$ levels are a pervasive pollution problem throughout the SJV area. Directly-emitted $PM_{2.5}$ and its precursor pollutants (NO_X, SO_2, VOC, and ammonia) are emitted throughout a nonattainment area and can be transported throughout that nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of the pollution problem as well as nearby areas in the same airshed. Initial classifications of nonattainment areas are coterminous with, that is, they match exactly, their boundaries. The EPA believes this approach best ensures public health protection from the adverse effects of $PM_{2.5}$ pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a disparate classification for a land area located within the boundaries of a larger nonattainment area, such as the areas of Indian country contained within the SJV $PM_{2.5}$ nonattainment area. Moreover, violations of the 2006 $PM_{2.5}$ standard, which are measured and modeled throughout the nonattainment area, as well as shared meteorological conditions, would dictate the same conclusion. Furthermore, emissions increases in portions of a $PM_{2.5}$ nonattainment area that are left classified as Moderate could counteract the effects of efforts to attain the standard within the overall area because less stringent requirements would apply in those Moderate portions relative to those that would apply in the portions of the area reclassified to Serious.

Uniformity of classification throughout a nonattainment area is thus a guiding principle and premise when an area is being reclassified. Equally, if the EPA believes it is likely that a given nonattainment area will not attain the $PM_{2.5}$ standard by the applicable attainment date, then it may be an additional reason why it is appropriate to maintain a uniform classification within the area and thus to reclassify the Indian country together with the balance of the nonattainment area. In this particular case, we are proposing to determine, based on the State's demonstration and current ambient air quality trends, that the SJV nonattainment area cannot practicably attain the 2006 $PM_{2.5}$ standards by the applicable Moderate area attainment date of December 31, 2015.

In light of the considerations outlined above that support retention of a uniformly-classified $PM_{2.5}$ nonattainment area, and our finding that is impracticable for the area to attain by

[88] *See generally* the General Preamble, 57 FR 13498 (April 16, 1992) and Addendum, 59 FR 41998 (August 16, 1994).

[89] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

the applicable attainment date, we propose to reclassify the areas of Indian country within the San Joaquin Valley nonattainment area to Serious for the 2006 $PM_{2.5}$ standard.

The effect of reclassification would be to lower the applicable ''major source'' threshold for purposes of the nonattainment new source review program and the Title V operating permit program from its current level of 100 tpy to 70 tpy (CAA sections 189(b)(3) and 501(2)(B)) thus subjecting more new or modified stationary sources to these requirements. The reclassification may also lower the *de minimis* threshold under the CAA's General Conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy. Under the General Conformity requirements, Federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding. Such permits, approvals or funding by Federal agencies for projects in these areas of Indian country may be more difficult to obtain because of the lower *de minimis* thresholds.

Given the potential implications of the reclassification, the EPA has contacted tribal officials to invite government-to-government consultation on this rulemaking effort.[90] The EPA specifically solicits additional comment on this proposed rule from tribal officials. We note that although eligible tribes may opt to seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address this reclassification.

VII. Summary of Proposed Actions and Request for Public Comment

Under CAA section 110(k)(3), the EPA is proposing to approve the following elements of the 2012 $PM_{2.5}$ Plan and Supplement submitted by California to address the CAA's Moderate area planning requirements for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area:

1. The 2007 base year emissions inventories as meeting the requirements of CAA section 172(c)(3);
2. the reasonably available control measures/reasonably available control technology demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C);
3. the reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2);
4. the demonstration that attainment by the Moderate area attainment date of December 31, 2015 is impracticable as meeting the requirements of CAA section 189(a)(1)(B)(ii); and
5. SJVUAPCD's commitments to adopt and implement specific rules and measures in accordance with the schedule provided in Chapter 5 of the 2012 $PM_{2.5}$ Plan to achieve the emissions reductions shown therein, and to submit these rules and measures to ARB within 30 days of adoption for transmittal to EPA as a revision to the SIP, as stated on p. 4 of SJVUAPCD Governing Board Resolution 2012–12–19.

In addition, the EPA is proposing to approve the 2014 and 2017 motor vehicle emissions budgets as shown in Table 6 above because they are derived from an approvable RFP demonstration and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A, provided the State completes its public review process and adopts and submits these budgets in final form prior to our final action on the Plan and Supplement. The EPA is also proposing to approve, in accordance with 40 CFR 93.124, the trading mechanism as described on p. C–32 in Appendix C of the 2012 $PM_{2.5}$ Plan as an enforceable component of the transportation conformity program for the SJV for the 2006 $PM_{2.5}$ standard, with the condition that trades are limited to substituting excess reductions in NO_X for increases in $PM_{2.5}$.

The EPA is proposing to disapprove the $PM_{2.5}$ interpollutant trading ratios provided in Appendix H of the 2012 $PM_{2.5}$ Plan for NNSR permitting purposes. Under section 179(a) of the CAA, final disapproval of a SIP submittal that addresses a requirement of part D, title I of the Act or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The NNSR interpollutant trading ratios provided in the 2012 $PM_{2.5}$ Plan were not submitted to meet either of these requirements. Therefore, if we take final action to disapprove this component of the Plan, no sanctions will be triggered. Disapproval of a SIP element also triggers the requirement under CAA section 110(c) for EPA to promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such FIP. Disapproval of these NNSR interpollutant trading ratios, however, would not create any deficiency in the plan and therefore would not trigger the obligation on EPA to promulgate a FIP under section 110(c).

Finally, pursuant to CAA section 188(b)(1), the EPA is proposing to reclassify the San Joaquin Valley $PM_{2.5}$ nonattainment area, including the Indian country within it, as Serious nonattainment for the 2006 $PM_{2.5}$ standard based on the Agency's determination that the SJV area cannot practicably attain the 2006 $PM_{2.5}$ standard by the Moderate area attainment date of December 31, 2015. Upon final reclassification as a Serious nonattainment area, California will be required to submit, within 18 months after the effective date of reclassification, provisions to assure that BACM shall be implemented no later than 4 years after the date of reclassification and to submit, within 4 years after the effective date of reclassification, a Serious area plan that satisfies the requirements of part D of title I of the Act, including a demonstration that the plan provides for attainment of the 2006 $PM_{2.5}$ standard as expeditiously as practicable but no later than December 31, 2019, or by the most expeditious alternative date practicable and no later than December 31, 2024, in accordance with the requirements of CAA sections 189(b) and 188(e).

In addition, because the EPA is proposing to similarly reclassify areas of Indian country within the SJV $PM_{2.5}$ nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ standard, consistent with our proposed reclassification of the surrounding non-Indian country lands, EPA has invited consultation with interested tribes concerning this issue. We note that although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address this reclassification.

We will accept comments from the public on these proposals for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

VIII. Statutory and Executive Order Reviews

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

[90] We sent letters to seven tribal officials regarding government-to-government consultation on September 30, 2014. EPA inadvertently did not send a letter to the Tejon Indian Tribe, therefore, we sent a letter to the chairperson of the Tejon Indian Tribe inviting government to government consultation on our proposed reclassification of the SJV $PM_{2.5}$ nonattainment area on December 18, 2014. All eight letters can be found in the docket for today's action.

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

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

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action would approve State law as meeting Federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, the proposed rule would reclassify the SJV nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, and would not itself regulate small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, and does not significantly or uniquely affect small governments. This proposed action would approve State law as meeting Federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, the proposed action would reclassify the SJV nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, and would not itself impose any federal intergovernmental mandate. The proposed action would not require any tribes to submit implementation plans.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

Eight Indian tribes are located within the boundaries of the SJV nonattainment area for the 2006 $PM_{2.5}$ NAAQS: The Big Sandy Rancheria of Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the North Fork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Rancheria of the Tachi Yokut Tribe, the Table Mountain Rancheria of California, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation.

EPA's proposed approvals of the SIP elements submitted by California to address the 2006 $PM_{2.5}$ standard in the SJV would not have tribal implications because the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed SIP approvals do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The EPA has concluded that the proposed reclassification might have tribal implications for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. We note that none of the tribes located in the SJV nonattainment area has requested eligibility to administer programs under the CAA. The proposed reclassification would affect the EPA's implementation of the new source review program because of the lower ''major source'' threshold triggered by reclassification (70 tons per year for direct $PM_{2.5}$ and precursors to $PM_{2.5}$). The proposed reclassification may also affect new or modified stationary sources proposed in these areas that require Federal permits, approvals, or funding. Such projects are subject to the requirements of EPA's General Conformity rule, and Federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower *de minimis* thresholds triggered by reclassification.

Given the potential implications, the EPA contacted tribal officials during the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On September 30, 2014, we sent letters to leaders of the seven tribes with areas of Indian country in the SJV nonattainment area inviting government-to-government consultation on the rulemaking effort. We requested that the tribal leaders, or their designated consultation representatives, provide input or request government-to-government consultation by October 27, 2014. We did not receive a response from any of the seven tribes. As noted above, the EPA inadvertently did not send a letter to the Tejon Indian Tribe at the time we sent letters to the other seven tribes. We contacted the chairperson of the Tejon Indian Tribe on December 18, 2014 to offer them an opportunity for government-to-government consultation. We intend to continue communicating with all eight tribes located within the boundaries of the SJV nonattainment area for the 2006 $PM_{2.5}$ NAAQS as we move forward in developing a final rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it would only approve a state air quality plan implementing a federal standard and reclassify the SJV nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, triggering Serious area planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA has determined that this action will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed action would only approve a state air quality plan implementing a federal standard and reclassify the SJV nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, triggering additional Serious area planning requirements under the CAA.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Incorporation by reference.

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

Dated: December 29, 2014.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2015–00270 Filed 1–12–15; 8:45 am]

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