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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG20

Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that appeared in the **Federal Register** on October 2, 2013. The rule, which described how supply procurements should be classified, mistakenly attempted to amend a regulation by removing words that did not exist in the particular paragraph. This notice corrects that rule document by removing the instruction.

DATES: Effective October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Michael McLaughlin, Office of Policy, Planning & Liaison, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; 202–205–5353; *michael.mclaughlin@sba.gov.*

SUPPLEMENTARY INFORMATION: On June 28, 2013, SBA published a rule in the **Federal Register** at 78 FR 38811 that amended § 121.404(b) by removing ''and the date of certification by SBA'' and adding in its place ''and, where applicable, the date the SBA program office requests a formal size determination in connection with a concern that otherwise appears eligible for program certification.'' The final rule published on October 2, 2013, (78 FR 61113) intended to amend 13 CFR 121.404(b) by removing ''date of certification by SBA'' and adding in its place ''date the Director of the Division of Program Certification and Eligibility or the Associate Administrator for Business Development requests a formal size determination in connection with a concern that is otherwise eligible for program certification.'' However, the amendment could not be implemented because at that point the words to be removed did not exist in § 121.404(b). Therefore, SBA is removing that instruction from the final rule published on October 2, 2013.

In the FR Rule Doc. No. 2016–22064 in the issue of October 2, 2013, beginning on page 61113, make the following correction:

On page 61131, first column, remove amendatory instruction number 4c.

Dated: September 21, 2016.

A. John Shoraka,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. 2016–23478 Filed 9–30–16; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AG78

Disaster Assistance Loan Program; Disaster Loan Mitigation, Contractor Malfeasance and Secured Threshold

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: On April 6, 2016, the U.S. Small Business Administration (SBA) published in the **Federal Register** a proposed rule to amend its disaster loan program regulations in response to changes made to the Small Business Act (the Act) by the Recovery Improvements for Small Entities After Disaster Act of 2015 (the RISE Act). SBA received no comments on its proposed rule; therefore SBA adopts the proposed rule without change. The first change expands the definition of a mitigating measure to include the construction of a safe room or similar storm shelter designed to protect property and occupants. The second change allows for an increase of the unsecured threshold for physical damage loans for non-major disasters. The third change allows SBA to increase loan amounts to address contractor malfeasance. In addition, SBA is making several technical corrections to conform certain regulatory provisions to existing statutory authority and remove an obsolete reference in part 123.

DATES: This rule is effective on October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Assistance, 409 3rd St. SW., Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION:

I. Background

Section 7(b) of the Small Business Act, 15 U.S.C. 636(b), authorizes SBA to make direct loans to homeowners, renters, businesses, and non-profit organizations that have been adversely affected by a disaster. After a declared disaster, SBA makes loans of up to $200,000 to homeowners and renters (plus up to $40,000 for personal property) and loans of up to $2 million to businesses of all sizes and non-profit organizations to assist with any uninsured and otherwise uncompensated physical losses sustained during the disaster. In addition to loans for the repair or replacement of damaged physical property, SBA also offers working capital loans, known as Economic Injury Disaster Loans (EIDLs), to small businesses, small agricultural cooperatives, and most private non-profit organizations that have suffered economic injury caused by a disaster. The maximum loan amount is $2 million for physical and economic injuries combined. SBA may waive this $2 million limit if a business is a major source of employment.

The Recovery Improvements for Small Entities After Disaster Act of 2015, Public Law 114–88, 129 Stat. 686 (November 25, 2015), amended certain terms and conditions of SBA's Disaster Assistance program. SBA published a proposed rule in the **Federal Register** on April 6, 2016 (81 FR 19934), to address three of those statutory amendments, as set out in sections 1102 (safe rooms), 2102 (three year temporary increase in unsecured loan limits), and 2107 (contractor malfeasance) of the RISE Act, as well as to make several minor technical amendments to the program regulations to ensure consistency between the program's regulatory and statutory authorities. The comment period for the proposed rule ended on June 6, 2016, and SBA received no comments. As discussed below, this final rule implements those statutory

and technical amendments without change.

II. Changes Made as a Result of the RISE Act

Section 1102 of the RISE Act, Use of Physical Damage Disaster Loans to Construct Safe Rooms, expanded the definition of mitigation to include ''construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency.'' This change allows SBA to include a safe room or storm shelter as a mitigating measure; therefore, SBA is amending 13 CFR 123.21 to reflect this change in the definition of a mitigation measure. Increases for mitigation purposes are only available when the mitigation protects or mitigates against damage from the same type of occurrence as the declared disaster. Revised § 123.21 also clarifies that a mitigation measure is something done for the purpose of protecting property (real and personal) and occupants. In addition, safe rooms and storm shelters are now included in the examples of mitigation measures. The final rule adopts the proposed revisions to 13 CFR 123.21 without change.

Section 2102 of the RISE Act, Collateral Requirements for Disaster Loans, increased SBA's unsecured loan limits for all disaster loans for a period of three years. Therefore, SBA proposed to amend 13 CFR 123.11 to reflect a $25,000 unsecured threshold for all disaster declarations. In accordance with the RISE Act, after November 25, 2018, the unsecured limit for physical damage loans for non-major disasters will revert back to $14,000, unless Congress makes the increase permanent. The final rule adopts the proposed revision to 13 CFR 123.11 without change.

Section 2107 of the RISE Act, Contractor Malfeasance, expanded SBA's ability to provide disaster assistance by expressly allowing for supplemental assistance for malfeasance by a contractor or other person and defining what constitutes malfeasance. Prior to implementation of the RISE Act, SBA provided assistance only for malfeasance by contractors, not malfeasance by any ''other person'' in connection with the loan, and did not allow for increases in the loan amount beyond the regulatory limit of $200,000 for repair or replacement of damaged property. The RISE Act gave SBA authority to increase a disaster loan when a contractor or other person engages in malfeasance in connection with repairs to, rehabilitation of, or replacement of property for which SBA made a disaster loan and the malfeasance results in substantial economic damage or substantial risks to health or safety. SBA proposed to revise 13 CFR 123.18, 123.20, and 123.105 to include details on what constitutes malfeasance, provide guidance on when borrowers are eligible to apply for loan increases due to malfeasance, and allow home loan borrowers to increase their loans up to an additional $200,000 for malfeasance. For business loans, the total maximum loan amount, including any increase for malfeasance, remains $2,000,000. The final rule adopts the proposed revisions to 13 CFR 123.18, 123.20, and 123.105 without change.

The changes made as a result of the RISE Act apply to all eligible recipients of SBA disaster loans for disasters declared on or after the effective date of the RISE Act, November 25, 2015.

III. Technical Corrections

In addition to the changes made as a result of the RISE Act, SBA is also making several technical corrections. In the proposed rule, SBA proposed to change the phrase ''sudden physical event'' to ''sudden event'' in 13 CFR 123.2 to conform the regulation to SBA's statutory definition of ''disaster'' in 15 U.S.C. 632(k). SBA also proposed to revise 13 CFR 123.3 to remove the reference to ''emergency'' declarations in 123.3(a)(1) in order to conform the regulations to SBA's statutory authority. SBA proposed this change to clarify that SBA disaster assistance is not automatically authorized when the President declares an emergency; such assistance may be available, however, if SBA declares a disaster under its own authority. Finally, SBA proposed to revise 13 CFR 123.13(a) to remove the reference to an expired OMB control number. These proposed technical corrections are all adopted without change in the final rule.

IV. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as . . . otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

SBA's Disaster Assistance Program offers low interest, fixed rate loans to disaster victims, enabling them to replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses and non-profits to help them recover from economic injury caused by such disasters. The changes in this final rule will not require members of the public to adjust their behavior. Rather, the changes will benefit the public by increasing the unsecured threshold for all disaster loans, allowing SBA to provide supplemental assistance for malfeasance by a contractor or other person, and expanding available uses of mitigation funds to include safe rooms and storm shelters.

In light of the urgent need to assist disaster victims, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive effect. The final rule will have retroactive effect to the enactment date of the statutory amendments. Sections 1102 (Safe Rooms), 2102 (3 year temporary increase in unsecured loan limits) and 2107 (Contractor Malfeasance) of the RISE Act amended the Small Business Act effective November 25, 2015. The regulatory changes made as a result of the RISE Act will apply to disasters declared on or after November 25, 2015.

Executive Order 13132

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

federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements and afforded the public 60 days to participate and provide comments. No comments were received.

Paperwork Reduction Act (44 U.S.C. Ch. 35)

For purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or recordkeeping requirements.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

While this rule will affect all future applicants for disaster assistance, some of which would be small entities, it does not impose any requirements on small entities. It streamlines SBA's processes in order to enable the Agency to provide disaster assistance more quickly and efficiently to small entities. SBA is not a small entity. As such, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons stated in the preamble, the U.S. Small Business Administration amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n; and Pub. L. 102–395, 106 Stat. 1828, 1864.

■ 2. Amend § 123.2 by revising the seventh sentence to read as follows:

§ 123.2 What are disaster loans and disaster declarations?

* * * Sudden events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. * * *

■ 3. Amend § 123.3 by revising paragraph (a)(1) to read as follows:

§ 123.3 How are disaster declarations made?

(a) * * *

(1) The President declares a Major Disaster and authorizes Federal Assistance, including individual assistance (Assistance to Individuals and Households Program).

* * * * *

■ 4. Amend § 123.11 by revising paragraph (a)(2) to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

(a) * * *

(2) *Physical disaster home and physical disaster business loans.* Generally, SBA will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of $25,000 or less. This authority expires on November 25, 2018, unless extended by statute.

* * * * *

§ 123.13 [Amended]

■ 5. Amend § 123.13 by removing the parenthetical phrase ''(OMB Approval No. 3245–0122.)'' from paragraph (a).

■ 6. Amend § 123.18 by:

■ a. Redesignating the undesignated text as paragraph (a);

■ b. Revising the first sentence of the redesignated paragraph (a); and

■ c. Adding paragraph (b).

The revisions and additions read as follows:

§ 123.18 Can I request an increase in the amount of a physical disaster loan?

(a) Generally, SBA will consider your request for an increase in your loan if you can show that the eligible cost of repair or replacement of damages increased because of events occurring after the loan approval that were beyond your control. * * *

(b) For all disasters occurring on or after November 25, 2015, you may also request an increase in your loan if you suffered substantial economic damage or substantial risks to health or safety as a result of malfeasance in connection with the repair or replacement of real property or business machinery and equipment for which SBA made a disaster loan. See § 123.105 for limits on home loan amounts and § 123.202 for limits on business loan amounts. Malfeasance may include, but is not limited to, nonperformance of all or any portion of the work for which a contractor was paid, work that does not meet acceptable standards, or use of substandard materials.

■ 7. Amend § 123.20 by redesignating the undesignated text as paragraph (a) and adding paragraph (b) to read as follows:

§ 123.20 How long do I have to request an increase in the amount of a physical disaster loan or an economic injury loan?

(a) * * *

(b) For physical disaster loan increases requested under § 123.18(b) as a result of malfeasance, the request must be received not later than two years after the date of final disbursement.

■ 8. Amend § 123.21 by revising the first and third sentences to read as follows:

§ 123.21 What is a mitigation measure?

A mitigation measure is something done for the purpose of protecting property and occupants against disaster related damage. * * * Examples of mitigation measures include building retaining walls, sea walls, grading and contouring land, elevating flood prone structures, relocating utilities, constructing a safe room or similar storm shelter (if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency), or retrofitting structures to protect against high winds, earthquakes, flood, wildfires, or other physical disasters. * * *

■ 9. Amend § 123.105 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing the word ''and'' from paragraph (a)(3);

■ c. Revising paragraph (a)(4); and

■ d. Adding paragraph (a)(5).

The revisions and additions read as follows:

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) There are limits on how much money you can borrow for particular purposes:

* * * * *

(4) 20 percent of the verified loss (not including refinancing or malfeasance), before deduction of compensation from other sources, up to a maximum of $200,000 for post-disaster mitigation (see § 123.107); and

(5) $200,000 for eligible malfeasance, pursuant to § 123.18.

* * * * *

Dated: September 22, 2016.

Maria Contreras-Sweet,

Administrator .

[FR Doc. 2016–23733 Filed 9–30–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9168; Directorate Identifier 2016–SW–028–AD; Amendment 39–18670; AD 2016–20–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA341G and SA342J. This AD prohibits autorotation training flights until the hardness of the landing gear rear crosstube (crosstube) is inspected. This AD is prompted by two reports of crosstubes failing during ground handling. These actions are intended to prevent failure of a crosstube, which could result in dropping or tipping of the helicopter.

DATES: This AD becomes effective October 18, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of October 18, 2016.

We must receive comments on this AD by December 2, 2016.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9168; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9168.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On April 13, 2016, EASA, which is the Technical Agent for the Member States of the European Union, issued EASA Emergency AD No. 2016–0073–E (AD 2016–0073–E) to correct an unsafe condition for Airbus Helicopters Model SA341G and SA342J helicopters with a crosstube part number (P/N) 341A415201.00 or P/N 341A415201.01. EASA advises that two reported failures of a crosstube have occurred during maintenance and towing operations, resulting in the helicopters dropping or tipping over. EASA further states that excessive hardness of the crosstube material, combined with inter-granular corrosion initiation, may have affected the structural integrity of the crosstube. EASA advises that this condition could lead to failure of the crosstube and dropping or tipping over of the helicopter. To address this unsafe condition, EASA AD 2016–0073–E requires identifying the affected crosstubes, implementing a temporary prohibition of autorotation training flights on affected helicopters by amending the RFM and installing a placard, inspecting the hardness of each affected crosstube, and replacing any crosstubes that do not meet the hardness criteria.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to

exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin (ASB) No. SA341/2–32.08, Revision 0, dated March 24, 2016 (ASB 32.08), which specifies removing the crosstube, checking its hardness, and replacing the crosstube if it fails the hardness test. ASB 32.08 also specifies prohibiting autorotation training flights by installing a placard on the instrument panel.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We also reviewed Aerospatiale (now Airbus Helicopters) Flight Manuals SA 341G, Issue 2, dated December 1974, and SA 342J, Issue 1, dated April 27, 1976. These manuals provide various procedures, limitations, and performance and loading information.

AD Requirements

This AD requires, before further flight, prohibiting autorotation training flights by amending the RFM and installing a limitation placard on the instrument panel.

This AD also requires, within 25 hours time-in-service (TIS), applying a solution to the crosstube to determine whether the metal is coated and removing all coating within a specific area. Once there is no coating, this AD requires inspecting the hardness of the crosstube and replacing the crosstube if it does not meet the hardness criteria. After determining the crosstube meets the hardness criteria, the placard and RFM amendment prohibiting autorotation training flights may be removed.

Differences Between This AD and the EASA AD

EASA requires the hardness inspection to be completed within six months, while we require the hardness inspection to be completed within 25 hours TIS.

Costs of Compliance

We estimate that this AD affects 17 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, amending the RFM and installing a placard will require about 0.5 work-hour, for a cost per helicopter of $43, and a total cost of $731 to the U.S. fleet. Inspecting a crosstube will require about 8 work-hours, and the required materials cost is minimal, for a cost per helicopter of $680 and a total cost of $11,560 to the U.S. fleet.

If required, replacing a crosstube will require 8 work-hours, and required parts will cost $11,952, for a total cost of $12,632 per helicopter.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because certain operations must be prohibited before further flight until the required corrective actions are accomplished. Those corrective actions must then be accomplished within 25 hours TIS, a short time interval for these model helicopters.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–20–04 Airbus Helicopters: Amendment 39–18670; Docket No. FAA–2016–9168; Directorate Identifier 2016–SW–028–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model SA 341G and Model SA 342J helicopters with a landing gear rear crosstube (crosstube) part number 341A415201.00 or 341A415201.01, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect hardness of the crosstube, which could result in failure of the crosstube and subsequent dropping or tipping of the helicopter.

(c) Effective Date

This AD becomes effective October 18, 2016.

(d) Compliance

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

(e) Required Actions

(1) Before further flight:

(i) Amend the rotorcraft flight manual (RFM) by inserting a copy of this AD or by making pen-and-ink changes in Section 1, Limitations, by adding the following: AUTOROTATION TRAINING FLIGHTS ARE PROHIBITED.

(ii) Install a placard on the instrument panel in full view of the pilots that states the following: AUTOROTATION TRAINING FLIGHTS ARE PROHIBITED.

(2) Within 25 hours time-in-service:

(i) Inspect the crosstube to determine whether the metal is coated. Make a copper sulfate solution by following the Accomplishment Instructions, paragraph 3.B.2.b.1., of Airbus Helicopters Alert Service Bulletin (ASB) No. SA341/342–32.08, Revision 0, dated March 24, 2016 (ASB 32.08). Apply 2 to 3 drops of the solution to Area Z in Figure 1 of ASB 32.08 and wait 10 to 15 seconds. If a dark mark appears as shown in Area 2 of Figure 3 of ASB 32.08, there is no metal coating. If a light mark appears as shown in Area 4 of Figure 3 of ASB 32.08, remove all metal coating in Area Z of Figure 1 of ASB 32.08.

(ii) Inspect the hardness of the crosstube by using the criteria in the table under Paragraph 3.B.2.c. of ASB 32.08. If the hardness is not within the value range in the table, before further flight, replace the crosstube. If the hardness is within the value range in the table, apply corrosion protectant to Area Z in Figure 1 of ASB 32.08.

(iii) Remove the RFM limitation and the instrument panel placard required by paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

(1) Aerospatiale (now Airbus Helicopters) Flight Manuals SA 341G, Issue 2, dated December 1974, and SA 342J, Issue 1, dated April 27, 1976, which are not incorporated by reference, contain additional information about the subject of this proposed rule. For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2016–0073–E, dated April 13, 2016. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–9168.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3213 Main Landing Gear Strut/Axel/Truck.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin No. SA341/342–32.08, Revision 0, dated March 24, 2016.

(ii) Reserved.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on September 16, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–23347 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0824]

RIN 1625–AA00

Safety Zone; Dredging, Shark River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change of effective period.

SUMMARY: The Coast Guard is extending the effective period for the temporary safety zone on a portion of Shark River, in Neptune City, NJ. That temporary regulation was set to expire September 30, 2016. Extending the effective period for this safety zone provides continued and uninterrupted protection for the dredge operations and for the safety of life on navigable waters during dredging operations.

DATES: This rule is effective September 30, 2016. Effective September 30, 2016, the effective period for § 165.T05–0824, added at 81 FR 59484, August 30, 2016, effective from September 1, 2016, through September 30, 2016, is extended through October 31, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to, type USCG–2016–0824 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271–4889, email *Tom.J.Simkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background Information and Regulatory History

Efforts to dredge the Shark River have been underway for well over a decade. After Superstorm Sandy the need to dredge the river increased significantly due to sediment deposited by the storm, which impeded navigation within those channels. Funding issues and concerns over dewatering locations (locations to dry the dredged materials) have historically stalled the progress of this project.

Mobile Dredging and Pumping Co. have been awarded the contract to restore the state channels to allow safe passage for recreational and commercial traffic. The project requires dredging approximately 102,000 cubic yards of sediment comprised of sand and silt. The sediment will be hydraulically dredged and piped via a secure welded pipeline to the selected dewatering locations.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations. The rule will temporarily restrict vessel traffic from transiting a portion of the Shark River while dredging operations are being conducted in the main navigational channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event, specifying the need for the dredging operation to continue from October 1, 2016 through October 31, 2016, were not received by the Coast Guard until September 15, 2016. It is impracticable to publish an NPRM because we must establish this safety zone October 1, 2016. Failing to extend the effective dates for this rule pending completion of notice and comment rulemaking is impracticable and contrary to the public interest because it would cause a gap in the ability to enforce the needed safety zone. The dredge and dredge piping are positioned in the main navigational channel in order for the dredging company to complete the proper dredging of the main navigational channel. Allowing this event to continue without a safety zone in place would expose mariners and the public to unnecessary dangers associated with dredge piping and dredge operations. Therefore, it is imperative that the safety zone restricting traffic in this portion of the Shark River, in Neptune City, NJ remain in place.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons stated above. The Coast Guard expects that there will be an impact to vessel traffic during times when the navigational channel is restricted. However, there will be times throughout the project where vessel traffic is not restricted and traffic will be able to freely flow through the main navigational channel. Furthermore, notification of the waterway restrictions will be made by the contractor, Mobile Dredging and Pumping Co. Additionally the New Jersey Department of Transportation, Office of Marine Resources, will be conducting outreach to the local community. Notification of the safety zone and waterway restrictions will be made by the COTP via marine safety broadcast using VHF–FM channel 16 and through the Local Notice to Mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that potential hazards are associated with dredge piping and dredge operations from October 1, 2016, through October 31, 2016. The rule is necessary to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations.

The rule will have an impact to vessels transiting through the Shark River main navigational channel, from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W. as vessels will be unable to transit the main navigational channel during times when dredging operations are being conducted. This restriction is necessary to ensure the safety of life and protect vessel from dredge piping and dredge operations.

IV. Discussion of the Rule

On September 1, 2016, dredging began on a portion of the Shark River in Neptune City, NJ. The Captain of the Port, Delaware Bay, determined that the hazards associated with dredge piping and dredge operations in the main navigational channel created the need for a safety zone to ensure safety of vessels transiting this portion and for workers engaged in dredge piping and dredging operations of the Shark River.

The safety zone closed the main navigational channel on all the navigable waters on the Shark River from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W.; during times of dredging. Dredging for the main navigational channel was scheduled from September 1, 2016, through September 30, 2016, from 9 a.m. to 9 p.m. Monday through Thursday. The Coast Guard is extending the effective period for the temporary safety zone through October 31, 2016. Entry into, transiting, or anchoring within this portion of Shark River during these times is prohibited. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

The channel will be open from October 1, 2016, through October 31, 2016, each week from 9 p.m. to 9 a.m., Monday through Thursday. Vessels may transit freely during these times, and vessels are requested to contact the dredge via VHF–FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and duration of the safety zone. Although the main navigational channel of this portion of the Shark River will be closed for periods of time throughout the dredging operation, there are designated times where the channel will be open for vessel traffic and traffic will be able to flow freely. Vessels will only be affected 84-hours weekly, from 9 a.m. to 9 p.m. Monday through Thursday, during October 2016. The safety zone and channel closure will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be some disruption to the maritime community. Before the effective period, the Coast Guard, Mobile Dredging and Pumping Co., and New Jersey Department of Transportation's Office of Marine Resources will issue maritime advisories, widely available to users of the Shark River, describing times and dates of waterway closures and openings.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing all the waters from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W., in the Shark River, in Neptune City, NJ. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as set forth below and extends the effective period for § 165.T05–0824 from September 30, 2016, through October 31, 2016.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Effective September 30, 2016, revise § 165.T05–0824 to read as follows:

§ 165.T05–0824 Safety Zone, Dredging; Shark River, NJ.

(a) *Regulated areas.* The following areas are safety zone: All waters from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W., in the Shark River, in Neptune City, NJ. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

(b) *Regulations.* The general safety zone regulations in § 165.23 apply to the safety zone created by this temporary section.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while it is subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215–271–4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) Vessels may freely transit this portion of the Shark River from 9 p.m. to 9 a.m. Monday through Thursday. Vessels are requested to contact the dredge via VHF–FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel during times of channel openings.

(5) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation and emergency response vessels.

(c) *Definitions.* As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement periods.* This section will be enforced weekly from 9 a.m. to 9 p.m. Monday through Thursday, through October 31, 2016.

Dated: September 27, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2016–23711 Filed 9–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0899]

RIN 1625–AA00

Safety Zone; Diving Operations, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware River in Philadelphia, PA, on October 3, 2016, from 7 a.m. through 11 a.m. During the period of enforcement, the safety zone will restrict vessel traffic on the waters of the Delaware River, adjacent to Penn's Landing, Philadelphia, PA. The safety zone is intended to provide for the safety of personnel involved in diving operations.

DATES: This rule is effective from 7 a.m. through 11 a.m. on October 3, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0899 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Thomas Simkins, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, email *Tom.J.Simkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because a safety zone is needed to ensure safety of life and property for those vessels involved in the diving operations and those persons transiting the Delaware River. In this case, waiting for a comment period to run would be contrary to the public interest of protecting life and property. In addition, publishing an NPRM is impracticable as the requestors did not provide sufficient notice to the Coast Guard relating to the expected date of the diving operations. Therefore, delay in taking action is both impracticable and contrary to public interest.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with diving operations.

III. Legal Authority and Need for Rule

The legal basis for the rule is provided by 33 U.S.C. 1231. On October 3, 2016, diving operations will be conducted from the Penn's Landing pier. Due to the proximity of the pier to the navigable channel, and the diving operations, vessel traffic will be restricted from entering the safety zone during the designated date and time, which accounts for staging as well as the actual diving operations. This rule is required in order to safely facilitate diving operations and protect both life and property on the navigable waterways of the Delaware River.

IV. Discussion of the Rule

To mitigate the risks associated with necessary diving operations, the Captain of the Port, Delaware Bay is establishing a temporary safety zone in the vicinity of the diving site. The safety zone will encompass all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29.1″ N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge. The safety zone will be effective and enforced from 7 a.m. through 11 p.m. on Monday, October 3, 2016. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his on-scene representative. The Captain of the Port, Delaware Bay, or his on-scene representative may be contacted via VHF channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will impact the waters affected by this rule from 7 a.m. through 11 a.m. on October 3, 2016, during a time of year when vessel traffic is normally low. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly. Such notifications will be updated as necessary, to keep the maritime community informed of the status of the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0899 to read as follows:

§ 165.T05–0899 Safety Zone; Diving Operations, Delaware River, Philadelphia, PA.

(a) *Regulated area.* The following area is a safety zone: All waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29.1″ N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge.

(b) *Regulations.* The general safety zone regulations found in § 165.23 apply to the safety zone created by this temporary section, § 165.T05–0899.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while it is subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215–271–4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) The Coast Guard vessels enforcing this safety zone can be contacted on VHF–FM marine band radio channel 16 (156.8 MHZ). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel operating under the authority of the COTP Delaware Bay, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The COTP Delaware Bay and his designated representatives can be contacted at telephone number 215–271–4807.

(c) *Definitions.* As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 7 a.m. through 11 a.m. on October 3, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2016–23782 Filed 9–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0912]

RIN 1625–AA00

Safety Zone; Allegheny River, Ohio River, Monongahela River, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the University of Pittsburgh Fireworks show, Pittsburgh, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective from 10 p.m. until 11:30 p.m. on October 1, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0912 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; at telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor submitted event application on September 21, 2016. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that delaying this regulation's effective date for comment would be contrary to the public interest since a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by October 1, 2016. The fireworks display has been advertised and the local community has prepared for the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest of ensuring the safety of spectators and vessels during the event. Immediate action is necessary to prevent possible loss of life and property during the hazards created by a barge-based fireworks display near and over the navigable waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on October 1, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. to 11:30 p.m. on October 1, 2016. The safety zone will cover all navigable waters on the Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway for a limited duration of one hour in the evening. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue broadcast notices to mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour that will prohibit entry to the Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1 during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0912 to read as follows:

§ 165.T08–0912 Safety Zone; Allegheny River, Ohio River and Monogahela River, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: Pittsburgh Steelers Fireworks; Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1, Pittsburgh, PA

(b) *Enforcement.* This safety zone described in (a) above will be enforced from 10 p.m. until 11:30 p.m. on October 1, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or their designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–23783 Filed 9–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0918]

RIN 1625–AA00

Safety Zone; 100th Ore Dock Anniversary Celebration; Chequamegon Bay, Ashland, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within Chequamegon Bay in Ashland, WI. This safety zone is intended to restrict vessels from specified waters in Chequamegon Bay during the 100th Ore Dock Anniversary Celebration Fireworks Display. This safety zone is necessary to protect spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 6:30 p.m. through 7:30 p.m. on October 1, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0918 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The event sponsor notified the Coast Guard on September 26, 2016 that the fireworks display will be held on October 1, 2016, accordingly there is insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be both impracticable and contrary to public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest as it would inhibit the Coast Guard's ability to protect spectator and vessels from the hazards associated with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with fireworks displays starting after 6:30 p.m. on October 1, 2016 will be a safety concern for anyone within a 420-foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:30 p.m. through 7:30 p.m. October 1, 2016. The safety zone will cover all navigable waters within an area bounded by a circle with a 420-foot radius of the fireworks display launching site located in Ashland, WI at coordinates 46°36′02″ N., 090°52′49″ W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory

action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Superior Bay in Superior, WI for 1 hour and during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting no more than 1 hour that will prohibit entry within a 420-foot radius from where a fireworks display will be conducted. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0918 to read as follows:

§ 165.T09–0834 Safety zone; 100th Ore Dock Anniversary Celebration Fireworks Display, Chequamegon Bay, Ashland, WI.

(a) *Location.* All waters of Chequamegon Bay within an area bounded by a circle with a 420-foot radius at position 46°36′02″ N., 090°52′49″ W.

(b) *Effective period.* This safety zone is effective from 6:30 p.m. through 7:30 p.m. on October 1, 2016.

(c) *Regulations.*

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

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Duluth or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth or his on-scene representative.

Dated: September 27, 2016.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2016–23712 Filed 9–30–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0529; FRL–9953–34–Region 7]

Approval of Missouri's Air Quality Implementation Plans and Operating Permits Program; Greenhouse Gas Tailoring Rule and Non-Substantive Definition and Language Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) and the 40 CFR part 70 operating permits program. EPA is approving revisions to two Missouri rule(s) entitled, ''Construction Permits Required,'' and ''Operating Permits.'' This approval action is consistent with the July 12, 2013, U.S. Court of Appeals for the District of Columbia and the June 23, 2014, U.S. Supreme Court actions regarding Greenhouse Gas Prevention of Significant Deterioration and Title V Permitting. This action makes non-substantive changes to definitions, and language clarifications.

DATES: This direct final rule will be effective December 2, 2016, without further notice, unless EPA receives adverse comment by November 2, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0529, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez at (913) 551–7041, or by email at *gonzalez.larry@epa.gov.*

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

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

I. What is being addressed in this document?

EPA is approving revisions to the Missouri SIP and Operating Permits Program requested from four separate requests. In the first request dated August 8, 2011, the State of Missouri asked that EPA amend the SIP and the state's operating permits program to include rule revisions that incorporate Federal permitting requirements for greenhouse gas emissions under state rule 10 CSR 10–6.065.

In the second request, also dated August 8, 2011, the State of Missouri asked that EPA amend the SIP to incorporate Federal permitting requirements to address new construction projects that emit 100,000 tons per year or more of greenhouse gases, as well as clarifying some rule text.

In the third request dated August 31, 2012, the State of Missouri asked that EPA amend the SIP to include recently promulgated revisions to the state rule 10 CSR 10–6.065 in order to defer for a period of three years the application of Title V permitting to carbon dioxide emissions from biogenic sources. In addition to the biogenic deferral language, Missouri included non-substantive edits and minor administrative rule revisions in this submission. For example, Missouri relabeled 10 CSR 10–6.065(3)(A)5 to 10 CSR 10–6.065(3)(B), and reworded the following in that same subsection ''40 CFR part 63, subpart EEE'' to ''40 CFR 63, subpart EEE.''

On July 14, 2016, the State of Missouri modified the 2011 and 2012 requests in a letter to EPA. The letter addresses the court directed revisions to EPA's GHG permitting provisions. Specifically, in the July 14, 2016, letter, Missouri identified regulatory language of the earlier submittals that it was withdrawing its request to EPA to approve into the SIP and notified EPA that the state will update its rules in the future to remove those provisions. The State explained that these changes to their earlier submittals are a result of court decisions by the Supreme Court (*Utility Air Regulatory Group* v. *EPA,* June 23, 2014) and the U.S. Court of Appeals for the District of Columbia (*Coalition for Responsible Regulation, Inc. et al.* v. *EPA,* April 10, 2015), in which the courts vacated certain permitting requirements that were included in Missouri's August 8, 2011, submission. In the July 2016 submittal, the state clarified this earlier request to EPA as follows:

(1) Missouri requested that in 10 CSR 10–6.060(8)(A), not include as part of the Missouri SIP the phrase ''including the revision published at 75 FR 31606–07 (effective August 2, 2010).'' Instead subsection (8)(A) will read ''. . . promulgated as of July 1, 2009 are hereby incorporated . . .''

(2) Missouri requested that in 10 CSR 10–6.6065(2)(A)2., not include the words ''Except that:'' and do not include the subparagraphs (2)(A)2.A. and (2)(A)2.B. as part of the Missouri SIP.

In addition, Missouri requested that EPA only include into the Missouri SIP the non-substantive wording clarifications submitted on August 31, 2012, without the biogenic deferral

wording revisions because the biogenic deferrals had expired.

These requested and remaining revisions to Missouri's earlier submittals are consistent with the changes in Federal permitting requirements that were necessitated by the two earlier mentioned court decisions. These changes will make Missouri's GHG permitting requirements included in the SIP consistent with current Federal requirements.

II. Have the requirements for approval of a SIP revision been met?

The state submissions have met the public notice requirements of SIP submissions in accordance with 40 CFR 51.102. The submissions also satisfy the completeness criteria of 40 CFR part appendix V. In addition, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving the request to amend the Missouri SIP and operating permits program by approving the State's request to amend 10 CSR 10–6.060, and 10 CSR 10–6.065 to align the State's rule with EPA's GHG Tailoring rule, streamline the public notice procedures to align them with similar procedures in the EPA rules, and allows the flexibility to publish notices on the internet.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri Regulations described in the direct final amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

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

[1] 62 FR 27968 (May 22, 1997).

Dated: September 21, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

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 AA—Missouri

■ 2. Section 52.1320(c) is amended by revising entries 10 CSR 10–6.060 and 10 CSR 10–6.065 under subheading ''Chapter 6'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.060	Construction Permits Required.	08/30/11	10/3/16 [Insert **Federal Register** citation].	Provisions of the 2010 $PM_{2.5}$ PSD—Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. In addition, we have not approved Missouri's rule incorporating EPA's 2007 revision of the definition of ''chemical processing plants'' (the ''Ethanol Rule,'' 72 FR 24060 (May 1, 2007) or EPA's 2008 ''fugitive emissions rule,'' 73 FR 77882 (December 19, 2008). Although exemptions previously listed in 10 CSR 10–6.060 have been transferred to 10 CSR 10–6.061, the Federally-approved SIP continues to include the following exemption, ''Livestock and livestock handling systems from which the only potential contaminant is odorous gas.'' Section 9, pertaining to hazardous air pollutants, is not SIP approved. EPA is not approving in subsection (8)(A) the phrase ''including the revision published at 75 FR 31606–07 (effective August 2, 2010).''
*	*	*	*	*
10–6.065	Operating Permits ...	08/30/11	10/3/16 [Insert **Federal Register** citation].	EPA has not approved Section (4) as part of the SIP. EPA is not approving in paragraph (2)(A)2 the words, ''except that'' and is not approving subparagraphs (2)(A)2.A. and (2)(A)2.B.
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

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

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

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

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

* * * * *

Missouri

* * * * *

(ff) The Missouri Department of Natural Resources submitted revisions to CSR on April 28, 2011. We are approving this rule except for Section (4) which relates to the State Basic Operating permits, and we are not approving in paragraph (2)(A)2 the words, ''except that'' and are not approving subparagraphs (2) (A)2.A. and (2)(A)2.B. This approval is effective December 2, 2016.

* * * * *

[FR Doc. 2016–23599 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2016–0197; FRL–9953–13–Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants, State of Wyoming; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Wyoming hospital/medical/infectious waste incinerator (HMIWI) Section 111(d)/129 plan (the ''plan''). The plan was submitted to the EPA to fulfill requirements of the Clean Air Act (CAA) and to implement and enforce the emissions guidelines (EG) for existing hospital/medical/infectious waste incinerators (HMIWI). The plan establishes emission limits; operator training and qualification requirements; performance testing, monitoring, and inspection requirements; and requirements for a waste management plan and reporting and recordkeeping requirements for existing hospital/medical/infectious waste incinerator units as specified in the October 6, 2009, amendments to the federal EG and New Source Performance Standards (NSPS), 40 CFR part 60, subparts Ce and Ec, respectively.

DATES: This direct final rule is effective on December 2, 2016 without further notice, unless the EPA receives adverse written comments by November 2, 2016. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0197 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kendra Morrison, Air Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6145, *morrison.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

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

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

II. What should I consider as I prepare my comments for the EPA?

A. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- 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; and,

III. Background

The EPA's statutory authority for the regulation of new and existing solid waste incineration units is outlined in the CAA sections 111 and 129. Section 129 of the CAA is specific to solid waste combustion, and requires the EPA to establish performance standards for each category of solid waste incineration units. Section 111 of the Act gives EPA the statutory authority to promulgate NSPS, applicable to new units, and/or EG for existing units. EG are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan. Section 129(b)(2) requires states to submit to the EPA for approval state plans that implement and enforce the promulgated EG. Section 129(b)(3) requires the EPA to promulgate a federal plan (FP) within two years from the date on which the EG, or amendment, was promulgated. The FP is applicable to any affected facility if the state has failed to receive the EPA approval of the state plan, or revision. The FP acts as an enforcement place holder until the state submits and receives the EPA approval of its plan. State plan submittals must be consistent with the relevant emissions guidelines, in this instance 40 CFR part 60, subpart Ce, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates the following substances or mixtures: Organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and

particulate matter (which includes opacity). The initial Wyoming plan for HMIWI units was approved by the EPA on August 21, 2000 (65 FR 38732). The plan approval is codified in 40 CFR part 62, subpart ZZ. On May 13, 2015, the Wyoming Department of Environmental Quality (DEQ) submitted to the EPA a revised Section 111(d)/129 plan for HMIWI units. The DEQ made minor edits to the plan at the request of the EPA and the DEQ revised and resubmitted its submission to the EPA on November 24, 2015. The submitted plan revision was in response to the October 6, 2009 amendments to federal EG and NSPS requirements for HMIWI units, 40 CFR part 60, subparts Ce and Ec, respectively (74 FR 51367). This rulemaking action will supersede the EPA's August 21, 2000 (65 FR 38732) approval of Wyoming's initial plan.

IV. Summary of Wyoming's HMIWI Plan Revision

The EPA has reviewed the Wyoming HMIWI plan revision submittal in the context of the requirements of 40 CFR part 60, subparts B and Ce, as amended, and part 62, subpart A. The plan contained (1) a demonstration of Wyoming's legal authority to implement the plan; (2) identification and a copy of the state's adoption of Subpart Ce into rule Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 4, Section 5, and Chapter 5 as the mechanism to enforce the emissions guidelines; (3) an inventory of one known designated facility and an inventory of its air emissions; (4) emission limits that are as protective as the emissions guidelines; (5) a final compliance date no later than October 6, 2014; (6) testing, monitoring, inspection, operator training and qualification, waste management plan, and recordkeeping and reporting requirements for the designated facilities; (7) documentation of public hearing(s) on the plan; (8) provisions to submit annual state progress reports to the EPA; and (9) a commitment to the EPA that all Title V operating permits, modifications, and renewals for designated facilities will specify all applicable state requirements and 40 CFR part 62, subpart ZZ. The submitted plan revision meets all requirements of 40 CFR part 60, subparts B and Ce, as amended, and part 62, subpart A.

V. What action is the EPA taking today?

The EPA is approving the Wyoming HMIWI Section 111(d)/129 plan revision that reflects amendments made to 40 CFR part 60, subparts Ce and Ec. Therefore, the EPA is amending 40 CFR part 62, subpart ZZ to reflect this action. This approval is based on the EPA's review of the plan, discussed above. This plan revision approval does not negate or void any of the initial August 21, 2000 plan approval requirements, including compliance dates for any affected facility. The scope of this plan revision approval is limited to the provisions of 40 CFR parts 60 and 62 for existing HMIWI units, as referenced in the EG, subpart Ce, and the related NSPS, subpart Ec, as amended.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the revision if adverse comments are filed. This rule will be effective December 2, 2016 without further notice unless we receive adverse comments by November 2, 2016. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a Section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing Section 111(d)/129 plan submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this direct final action merely approves some state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The state plan 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 rule does 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 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Solid waste incineration, Hospital/medical/infectious waste incineration.

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

Dated: May 17, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 62, subpart ZZ, is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

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

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

Subpart ZZ—Wyoming

■ 2. Section 62.12610 is revised to read as follows:

§ 62.12610 Identification of plan.

Section 111(d)/129 Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation, Chapter 4, Section 5, and Chapter 5 of the Wyoming Air Quality Standards and Regulations, submitted by the State on September 7, 1999 and November 9, 1999, and as amended on May 13, 2015 and November 24, 2015.

■ 3. Section 62.12611 is revised to read as follows:

§ 62.12611 Identification of sources.

The plan applies to each individual hospital/medical/infectious waste incinerator:

(a) For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998.

(b) For which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

■ 4. Section 62.12612 is revised to read as follows:

§ 62.12612 Effective date.

The effective date of the plan for hospital/medical/infectious waste incinerators is December 2, 2016.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 26, 2016.

[FR Doc. 2016–23584 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0920; FRL–9947–92]

Bacillus Mycoides Isolate J; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus mycoides* isolate J in or on all agricultural commodities when used in accordance with label directions and good agricultural practices. Certis USA LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus mycoides* isolate J under FFDCA.

DATES: This regulation is effective October 3, 2016. Objections and requests for hearings must be received on or before December 2, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0920, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0920 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 2, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0920, by one of the following methods:

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

II. Background

In the **Federal Register** of January 28, 2015 (80 FR 4525) (FRL–9921–55), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F8252) by Certis USA LLC, 9145 Guilford Rd., Suite 175, Columbia, MD 21046. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus mycoides* isolate J, in or on all agricultural commodities. That document referenced a summary of the petition prepared by the petitioner Certis USA LLC, which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In addition, the Agency is removing the existing paragraph contained in section 180.1269 because that exemption from the requirement of a tolerance for *Bacillus mycoides* isolate J residues has expired.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Bacillus mycoides* isolate J and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on that data can be found within the May 9, 2016, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus mycoides* isolate J.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus mycoides* isolate J. Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus mycoides* isolate J in or on all agricultural commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons contained in the May 9, 2016, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus mycoides* isolate J'' and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such,

EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 2016.

Yu-Ting Guilaran,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Revise § 180.1269 to read as follows:

§ 180.1269 *Bacillus mycoides* isolate J; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus mycoides* isolate J in or on all agricultural commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2016–23608 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 11–42, 09–197 and 10–90; FCC 16–38]

Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with certain of the provision of the rules adopted as part of the Commission's Third Further Notice of Proposed Rulemaking, Order on Reconsideration, and Further Report and Order, (*Lifeline Third Reform Order*). This notice is consistent with the *Lifeline Third Reform Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of those rules.

DATES: The rule amendments to 47 CFR 54.202(a)(6), (d), and (e), and 54.205(c) published at 81 FR 33025, May 24, 2016, will become effective October 3, 2016. The rule amendments to 47 CFR 54.101, 54.401(a)(2), (b), (c), (f), 54.403(a), 54.405(e)(1), (e)(3) through (e)(5), 54.407(a), (c)(2), (d), 54.408, 54.409(a)(2), 54.410(b) through (e), (g) through (h), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3) will become effective December 2, 2016 . The rule amendments to 47 CFR 54.410(f) will become effective January 1, 2017.

The rule amendments to 47 CFR 54.400(l) are applicable October 3, 2016. The rule amendments to 47 CFR 54.400(f), (j), and (m) through (o) are applicable December 2, 2016.

FOR FURTHER INFORMATION CONTACT: Christian Hoefly, Wireline Competition Bureau, Telecommunications Access Policy Division at (202) 418–3607 or at *christian.hoefly@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on September 20, 2016, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Order,* FCC 16–38, published at 81 FR 33025, May 24, 2016. The OMB Control Number is 3060–0819. The Commission publishes this notice as an announcement of the effective date rules requiring OMB approval. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0819, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on September 20, 2016, for the information collection requirements contained in the Commission's rules in 47 CFR part 54.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0819.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0819.

OMB Approval Date: 9/20/2016.

OMB Expiration Date: 9/30/2019.

Title: Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund.

Form Number: FCC Forms 497, 481 & 555.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents and Responses: 21,162,260 respondents; 23,956,240 responses.

Estimated Time per Response: 0.0167 hours–250 hours.

Frequency of Response: Annual and on occasion reporting requirements and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. *Statutory authority* is contained in Section 1 through 4, 201 through 205, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r) and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302.

Total Annual Burden: 13,484,412 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contain in this collection. The PIA was published in the **Federal Register** at 78 FR 73535 on December 6, 2013. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection does affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN), FCC/WCB–1, ''Lifeline Program.'' The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program (''Lifeline''). As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission also published a SORN, FCC/WCB–1 ''Lifeline Program'' in the **Federal Register** on December 6, 2013 (78 FR 73535).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: On April 27, 2016, the Commission released the *Lifeline Third Reform Order* modernizing its low-income universal service support mechanisms. This revised information collection addresses requirements to carry out the programs to which the Commission committed itself in the *Lifeline Third Reform Order.* Under this information collection, the Commission seeks to revise the information collection to comply with the Commission's new rules, adopted in the *Lifeline Third Reform Order,* regarding phasing out support for mobile voice over the next six years, requiring Eligible Telecommunications Carriers (ETCs) to certify compliance with the new minimum service requirements, creating a new ETC designation for Lifeline Broadband Providers (LBPs), updating the obligations to advertise Lifeline offerings, modifying the non-usage de-enrollment requirements within the program, moving to rolling annual subscriber recertification, and streamlining the first-year ETC audit requirements. Also, the Commission seeks to update the number of respondents for all the existing information collection requirements, thus increasing the total burden hours for some requirements and decreasing the total burden hours for other requirements. Finally, the Commission seeks to revise the FCC Forms 555, 497, and 481 to incorporate the new Commission rules and modify the filings for FCC Forms 555 and 497 to include detailed field descriptions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–23450 Filed 9–30–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

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

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB38

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulations implementing the loan guarantee provisions in Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act). The proposal is intended to increase clarity and transparency, reduce paperwork, and provide a more workable interpretation of certain statutory provisions in light of DOE's experience with the Title XVII program.

DATES: Comments on this proposed rule must be postmarked no later than November 2, 2016.

ADDRESSES: You may submit comments, identified by RIN 1901–AB38, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: LPO.ProposedRuleComments@hq.doe.gov.* Include RIN 1901–AB38 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.
- *Postal Mail:* Mark A. McCall, Executive Director, Loan Programs Office, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed original paper copy. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.
- *Hand Delivery/Courier:* Mark A. McCall, Executive Director, Loan Programs Office, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

This notice of proposed rulemaking and any comments that DOE receives will be made available on the regulations.gov Web site at: *http://www.regulations.gov.* You also may obtain copies of comments by contacting Mr. Westergard using the information below.

FOR FURTHER INFORMATION CONTACT: Mark S. Westergard, Loan Programs Office, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–5621, email: *LPO.ProposedRuleComments@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Discussion of Proposed Rule
III. Public Comment Procedures
IV. Regulatory Review
V. Approval of the Office of the Secretary

I. Introduction and Background

Section 1703 (section 1703) authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases. Such projects must also employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. The two principal goals of section 1703 are to encourage commercial use in the United States of new or significantly improved energy related technologies and to achieve substantial environmental benefits. Section 1703 also identifies ten categories of technologies and projects that are potentially eligible for loan guarantees. Commercial use of these technologies is expected to help sustain and promote economic growth, produce a more stable and secure energy supply and economy for the United States, and improve the environment.

As a result of experience gained implementing the loan guarantee program authorized by section 1703, and information received from program participants, including applicants, borrowers, sponsors, and lenders, as well as various energy industry groups, DOE proposes to amend the existing regulations as described in Section II of this proposed rule. The proposal is intended to provide increased clarity and transparency, reduce paperwork, and provide a more workable interpretation of certain statutory provisions in light of DOE's experience with operation of the Title XVII program.

II. Discussion of Proposed Rule

Section 1702(a) of Title XVII directs the Secretary to make guarantees on the terms and conditions determined by the Secretary, after consultation with the Secretary of the Treasury, and in accordance with the prescriptions set forth in section 1702. This provision authorizes the Secretary to establish the loan guarantee program and to determine the terms and conditions of individual loan guarantees, after consultation with the Secretary of Treasury, subject to the limitations in paragraphs (b) through (k) of section 1702. Pursuant to direction provided in Public Law 110–5 (Feb. 15, 2007) DOE promulgated regulations to implement Title XVII which are currently found at 10 CFR part 609 (the ''Title XVII Rule''). See 74 FR 63544 (Dec. 4, 2009). (The proposed rule was issued on Aug 7, 2009 (74 FR 39569).) The Title XVII Rule addresses matters such as (1) the manner in which proposed projects are vetted, (2) precisely which project costs are eligible for financing, (3) the adequacy and character of equity capital required from sponsors, and (4) what types of co-financing and subordination arrangements would be acceptable to DOE. Similarly, in implementing the Secretary's general authority under section 1702(a) and the Title XVII Rule, the Loan Programs Office has adopted extensive credit, loan monitoring and risk monitoring policies and procedures, detailed conditional commitment letters and term sheets, and loan guarantee agreements to carry out the purposes of Title XVII.

In this rulemaking, DOE proposes amendments to the regulations at 10 CFR part 609 based on its experience in implementing the loan guarantee program. The proposed changes address topics such as the exchange of information with potential applicants and the solicitation process, the pre-application process, the restriction of a project to a single location, and the imposition of a risk-based fee. These issues are described in the paragraphs that follow.

For the past several years, the DOE Loan Programs Office has increased

communication with interested members of the public regarding the Office, its programs, and solicitations. DOE has prepared and distributed a number of presentations explaining the application process and the types of projects that may be eligible under its solicitations. The Executive Director of the Loan Programs Office has participated in numerous public discussions regarding the program. DOE has also increased communication by regular, broadly distributed email communications to thousands of recipients that have expressed an interest in keeping up with developments in the Loan Programs Office. Contacts by potential applicants regarding the program have significantly increased as a result of these efforts. Nevertheless, the proposed rule includes changes intended to clarify the circumstances under which potential applicants may communicate with DOE prior to submitting an application. DOE expects that the proposed changes would increase transparency and result in more applications by qualified applicants with respect to potential eligible projects.

The provisions of the existing rule relating to Pre-Applications have caused considerable confusion among potential applicants and applicants. In this proposed rule, DOE proposes to eliminate the existing pre-application process and codify procedures that divide the application into two parts. The Part I submission would provide DOE with a description of the project or facility, technical information, background information on management, financing strategy, and progress to date of critical path schedules. These schedules would include items such as obtaining licenses or regulatory permits and approvals, site preparation and long lead-time procurements, and would be used as a basis for determining the eligibility of the project and the project's readiness to proceed. Applicants whose Part I application is sufficient to indicate, on a preliminary basis, the eligibility of the project and that it is ready to proceed would be invited to submit Part II of the application. The Part II submission would involve substantially more, and substantially more detailed, information than is required for the Part I submission. The proposed process of requiring a two-part application is designed, in part, to enable DOE to screen interested projects and provide an early indication of projects' eligibility for a loan guarantee under this program. The two-part application process would additionally allow DOE to charge the required fee in two parts, making it more economical for smaller businesses to apply. By allowing DOE to engage in an initial review of project proposals, the two-part application process would reduce the paperwork burden for applicants whose projects are not ready to move forward into Part II.

Although there is no statutory requirement that all parts of a project be located at a single location, DOE's solicitations have provided that generally, a Project is restricted to one location within the United States but that DOE, in its discretion, could consider an application for a project using a particular technology that is proposed to be situated in more than one location in the United States if multiple locations are integral components of a unitary plan, necessary to the viability of the Project, and at least one of the locations is identified in the application. Applicants and potential applicants found this requirement of DOE's solicitations difficult to understand. Additionally, this requirement inhibits an applicant's ability to propose certain types of distributed energy facilities. DOE reconsidered the need for such a requirement and proposes a revised definition of Eligible Project that would explicitly state that a project may be located at two or more locations in the United States if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan.

DOE also proposes to include in the rule provisions for the use of Risk-Based Charges. DOE, working in conjunction with the Federal Financing Bank (''FFB''), has developed a program under which borrowers for certain types of transactions pay a ''credit-based interest rate spread'' in addition to interest otherwise payable on loans that are issued by FFB. Use of interest rate spreads or other charges based upon the creditworthiness or specific risks arising from individual transactions are commonplace in private-sector commercial loan transactions, including private-sector project finance loan transactions. Such spreads or other charges are also used by other federal credit programs comparable to the Title XVII loan guarantee program, such as those administered by the Overseas Private Investment Corporation and the Export-Import Bank of the United States. Use of Risk-Based Charges is permitted pursuant to the grant of authority to the Secretary in Section 1702(a) to determine the terms and conditions of the Title XVII loan guarantee program.

A number of other changes have been included to increase clarity and transparency. Among those changes are: Definitions have been clarified, shortened where possible, and added; specific references to the Cargo Preference Act and the Davis Bacon Act have been added; an introductory section on how the rule is to be interpreted has been added; and various provisions of the existing rule have been re-organized to more-appropriate places in the rule. In a number of places, references to the statutory requirement that DOE consult with the Secretary of the Treasury previously included in Title XVII Rule have been removed. Those references were removed solely because they were unnecessary for consideration by applicants and potential applicants. DOE's statutory obligation to consult with the Secretary of the Treasury under Section 1702(a) of Title XVII remains unchanged, and no change is intended in the existing consultation arrangements between the Secretary of Energy and the Secretary of the Treasury.

III. Public Comment Procedures

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

IV. Regulatory Review

A. Executive Order 12866

This proposed rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory

Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking.*

DOE is not obliged to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

D. Paperwork Reduction Act

Information collection requirements for the DOE regulations at 10 CFR part 609 were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedure implementing that Act (5 CFR 1320.1 *et seq.*) under OMB Control Number 1910–5134. This proposed rule contains revised information collection requirements subject to approval by OMB. DOE has submitted the proposed revised collection of information to OMB for approval. Public reporting burden for the revised requirements in this proposed rule is estimated to average 130 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses are expected to be collected electronically.

DOE invites public comment on: (1) Whether the proposed information collection requirements are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents. Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **ADDRESSES** section of this notice of proposed rulemaking. Interested persons may obtain a copy of the DOE's Paperwork Reduction Act Submission to OMB from the contact person named in this notice of proposed rulemaking. Notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Act) (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments.

The term ''Federal mandate'' is defined in the Act to mean a Federal intergovernmental mandate or a Federal private sector mandate. Although the proposed rule would impose certain requirements on non-Federal governmental and private sector applicants for loan guarantees, the Act's definitions of the terms ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' exclude among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program. The proposed rule would establish requirements that persons voluntarily seeking loan guarantees for projects that would use certain new and improved energy technologies must satisfy as a condition of a Federal loan guarantee. Thus, the proposed rule falls under the exceptions in the definitions of ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. The Act does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on

existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by OIRA as a significant energy action, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 12630

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rulemaking would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 21, 2016.

Mark A. McCall,

Executive Director, Loan Programs Office.

For the reasons stated in the preamble, DOE proposes to revise part 609 of chapter II of title 10 of the Code of Federal Regulations to read as follows:

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

Sec.

609.1 Purpose and scope.
609.2 Definitions and interpretation.
609.3 Solicitations.
609.4 Submission of applications.
609.5 Programmatic, technical and financial evaluation of applications.
609.6 Term sheets and conditional commitments.
609.7 Closing on the loan guarantee agreement.
609.8 Loan guarantee agreement.
609.9 Lender servicing requirements.
609.10 Project costs.
609.11 Fees and charges.
609.12 Full faith and credit and incontestability.
609.13 Default, demand, payment, and foreclosure on collateral.
609.14 Preservation of collateral.
609.15 Audits and access to records.
609.16 Deviations.

Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 Purpose and scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and approving applications for loan guarantees to support Eligible Projects under section 1703 of the Energy Policy Act of 2005 (Act).

(b) This part applies to all Applications, Conditional Commitments, and Loan Guarantee Agreements.

(c) Part 1024 of chapter X of title 10 of the Code of Federal Regulations (PROCEDURES FOR FINANCIAL ASSISTANCE APPEALS) shall not apply to actions taken under this part.

§ 609.2 Definitions and interpretation.

(a) *Definitions.* When used in this part the following words have the following meanings.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514), as amended.

Administrative cost of issuing a loan guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of an Application for a loan guarantee;

(2) The negotiation and offer of a Term Sheet;

(3) The negotiation of a Loan Guarantee Agreement and related documents, including the issuance of a Guarantee; and

(4) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant means a Person, including a prospective Borrower or Project Sponsor, that submits an Application to DOE.

Application means a written submission of materials responsive to a Solicitation that satisfies § 609.4 of this part.

Application fee means the fee or fees required to be paid by an Applicant in connection with submission of an Application and specified in a Solicitation. The Application Fee does not include the Credit Subsidy Cost.

Attorney General means the Attorney General of the United States.

Borrower means any Person that enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Cargo preference act means the Cargo Preference Act of 1954, 46 U.S.C 55305, as amended.

Commercial technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is

offered by DOE. A technology is in general use if it is being used in three or more facilities that are in commercial operation in the United States for the same general purpose as the proposed project, and has been used in each such facility for a period of at least five years. The five-year period for each facility shall start on the in-service date of the facility employing that particular technology or, in the case of a retrofit of a facility to employ a particular technology, the date the facility resumes commercial operation following completion and testing of the retrofit. For purposes of this section, facilities that are in commercial operation include projects that have been the recipients of a loan guarantee from DOE under this part.

Conditional commitment means a Term Sheet offered by DOE and accepted by the offeree of the Term Sheet, all in accordance with § 609.6(c) of this part; provided, that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and provided, further, that the Secretary may not delegate this authority to terminate a Conditional Commitment.

Contracting officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit subsidy cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990, which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

Davis-Bacon act means the statute referenced in section 1702(k) of the Act.

DOE means the United States Department of Energy.

Eligible lender means either:

(1) Any Person formed for the purpose of, or engaged in the business of, lending money that, as determined by DOE in each case, is:

(i) Not debarred or suspended from participation in a Federal government contract or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR part 180);

(ii) Not delinquent on any Federal debt or loan;

(iii) Legally authorized and empowered to enter into loan guarantee transactions authorized by the Act and these regulations;

(iv) Able to demonstrate experience in originating and servicing loans for commercial projects similar in size and scope to the Eligible Project, or able to procure such experience through contracts acceptable to DOE; and

(v) Able to demonstrate experience as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience, or able to procure such experience through contracts acceptable to DOE; or

(2) The Federal Financing Bank.

Eligible project means a project that:

(1) Is located in the United States at one location, except that the project may be located at two or more locations in the United States if the project is comprised of installations or facilities employing a single New or Significantly Improved Technology that is deployed pursuant to an integrated and comprehensive business plan. An Eligible Project in more than one location is a single Eligible Project;

(2) Deploys a New or Significantly Improved Technology; and

(3) Satisfies all applicable requirements of section 1703 of the Act, the applicable Solicitation, and this part.

Equity means cash contributed to the permanent capital stock (or equivalent) of the Borrower or the Eligible Project by the shareholders or other owners of the Borrower or the Eligible Project. Equity does not include proceeds from the non-guaranteed portion of a Guaranteed Obligation, proceeds from any other non-guaranteed loan or obligation, or the value of any government assistance or support.

Facility fee means the fee, to be paid in the amount and in the manner provided in the Term Sheet, to cover the Administrative Cost of Issuing a Loan Guarantee for the period from the Borrower's acceptance of the Term Sheet through issuance of the Guarantee.

Federal financing bank means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973, under the general supervision of the Secretary of the Treasury.

Guarantee means the undertaking of the United States of America, acting through the Secretary pursuant to Title XVII of the Energy Policy Act of 2005, to pay in accordance with the terms thereof, principal and interest of a Guaranteed Obligation.

Guaranteed obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any Person that holds a promissory made by the Borrower evidencing the Guaranteed Obligation (or his designee or agent).

Intercreditor agreement means any agreement or instrument (or amendment or modification thereof) among DOE and one or more other Persons providing financing or other credit arrangements to the Borrower or an Eligible Project) or that otherwise provides for rights of DOE in respect of a Borrower or in respect of an Eligible Project, in each case in form and substance satisfactory to DOE.

Loan agreement means a written agreement between a Borrower and an Eligible Lender containing the terms and conditions under which the Eligible Lender will make a loan or loans to the Borrower for an Eligible Project.

Loan guarantee agreement means a written agreement that, when entered into by DOE and a Borrower, and, if applicable, an Eligible Lender, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal of, and interest on, specified Guaranteed Obligations, subject to the terms and conditions specified in the Loan Guarantee Agreement.

New or significantly improved technology means a technology, or a defined suite of technologies, concerned with the production, consumption, or transportation of energy and that is not a Commercial Technology, and that has either:

(1) Only recently been developed, discovered, or learned; or

(2) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

OMB means the Office of Management and Budget in the Executive Office of the President.

Person means any natural person or any legally constituted entity, including a state or local government, tribe, corporation, company, voluntary association, partnership, limited

liability company, joint venture, and trust.

Project costs mean those costs, including escalation and contingencies, that are to be expended or accrued by a Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.10(a) of this part. Project Costs do not include costs for the items set forth in § 609.10(b) of this part.

Project sponsor means any Person that assumes substantial responsibility for the development, financing, and structuring of an Eligible Project and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, the Borrower or the Applicant.

Risk-based charge means a charge that, together with the principal and interest on the guaranteed loan, or at such other times as DOE may determine, is payable on specified dates during the term of a Guaranteed Obligation.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Solicitation means an announcement that DOE is accepting Applications that is widely disseminated to the public on the DOE Web site or otherwise, and which satisfies the requirements of § 609.3(b) of this part.

Term sheet means a written offer for the issuance of a loan guarantee, executed by the Secretary (or a DOE official authorized by the Secretary to execute such offer), delivered to the offeree, that sets forth the detailed terms and conditions under which DOE and the Applicant will execute a Loan Guarantee Agreement.

United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and any territory or possession of the United States of America.

(b) *Interpretations.* This part shall be interpreted using the following guidelines.

(1) The word ''discretion'' when used with reference to DOE, including the Secretary, means ''sole discretion.''

(2) Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

(3) The word ''or'' is not exclusive.

(4) References to laws by name or popular name are references to the version of such law appearing in the United States Code and include any amendment, supplement or modification of such law, and all regulations, rulings, and other laws promulgated thereunder.

(5) References to information or documents required or allowed to be submitted to DOE mean information or documents that are marked as provided in 10 CFR 600.15(b). A document or information that is not marked as provided in 10 CFR 600.15(b) will not be considered as having been submitted to or received by DOE.

(6) A reference to a Person includes such Person's successors and permitted assigns.

(7) The words ''include,'' ''includes'' and ''including'' are not limiting and mean include, includes and including ''without limitation'' and ''without limitation by specification.''

(8) The words ''hereof,'' ''herein'' and ''hereunder'' and words of similar import refer this part as a whole and not to any particular provision of this part.

§ 609.3 Solicitations.

(a) DOE may invite the submission of Applications for loan guarantees for Eligible Projects pursuant to a Solicitation.

(b) Each Solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that Solicitation;

(2) The place and deadline for submission of Applications;

(3) The name and address of the DOE representative whom a potential Applicant may contact to receive further information and a copy of the Solicitation;

(4) The form, format, and page limits applicable to the Application;

(5) The amount of the Application Fee and any other fees that will be required;

(6) The programmatic, technical, financial and other factors that DOE will use to evaluate response submissions, and their relative weightings in that evaluation; and

(7) Such other information as DOE may deem appropriate.

(c) Using procedures as may be announced by DOE a potential Applicant may request a meeting with DOE to discuss its potential Application. At its discretion, DOE may meet with a potential Applicant, either in person or electronically, to discuss its potential Application. DOE may provide a potential Applicant with a preliminary response regarding whether its proposed Application may constitute an Eligible Project. DOE is not permitted to design an Eligible Project for an Applicant, but may respond, in its discretion, in general terms to specific proposals. DOE's responses to questions from potential Applicants and DOE's statements to potential Applicants are pre-decisional and preliminary in nature. Any such responses and statements are subject in their entirety to any final action by DOE with respect to an Application submitted in accordance with § 609.4 of this part.

§ 609.4 Submission of applications.

(a) In response to a Solicitation, an Applicant must meet all requirements and provide all information specified in this part and the Solicitation in the manner and on or before the date specified therein. DOE may direct that Applications be submitted in more than one part; provided, that the parts of such Application, taken as a whole, satisfy the requirements of § 609.4(c) and this part. In such event, subsequent parts of an Application may be filed only after DOE invites an Applicant to make an additional submission. The initial part of an Application may be used by DOE to determine the likelihood that the project proposed by an Applicant will be an Eligible Project, and to evaluate such project's readiness to proceed. If there have been any material amendments, modifications or additions made to the information previously submitted by an Applicant, the Applicant shall provide a detailed description thereof, including any changes in the proposed project's financing structure or other terms, promptly upon request by DOE. Where DOE has directed that an Application be submitted in parts, DOE may provide for payment of the Application Fee in parts.

(b) An Applicant may submit only one Application for one proposed project using a particular technology. An Applicant may not submit an Application or Applications for multiple Eligible Projects using the same technology. An Applicant may submit Applications for multiple proposed projects using different technologies. For purposes of this paragraph, the term Applicant shall include the Project Sponsor and any subsidiaries or affiliates of the Project Sponsor.

(c) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant, including the commitments and representations made in each part of the Application;

(2) The applicable Application Fee;

(3) A description of how and to what measurable extent the proposed project

avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those effects;

(4) A description of the nature and scope of the proposed project, including:

(i) Key project milestones;

(ii) Location or locations of the proposed project;

(iii) Identification and commercial feasibility of the New or Significantly Improved Technology to be deployed;

(iv) How the Applicant intends to deploy such New or Significantly Improved Technology in the proposed project; and

(v) How the Applicant intends to assure, to the extent possible, the further commercial availability of the New or Significantly Improved Technology in the United States.

(5) An explanation of how the proposed project qualifies as a project within the category or categories of projects referred to in the Solicitation;

(6) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(7) A detailed description of the engineering and design contractor(s), construction contractor(s), and equipment supplier(s);

(8) The construction schedules for the proposed project, including major activity and cost milestones;

(9) A description of the material terms and conditions of the development and construction contracts to include the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties;

(10) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(11) A description of the management plan of operations to be employed in carrying out the proposed project, and information concerning the management experience of each officer or key person associated with the proposed project;

(12) A detailed description of the proposed project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(13) An analysis of the market for any product (including but not limited to electricity and chemicals) to be produced by, or services to be provided by, the proposed project, including relevant economics justifying the analysis, and copies of

(i) Any contracts for the sale of such products or the provision of such services, or

(ii) Any other assurance of the revenues to be generated from sale of such products or provision of such services;

(14) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the proposed project over the term of the Loan Guarantee Agreement;

(15) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the proposed project;

(16) A copy of the financial closing checklist for the equity and debt to the extent available;

(17) The Applicant's business plan on which the proposed project is based and Applicant's financial model with respect to the proposed project for the proposed term of the Guaranteed Obligations, including, as applicable, *pro forma* income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(18) Financial statements for the three immediately preceding fiscal years of the Applicant (or such shorter period as the Applicant has been in existence) that have been audited by an independent certified public accounting firm, including all associated certifications, notes and letters to management, as well as interim financial statements and notes for the current fiscal year for the Applicant and all other Persons the credit of which is material to the success of the transactions described in the Application;

(19) A copy of all legal opinions, and other material reports, analyses, and reviews related to the proposed project that have been delivered prior to submission of any part of the Application;

(20) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address the proposed project's siting and permitting arrangements, engineering and design, contractual requirements, environmental compliance, testing, commissioning and operations, and maintenance;

(21) A credit history of the Applicant and each Project Sponsor;

(22) A preliminary credit assessment for the proposed project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed $25 million. For proposed projects where the total estimated Project Costs are $25 million or less and where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(23) A list showing the status of and estimated completion date of Applicant's required applications for federal, state, and local permits, authorizations or approvals to site, construct, and operate the proposed project;

(24) A report containing an analysis of the potential environmental impacts of the proposed project that will enable DOE to—

(i) Assess whether the proposed project will comply with all applicable environmental requirements; and

(ii) Undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(25) A listing and description of the assets of or to be utilized for the benefit of the proposed project, and of any other asset that will serve as collateral pledged in respect of the Guaranteed Obligations, including appropriate data as to the value of such assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(26) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based; and

(27) If proposed project assets or facilities are or will be jointly owned by the Applicant and one or more other Persons or entities, each of which owns an undivided ownership interest in such proposed project assets or facilities, a description of the Applicant's rights and obligations in respect of its undivided ownership interest in such proposed project assets or facilities.

(d) During the Application evaluation process pursuant to § 609.5 of this part, DOE may request additional information, potentially including a preliminary credit rating or credit assessment, with respect to the proposed project.

(e) DOE will not consider any part of any Application or the Application as a whole complete unless the Application Fee (or the required portion of the Application Fee related to a particular part of the Application) has been paid. An Application Fee paid in connection with one Application is not transferable to another Application. Except in the discretion of DOE, no portion of the Application Fee is refundable;

(f) DOE has no obligation to evaluate an Application that is not complete, and may proceed with such evaluation, or a partial evaluation, only in its discretion.

(g) Unless an Applicant requests an extension and such an extension is granted by DOE in its discretion, an Application may be rejected if it is not complete within four years from the date of submission (or date of submission of the first part thereof, in the case of Applications made in more than one part).

(h) Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant or Project Sponsor, as appropriate, of an agreement satisfactory to DOE to pay the fees and expenses charged by the independent consultants and outside legal counsel.

§ 609.5 Programmatic, technical and financial evaluation of applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those as to which a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, any applicable Solicitation, and this part. Applications will be considered in a competitive process, *i.e.* each Application will be evaluated against other Applications responsive to the Solicitation. .DOE may compare an Application to Applications related to other projects that DOE reasonably believes may become the subject of an Application. Applications will be denied if:

(1) The proposed project is not an Eligible Project;

(2) The applicable technology is not ready to be deployed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the Application, does not have the potential to be deployed in other commercial projects in the United States, or is not or will not be available for further commercial use in the United States;

(3) The Person proposed to issue the loan or purchase other debt obligations constituting the Guaranteed Obligations is not an Eligible Lender;

(4) The proposed project is for demonstration, research, or development;

(5) Significant Equity for the proposed project will not be provided by the date of issuance of the Guaranteed Obligations, or such later time as DOE in its discretion may determine; or

(6) The proposed project does not present a reasonable prospect of repayment of the Guaranteed Obligations.

(b) If an Application has not been denied pursuant to § 609.5(a), DOE will evaluate the proposed Project based on the criteria set forth in the Act, any applicable Solicitation and the following:

(1) To what measurable extent the proposed project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouses gases, or contributes to the avoidance, reduction or sequestration of air pollutants or anthropogenic emissions of greenhouse gases;

(2) To what extent the technology to be deployed in the proposed project—

(i) Is ready to be deployed commercially in the United States, can be replicated, yields a commercially viable product or service in the use proposed in the proposed project, has potential to be deployed in other commercial projects in the United States, and is or will be available for further commercial use in the United States; and

(ii) Constitutes an important improvement in technology, as compared to available Commercial Technologies, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases;

(3) To what extent the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace in the United States;

(4) The extent to which the level of proposed support in the Application is consistent with a reasonable prospect of repayment of the Guaranteed Obligations by considering, among other factors:

(i) The extent to which the requested amount of the loan guarantee, the requested amount of Guaranteed Obligations and, if applicable, the expected amount of any other financing or credit arrangements, are reasonable relative to the nature and scope of the proposed project;

(ii) The total amount and nature of the Project Costs and the extent to which Project Costs are to be funded by Guaranteed Obligations; and

(iii) The feasibility of the proposed project and likelihood that it will produce sufficient revenues to service its debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(5) The likelihood that the proposed project will be ready for full commercial operations in the time frame stated in the Application;

(6) The amount of Equity committed and to be committed to the proposed project by the Borrower, the Project Sponsor, and other Persons;

(7) Whether there is sufficient evidence that the Borrower will diligently implement the proposed project, including initiating and completing the proposed project in a timely manner;

(8) Whether and to what extent the Applicant will rely upon other Federal and non-Federal Government assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the proposed project and how such assistance will impact the proposed project;

(9) The levels of safeguards provided to the Federal Government in the event of default through collateral, warranties, and other assurance of repayment described in the Application, including the nature of any anticipated intercreditor arrangements;

(10) The Applicant's, or the relevant contractor's, capacity and expertise to operate the proposed project successfully, based on factors such as financial soundness, management organization, and the nature and extent of corporate and individual experience;

(11) The ability of the proposed Borrower to ensure that the proposed project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(12) The levels of market, regulatory, legal, financial, technological, and other risks associated with the proposed project and their appropriateness for a loan guarantee provided by DOE;

(13) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the proposed project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the proposed project; and

(14) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) After DOE completes its review and evaluation of a proposed project pursuant to § 609.5(b) and this part, DOE will notify the Applicant in writing of its determination whether to proceed with due diligence and negotiation of a Term Sheet in accordance with § 609.6 of this part. DOE will proceed only if it determines that the proposed project is highly qualified and suitable for a Guarantee. Upon written confirmation from the Applicant that it desires to proceed, DOE and the Applicant will commence negotiations.

(d) A determination by DOE not to proceed with a proposed project following evaluation pursuant to § 609.5(b) shall be final and non-appealable, but shall not prejudice the Applicant or other affected Persons from applying for a Guarantee in respect of a different proposed project pursuant to another, separate Application.

§ 609.6 Term sheets and conditional commitments.

(a) DOE, after negotiation of a Term Sheet with an Applicant, may offer such Term Sheet to an Applicant or such other Person that is an affiliate of the Applicant and that is acceptable to DOE. DOE's offer of a Term Sheet shall be in writing and signed by the Contracting Officer. DOE's negotiation of a Term Sheet imposes no obligation on the Secretary to offer a Term Sheet to the Applicant.

(b) DOE shall terminate its negotiations of a Term Sheet if it has not offered a Term Sheet in respect of an Eligible Project within four years after the date of the written notification set forth in § 609.5(c) of this part, unless extended in writing in the discretion of the Contracting Officer.

(c) If and when the offeree specified in a Term Sheet satisfies all terms and conditions for acceptance of the Term Sheet, including written acceptance thereof and payment of all fees specified in § 609.11(f) and therein to be paid at or prior to acceptance of the Term Sheet, the Term Sheet shall become a Conditional Commitment. Each Conditional Commitment shall include an expiration date no more than two years from the date it is issued, unless extended in writing in the discretion of the Contracting Officer. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

(d) If, subsequent to execution of a Conditional Commitment, the financing arrangements of the Borrower, or in respect of an Eligible Project, change from those described in the Conditional Commitment, the Applicant shall promptly provide updated financing information in writing to DOE. All such updated information shall be deemed to be information submitted in connection with an Application and shall be subject to § 609.4(b). Based on such updated information, DOE may take one or more of the following actions:

(1) Determine that such changes are not material to the Borrower, the Eligible Project or DOE;

(2) Amend the Conditional Commitment accordingly;

(3) Postpone the expected closing date of the associated Loan Guarantee Agreement; or

(4) Terminate the Conditional Commitment.

§ 609.7 Closing on the loan guarantee agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of a Loan Guarantee Agreement.

(b) Prior to or on the closing date of a Loan Guarantee Agreement, DOE will ensure that:

(1) One of the following has occurred:

(i) An appropriation for the Credit Subsidy Cost has been made;

(ii) The Secretary has received from the Borrower payment in full for the Credit Subsidy Cost and deposited the payment into the Treasury; or

(iii) A combination of one or more appropriations under paragraph (b)(1)(i) of this section and one or more payments from the Borrower under paragraph (b)(1)(ii) of this section has been made that is equal to the Credit Subsidy Cost;

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Applicant the remainder of the Facility Fee referred to in § 609.11(b) of this part;

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the Guarantee;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States;

(6) Each holder of the Guaranteed Obligations is an Eligible Lender, and the servicer of the Guaranteed Obligations meets the servicing performance requirements of § 609.9(b) of this part;

(7) DOE has determined the principal amount of the Guaranteed Obligations expected to be issued in respect of the Eligible Project, as estimated at the time of issuance, will not exceed 80 percent of the Project Costs of the Eligible Project;

(8) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by the Contracting Officer and all other applicable contractual, statutory, and regulatory requirements have been satisfied or waived by the Contracting Officer. If the counterparty to the Conditional Commitment has not satisfied all such terms and conditions on or prior to the closing date of the Loan Guarantee Agreement, the Secretary may, in his discretion, set a new closing date, or terminate the Conditional Commitment; and

(9) Where the total Project Costs for an Eligible Project are projected to exceed $25 million, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a Federal guarantee. Where total Project Costs are projected to be $25 million or less, the Secretary may, on a case-by-case basis, require a credit rating. If a credit rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

§ 609.8 Loan guarantee agreement.

(a) Only a Loan Guarantee Agreement executed by the Contracting Officer can obligate DOE to issue a Guarantee in respect of Guaranteed Obligations.

(b) DOE is not bound by oral representations.

(c) Each Loan Guarantee Agreement shall contain the following requirements and conditions, and shall not be executed until the Contracting Officer determines that the following requirements and conditions are satisfied:

(1) The Federal Financing Bank shall be the only Eligible Lender in transactions where DOE guarantees 100 percent (but not less than 100 percent) of the principal and interest of the Guaranteed Obligations issued under a Loan Guarantee Agreement.

(i) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market; and

(ii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated

from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(2) The Borrower shall be obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other debt of a Borrower over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Eligible Project's major physical assets, as calculated in accordance with U.S. generally accepted accounting principles and practices. The non-guaranteed portion (if any) of any Guaranteed Obligations must be repaid *pro rata,* and on the same amortization schedule, with the guaranteed portion.

(3) If any financing or credit arrangement of the Borrower or relating to the Eligible Project, other than the Guaranteed Obligations, has an amortization period shorter than that of the Guaranteed Obligations, DOE shall have determined that the resulting financing structure allocates to DOE a reasonably proportionate share of the default risk, in light of:

(i) DOE's share of the total debt financing of the Borrower,

(ii) Risk allocation among the credit providers to the Borrower, and

(iii) Internal and external credit enhancements.

(4) Consistent with the requirements of section 149(b) of the Internal Revenue Code, the Guaranteed Obligations shall not finance, directly, indirectly, or through effective subordination within the meaning of section II.A of OMB Circular No. A–129 (January 2013), tax-exempt debt obligations. Guaranteed Obligations and any tax-exempt debt obligations payable directly or indirectly from the revenues of the Borrower or other resources of the Borrower must be repaid using separate, dedicated revenue streams or other separate sources of repayment, and must be separately collateralized. The terms of the Guaranteed Obligations, such as, for example, grace periods, repayment schedules, and availability of deferrals, must not create effective subordination. The Guaranteed Obligations shall not be used as collateral to secure tax-exempt debt obligations or guarantee loans funded by tax-exempt debt obligations;

(5) The principal amount of the Guaranteed Obligations, when combined with funds from other sources committed and available to the Borrower, shall be sufficient to pay for expected Project Costs (including adequate contingency amounts), the applicable items specified in § 609.10(b) of this part, and otherwise to carry out the Eligible Project;

(6) There shall be a reasonable prospect of repayment by the Borrower of the principal of and interest on the Guaranteed Obligations and all of its other debt obligations;

(7) The Borrower shall pledge collateral or surety determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations. Such collateral or security may include Eligible Project assets and assets not related to the Eligible Project;

(8) The Loan Guarantee Agreement and related documents shall include detailed terms and conditions that DOE deems necessary and appropriate to protect the interests of the United States in the case of default, including ensuring availability of all relevant intellectual property rights, technical data including software, and technology necessary for DOE or any Person or entity selected by DOE, to complete, operate, convey, and dispose of the defaulted Borrower or the Eligible Project;

(9) The Guaranteed Obligations shall not be subordinate to other financing. Guaranteed Obligations are not subordinate to other financing if the lien on property securing the Guaranteed Obligations, together with liens that are *pari passu* with such lien, if any, take priority or precedence over other charges or encumbrances upon the same property and must be satisfied before such other charges are entitled to participate in proceeds of the property's sale. In DOE's discretion, Guaranteed Obligations may share a lien position with other financing;

(10) There is satisfactory evidence that the Borrower will diligently pursue the Eligible Project and is willing, competent, and capable of performing its obligations under the Loan Guarantee Agreement and the loan documentation relating to its other debt obligations;

(11) The Borrower shall have paid all fees and expenses due to DOE or the U.S. Government, including such amount of the Credit Subsidy Cost as may be due and payable from the Borrower pursuant to the Conditional Commitment, upon execution of the Loan Guarantee Agreement;

(12) The Borrower, any Eligible Lender, and each other relevant party shall take, and be obligated to continue to take, those actions necessary to perfect and maintain liens on collateral pledged in respect of the Guaranteed Obligations;

(13) DOE or its representatives shall have access to the offices of the Borrower and the Eligible Project site at all reasonable times in order to—

(i) Monitor the performance by the Borrower of its obligations under the Loan Guarantee Agreement, and

(ii) Performance of the Eligible Project;

(14) DOE and Borrower have reached an agreement regarding the information that will be made available to DOE and the information that will be made publicly available;

(15) The Borrower shall have filed applications for or obtained any required regulatory approvals for the Eligible Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(16) The Borrower shall have no delinquent Federal debt;

(17) The Project Sponsors have made or will make a significant Equity investment in the Borrower or the Eligible Project, and will maintain control of the Borrower or the Eligible Project as agreed in the LGA; and

(18) The Loan Guarantee Agreement and related agreements shall include such other terms and conditions as DOE deems necessary or appropriate to protect the interests of the United States.

(d) The Loan Guarantee Agreement shall provide that, in the event of a default by the Borrower:

(1) Interest on the Guaranteed Obligations shall accrue at the rate stated in the Loan Guarantee Agreement or the Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when such Guaranteed Obligations are funded through the Federal Financing Bank, DOE shall not be required to pay any premium, default penalties, or prepayment penalties; and

(2) The holder of collateral pledged in respect of the Guaranteed Obligations shall be obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery.

(e)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.9 of this part. Such latter Eligible Lender shall be required to assume all servicing, monitoring and reporting requirements as provided in the Loan Guarantee Agreement. Any transfer of the servicing, monitoring, and reporting functions shall be subject to the prior written approval of DOE.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the

right to receive payment under the Guaranteed Obligations, shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guaranteed Obligations. Any contractual agent approved by the Secretary to perform this function may transfer or assign this responsibility only with the Secretary's prior written approval.

(f) Each Loan Guarantee Agreement shall require the Borrower to make representations and warranties, agree to covenants, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis-Bacon Act and the Cargo Preference Act.

(g) The Applicant, the Borrower or the Project Sponsor must estimate, calculate, record, and provide to DOE any time DOE requests such information and at the times provided in the Loan Guarantee Agreement all costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the Eligible Project in accordance with generally accepted accounting principles and practices.

§ 609.9 Lender servicing requirements.

(a) When reviewing and evaluating a proposed Eligible Project, all Eligible Lenders (other than the Federal Financing Bank) shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.

(b) Loan servicing duties shall be performed by an Eligible Lender, DOE, or another qualified loan servicer approved by DOE. When performing its servicing duties, the loan servicer shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, monitoring the satisfaction of all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement or related documents;

(2) During the operational phase, monitoring and servicing the Guaranteed Obligations and collection of the outstanding principal and accrued interest as well as undertaking to ensure that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) Until the Guaranteed Obligation has been repaid, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or its other debt obligations.

§ 609.10 Project costs.

(a) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility;

(3) Costs of equipment purchases, including a reasonable reserve of spare parts to the extent required;

(4) Costs to provide facilities and services related to safety and environmental protection;

(5) Costs of financial, legal, and other professional services, including services necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) Costs of issuing Eligible Project debt, such as fees, transaction, and costs referred to in § 609.10(a)(5), and other customary charges imposed by Eligible Lenders;

(7) Costs of necessary and appropriate insurance and bonds of all types including letters of credit and any collateral required therefor;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the Eligible Project;

(10) To the extent

(i) Required by the Loan Guarantee Agreement and

(ii) Not intended or available for any cost referred to in § 609.10(b),

costs of funding any reserve fund, including without limitation, a debt service reserve, a maintenance reserve, and a contingency reserve for cost overruns during construction; provided that proceeds of a Guaranteed Loan deposited to any reserve fund shall not be removed from such fund except to pay Project Costs, to pay principal of the Guaranteed Loan, or otherwise to be used as provided in the Loan Guarantee Agreement;

(11) Capitalized interest necessary to meet market requirements and other carrying costs during construction; and

(12) Other necessary and reasonable costs.

(b) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-Eligible Project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying an innovative technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the Eligible Project, as determined by DOE;

(7) Expenses incurred after startup, commissioning, and shakedown before the facility, or, in DOE's discretion, any portion of the facility, has been placed in service;

(8) Borrower-paid Credit Subsidy Costs, the Administrative Cost of Issuing a Loan Guarantee, and any other fee collected by DOE; and

(9) Operating costs.

§ 609.11 Fees and charges.

(a) Unless explicitly authorized by statute, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for the Credit Subsidy Cost, the Application Fee, the Facility Fee, the Guarantee Fee, the maintenance fee and any other fees charged by or paid to DOE relating to the Act or any Guarantee thereunder.

(b) DOE may charge Applicants a non-refundable Facility Fee, with a portion being payable on or prior to the date on which the Applicant executes the Commitment Letter and the remainder being payable on or prior to the closing date for the Loan Guarantee Agreement.

(c) In order to encourage and supplement private lending activity DOE may collect from Borrowers for deposit in the United States Treasury a non-refundable Risk-Based Charge which, together with the interest rate on the Guaranteed Obligation that LPO determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. The Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a

pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.

(d) DOE may collect a maintenance fee to cover DOE's administrative expenses, other than extraordinary expenses, incurred in servicing and monitoring a Loan Guarantee Agreement. The maintenance fee shall accrue from the date of execution of the Loan Guarantee Agreement through the date of payment in full of the related Guaranteed Obligations. If DOE determines to collect a maintenance fee, it shall be paid by the Borrower each year (or portion thereof) in advance in the amount specified in the applicable Loan Guarantee Agreement.

(e) In the event a Borrower or an Eligible Project experiences difficulty relating to technical, financial, or legal matters or other events (*e.g.,* engineering failure or financial workouts), the Borrower shall be liable as follows:

(1) If such difficulty requires DOE to incur time or expenses beyond those customarily expended to monitor and administer performing loans, DOE may collect an extraordinary expenses fee from the Borrower that will reimburse DOE for such time and expenses, as determined by DOE; and

(2) For all fees and expenses of DOE's independent consultants and outside counsel, to the extent that such fees and expenses are elected to be paid by DOE notwithstanding the provisions of paragraphs (f) and (g) of this section.

(f) Each Applicant, Borrower or Project Sponsor, as applicable, shall be responsible for the payment of all fees and expenses charged by DOE's independent consultants and outside legal counsel in connection with an Application, Conditional Commitment or Loan Guarantee Agreement, as applicable. Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant or Project Sponsor, as appropriate, of an agreement satisfactory to DOE to pay the fees and expenses charged by the independent consultants and outside legal counsel. Appropriate provisions regarding payment of such fees and expenses shall also be included in each Term Sheet and Loan Guaranty Agreement or, upon a determination by DOE, in other appropriate agreements.

(g) Notwithstanding payment by Applicant, Borrower or Project Sponsor, all services rendered by an independent consultant or outside legal counsel to DOE in connection with an Application, Conditional Commitment or Loan Guarantee Agreement shall be solely for the benefit of DOE (and such other creditors as DOE may agree in writing). DOE may require, in its discretion, the payment of an advance retainer to such independent consultants or outside legal counsel as security for the collection of the fees and expenses charged by the independent consultants and outside legal counsel. In the event an Applicant, Borrower or Project Sponsor fails to comply with the provisions of such payment agreement, DOE in its discretion, may stop work on or terminate an Application, a Conditional Commitment or a Loan Guarantee Agreement, or may take such other remedial measures in its discretion as it deems appropriate.

(h) DOE shall not be financially liable under any circumstances to any independent consultant or outside counsel for services rendered in connection with an Application, Conditional Commitment or Loan Guarantee Agreement except to the extent DOE has previously entered into an express written agreement to pay for such services.

§ 609.12 Full faith and credit and incontestability.

The full faith and credit of the United States is pledged to the payment of principal and interest of Guaranteed Obligations pursuant to Guarantees issued in accordance with the Act and this Part. The issuance by DOE of a Guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such Guarantee; and that, but for fraud or material misrepresentation by the Holder, such Guarantee shall be legal, valid, binding and enforceable against DOE in accordance with its terms.

§ 609.13 Default, demand, payment, and foreclosure on collateral.

(a) If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Holder may make written demand for payment upon the Secretary in accordance with the terms of the applicable Guarantee. If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Secretary shall notify the Attorney General.

(b) Subject to the terms of the applicable Guarantee, the Secretary shall make payment within 60 days after receipt of written demand for payment from the Holder, provided that the demand for payment complies in all respects with the terms of the applicable Guarantee. Interest shall accrue to the Holder at the rate stated in the promissory note evidencing the Guaranteed Obligation, without giving effect to the Borrower's default in making a required payment of principal or interest on the applicable Guarantee Obligation or any other default by the Borrower, until the Guaranteed Obligation has been fully paid by DOE. Payment by the Secretary on the applicable Guarantee does not change Borrower's obligations under the promissory note evidencing the Guaranteed Obligation, Loan Guarantee Agreement, Loan Agreement or related documents, including an obligation to pay default interest.

(c) Following payment by the Secretary pursuant to the applicable Guarantee, upon demand by DOE, the Holder shall transfer and assign to the Secretary (or his designee or agent) the promissory note evidencing the Guaranteed Obligation, all rights and interests of the Holder in the Guaranteed Obligation, and all rights and interests of the Holder in respect of the Guaranteed Obligation, except to the extent that the Secretary determines that such promissory note or any of such rights and interests shall not be transferred and assigned to the Secretary. Such transfer and assignment shall include, without limitation, all of the liens, security and collateral rights of the Holder (or his designee or agent) in respect of the Guaranteed Obligation.

(d) Following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, the Secretary is authorized to protect and foreclose on the collateral, take action to recover costs incurred by, and all amounts owed to, the United States as a result of the defaulted Guarantee Obligation, and take such other action necessary or appropriate to protect the interests of the United States. In respect of any such authorized actions that involve a judicial proceeding or other judicial action, the Secretary shall act through the Attorney General. The foregoing provisions of this paragraph shall not relieve the Secretary from its obligations pursuant to any applicable Intercreditor Agreement. Nothing in this paragraph shall limit the Secretary from exercising any rights or remedies pursuant to the terms of the Loan Guarantee Agreement.

(e) The cash proceeds received as a result of any foreclosure on the collateral or other action, shall be distributed in accordance with the Loan Guarantee Agreement (subject to any applicable Intercreditor Agreement).

(f) The Loan Guarantee Agreement shall provide that cash proceeds received by the Secretary (or his designee or agent) as a result of any foreclosure on the collateral or other action shall be applied in the following order of priority:

(1) Toward the pro rata payment of any costs and expenses (including unpaid fees, fees and expenses of counsel, contractors and agents, and liabilities and advances made or incurred) of the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them (solely in their individual capacities as such and not on behalf of or for the benefit of their principals), incurred in connection with any authorized action following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, or as otherwise permitted under the Loan Agreement or Loan Guarantee Agreement.

(2) To pay all accrued and unpaid fees due and payable to the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(3) To pay all accrued and unpaid interest due and payable to the Secretary, the Attorney General, the Holder, a collateral agent or other responsible person of any of them on a pro rata basis in respect of the Guaranteed Obligation;

(4) To pay all unpaid principal of the Guaranteed Obligation;

(5) To pay all other obligations of the Borrower under the Loan Guarantee Agreement, the Loan Agreement and related documents that are remaining after giving effect to the preceding provisions and are then due and payable; and

(6) To pay to the Borrower, or its successors and assigns, or as a court of competent jurisdiction may direct, any cash proceeds then remaining following the application of all payment described above.

(g) No action taken by the Holder or its agent or designee in respect of any collateral will affect the rights of any person, including the Secretary, having an interest in the Guaranteed Obligations or other debt obligations, to pursue, jointly or severally, legal action against the Borrower or other liable persons, for any amounts owing in respect of the Guaranteed Obligation or other applicable debt obligations.

(h) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection exercise of rights as a lien holder or recovery of deficiencies due under the Guaranteed Obligation, the Secretary may take such action as he determines to be appropriate under the circumstances.

(i) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, the Secretary from purchasing any collateral or Holder's or other person's interest in the Eligible Project upon foreclosure of the collateral.

(j) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, forbearance by any Holder with the consent of the Secretary for the benefit of the Borrower and the United States.

(k) The Holder and the Secretary may agree to a formal or informal plan of reorganization in respect of the Borrower, to include a restructuring of the Guaranteed Obligation and other applicable debt of the Borrower on such terms and conditions as the Secretary determines are in the best interest of the United States.

§ 609.14 Preservation of collateral.

(a) If the Secretary exercises his right under the Loan Guarantee Agreement to require the holder of pledged collateral to take such actions as the Secretary (subject to any applicable Intercreditor Agreement) may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the collateral, the Secretary shall, subject to compliance with the Antideficiency Act, 31 U.S.C. 1341 *et seq.,* reimburse the holder of such collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.13, no party may waive or relinquish, without the consent of the Secretary, any such collateral to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as he determines are required or appropriate, taking into account the term of any applicable Intercreditor Agreement, to care for, preserve, protect or maintain collateral pledged in respect of Guaranteed Obligations. The cost of such contracts may be charged to the Borrower.

§ 609.15 Audits and access to records.

Each Loan Guarantee Agreement and related documents shall provide that:

(a) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the Eligible Project as are necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all Eligible Project assets and non-Eligible Project assets pledged in respect of the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all Eligible Project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Borrower or the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the Eligible Project; and

(b) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

§ 609.16 Deviations.

(a) To the extent that the requirements under this part are not specified by the Act or other applicable statutes, DOE may authorize deviations from the requirements of this part upon:

(1) Either (A) receipt from the Applicant, Borrower or Project Sponsor, as applicable, of—

(i) A written request that the Secretary deviate from one or more requirements, and

(ii) A supporting statement briefly describing one or more justifications for such deviation, or

(iii)(B) a determination by the Secretary in his discretion to undertake a deviation;

(2) A finding by the Secretary that such deviation supports program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government; and

(3) If the waiver would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents, consultation by DOE with OMB and the Secretary of the Treasury.

(b) If a deviation under this section results in an increase in the applicable Credit Subsidy Cost, such increase shall be funded either by additional fees paid by or on behalf of the Borrower or, if an appropriation is available by means of an appropriations act. The Secretary has discretion to determine how the cost of a deviation is funded.

[FR Doc. 2016–23268 Filed 9–30–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9117; Directorate Identifier 2016–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain A330–200 Freighter, –200 and –300 series airplanes; and Airbus Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by reports of certain hydraulic reservoirs (HRs) becoming depressurized due to air leakage from the HR pressure relief valve (PRV). This proposed AD would require repetitive inspections of the hydraulic fluid levels and nitrogen gas pressure in the HR for each hydraulic circuit, and if necessary, adjustment of the fluid level(s) and nitrogen pressure in affected HRs. We are proposing this AD to detect and correct air leakage from the HR PRV, which could lead to the loss of one or more hydraulic systems, with the possible result of loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 17, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9117; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9117; Directorate Identifier 2016–NM–095–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0107, dated June 7, 2016, to correct an unsafe condition for certain Airbus Model A330–200 Freighter, –200 and –300 series airplanes; and Airbus Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> Some events of depressurisation of hydraulic reservoirs have been reported, due to air leakage from the HR PRV [hydraulic reservoir pressure relief valve]. The results of the investigations revealed that the air leakage was due to the extrusion of the O-ring seal from the HR PRV. This may have happened during HR maintenance, testing or during flight, if HR over-filling was performed, as a result of which hydraulic fluid could pass through the PRV, causing [the] PRV seal to migrate from its nominal position, leading to loss of HR pressurisation.
>
> This condition, if not detected and corrected, could lead to the loss of one or more hydraulic systems, possibly resulting in loss of control of the aeroplane.
>
> Prompted by these findings, Airbus issued Alert Operators Transmission (AOT) A29L005–16 [dated January 28, 2016] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the HR fluid level of each hydraulic circuit and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires actions when maintenance action is accomplished on hydraulic reservoirs.
>
> This [EASA] AD is considered as interim action and further [EASA] AD action may follow.

Required actions include repetitive inspection of the hydraulic fluid levels and nitrogen gas pressure in the HR for each hydraulic circuit, and if necessary, adjustment of the fluid level(s) and nitrogen pressure in affected HRs. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9117.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Alert Operators Transmission (AOT) A29L005–16, Revision 01, dated June 28, 2016. This service information describes procedures for inspecting hydraulic fluid levels and nitrogen gas pressure in certain HRs, and adjustment of the fluid level(s) and nitrogen pressure in affected HRs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 101 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle	$0	$85 per inspection cycle.	$8,585 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Adding or Removing Hydraulic Fluid or Nitrogen Gas	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2016–9117; Directorate Identifier 2016–NM–095–AD.

(a) Comments Due Date

We must receive comments by November 17, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes, and Airbus A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, certificated in any category, all airplanes that are fitted with a hydraulic reservoir (HR) pressure relief valve (PRV) part number 42F0026 installed on TECHSPACE HR having part number 42F1005, 42F1203, 42F1304, 42F1412, 42F1512, or 42F1607.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by reports of certain hydraulic reservoirs (HRs) becoming depressurized due to air leakage from the HR pressure relief valve (PRV). We are issuing this AD to detect and correct air leakage from the HR PRV, which could lead to the loss of one or more hydraulic systems, with the possible result of loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspect Fluid Level and Nitrogen Pressure in Hydraulic Reservoir

Within the compliance time defined in table 1 to paragraph (g) of this AD, as applicable, inspect the HR fluid level and nitrogen pressure of each hydraulic circuit in accordance with the instructions of paragraph 4.2.2.1 of Airbus Alert Operators Transmission (AOT) A29L005–16, Revision 01, dated June 28, 2016. Repeat the

inspection thereafter at intervals not to exceed 1,600 flight hours.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INITIAL INSPECTION COMPLIANCE TIME

Compliance Time (A or B, whichever occurs later)	
A	Before accumulating 1,600 flight hours since first flight of the airplane.
B	Within 1,000 flight hours or 3 months, whichever occurs first after the effective date of this AD.

(h) Corrective Action

If, during any inspection required by paragraph (g) of this AD, any unacceptable pressure or fluid level is identified, before further flight, do the actions in paragraphs (h)(1) and (h)(2) of this AD, as applicable, for each unacceptable pressure or fluid level that is discovered. Accomplishment of these actions on an airplane does not constitute terminating action for the repetitive inspections as required by paragraph (g) of this AD for that airplane.

(1) Add or remove hydraulic fluid, as applicable, in accordance with the instructions of paragraph 4.2.2.2 of Airbus Alert Operators Transmission (AOT) A29L005–16, Revision 01, dated June 28, 2016.

(2) Add or remove nitrogen gas, as applicable, in accordance with the instructions of paragraph 4.2.2.2 of Airbus Alert Operators Transmission (AOT) A29L005–16, Revision 01, dated June 28, 2016.

(i) Servicing Hydraulic Reservoir

Concurrent with the initial inspection specified in paragraph (g) of this AD, revise the maintenance or inspection program, as applicable, to incorporate the hydraulic reservoir servicing actions specified in paragraph 4.2.2.2 of Airbus Alert Operators Transmission (AOT) A29L005–16, Revision 01, dated June 28, 2016.

(j) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Alert Operators Transmission (AOT) A29L005–16, dated January 28, 2016.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0107, dated June 7, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9117.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 26, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–23786 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2015–0246]

RIN 2105–AE12

Nondiscrimination on the Basis of Disability in Air Travel: Negotiated Rulemaking Committee Sixth Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of sixth public meeting of advisory committee.

SUMMARY: This notice announces the sixth meeting of the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

DATES: The sixth meeting of the ACCESS Advisory Committee will be held on October 12–14, 2016, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Hilton Arlington, 950 N. Stafford St., Arlington, VA 22203. Attendance is open to the public up to the room's capacity of 150 attendees. Since space is limited, any member of the general public who plans to attend this meeting must notify the registration contact identified below no later than October 5, 2016.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Kyle Ilgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128). For other information, please contact Livaughn Chapman or Vinh Nguyen, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at *livaughn.chapman@dot.gov* or *vinh.nguyen@dot.gov* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

I. Sixth Public Meeting of the ACCESS Committee

The sixth meeting of the ACCESS Advisory Committee will be held on October 12–14, 2016, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time. The meeting will be held at the Hilton Arlington, 950 N. Stafford St., Arlington, VA 22203. At the meeting, the ACCESS Advisory Committee will continue to address whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications, whether to require an accessible lavatory on new single-aisle

aircraft over a certain size, and whether to amend the definition of ''service animals'' that may accompany passengers with a disability on a flight. We expect to negotiate and vote on proposals to amend the Department's disability regulation regarding one or more of these issues. Prior to the meeting, the agenda will be available on the ACCESS Advisory Committee's Web site, *www.transportation.gov/access-advisory-committee.* Information on how to access advisory committee documents via the FDMC is contained in Section III, below.

The meeting will be open to the public. Attendance will be limited by the size of the meeting room (maximum 150 attendees). Because space is limited, we ask that any member of the public who plans to attend the meeting notify the registration contact, Kyle Ilgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128) at Linkvisum, no later than October 5, 2016. At the discretion of the facilitator and the Committee and time permitting, members of the public are invited to contribute to the discussion and provide oral comments.

II. Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by October 6, 2016, to FDMC, Docket Number DOT–OST–2015–0246. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. DOT recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that DOT can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, DOT–OST–2015–0246, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

III. Viewing Comments and Documents

To view comments and any documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov.* Enter the docket number, DOT–OST–2015–0246, in the keyword box, and click ''Search.'' Next, click the link to ''Open Docket Folder'' and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

IV. ACCESS Advisory Committee Charter

The ACCESS Advisory Committee is established by charter in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Secretary of Transportation Anthony Foxx approved the ACCESS Advisory Committee charter on April 6, 2016. The committee's charter sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *www.transportation.gov/office-general-counsel/negotiated-regulations/charter.*

V. Privacy Act

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

VI. Federal Advisory Committee Act

Notice of this meeting is being provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations covering management of Federal advisory committees. *See* 41 CFR part 102–3.

Issued under the authority of delegation in 49 CFR 1.27(n).

Dated: September 27, 2016.

Molly J. Moran,

Acting General Counsel.

[FR Doc. 2016–23834 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–9X–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 202, 203, 204, 205, 210, 211, 212, 253, 255, 258, 260, 261, 262, 263, and 270

[Docket No. 2016–5]

Copyright Office Technical Amendments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend its regulations governing registration, recordation, licensing, and other services that the Office provides. The amendments will improve the quality of the Office's regulations by updating cross-references to the Copyright Act and the Office's regulations, replacing outdated terminology, reflecting structural changes to the Office and its senior management, eliminating expired or obsolete provisions, and correcting nonsubstantive errors. While these amendments are intended to be technical in nature, out of an abundance of caution, the Office is publishing the proposed regulations for public comment.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on November 2, 2016.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/rulemaking/2016technicalamendments/index.html.* If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, *sdam@loc.gov;* Regan A. Smith, Associate General Counsel, *resm@loc.gov;* or Erik Bertin, Deputy Director of Registration Policy and Practice, *ebertin@loc.gov.* Each person can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: The U.S. Copyright Office (the ''Office'') is proposing to make a series of technical amendments (the proposed ''Rule'') that address certain inconsistencies and inaccuracies in parts 201, 202, 203, 204,

205, 210, 211, 212 and subchapter B of title 37 of the Code of Federal Regulations. Specifically, the proposed rule makes technical changes to regulations governing registration, recordation, and licensing. These changes include the removal of expired or obsolete provisions that no longer serve any purpose, such as regulations issued under the now-defunct Copyright Arbitration Royalty Panel system. It also proposes technical changes to the regulations for submitting requests under the Freedom of Information Act and the Privacy Act, the procedures for serving legal process on the Office, and the regulations governing the Office's general operations.

While the amendments are self-explanatory, for convenience, the Office has summarized them in seven categories below.

I. Reorganization of the U.S. Copyright Office

The Register of Copyrights has reorganized the administrative divisions of the Office in the last few years. The Register appointed a Chief Information Officer (''CIO'') to serve as her primary advisor on information technology, and a Director of the Copyright Technology Office, who supervises the day-to-day maintenance of the Office's registration and recordation systems.

The Register also divided the former Information and Records Division into the Office of Public Records and Repositories (''PRR'') and Office of Public Information and Education (''PIE''). PRR, headed by an expert in public administration, includes the Recordation Section, the Records Management Section, and the Records Research and Certification Section. PIE is headed by an Associate Register of Copyrights and includes the Publications Section and the Copyright Information Section.

The proposed rule reflects these developments by updating § 203.3 by providing titles of the Office's senior management and updated descriptions for each division within the Office, including the Office of the Register, the Office of the General Counsel, the Office of Policy and International Affairs, the Office of Registration Policy and Practice, the Office of Public Records and Repositories, the Office of Public Information and Education, the Office of the Chief Information Officer, and the Office of the Chief of Operations (which includes the Receipt Analysis and Control Division, the Copyright Acquisitions Division, and the Licensing Division). It also provides updated mailing addresses as set forth in 37 CFR 201.1(b)(2) and (c). Additionally, when referring to the Office's Web site, the proposed rule replaces the term ''homepage'' with the term ''Web site.''

In the interest of consistency, the proposed rule also removes the initials ''U.S.'' from certain provisions that refer to the ''U.S. Copyright Office.'' Finally, the proposed rule clarifies that checks, money orders, or other fees submitted to the Office should be made payable to the ''U.S. Copyright Office,'' rather than the ''Register of Copyrights.'' *See, e.g.,* 37 CFR 201.6, 201.33(e)(2)(i), 201.39(g)(3)(i).

II. Compendium of U.S. Copyright Office Practices

The *Compendium of U.S. Copyright Office Practices, Third Edition,* published in December 2014, is the administrative manual of the Register of Copyrights concerning the statutory duties of the Copyright Office under title 17 of the United States Code. It serves as both a technical manual for the Office's staff and a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public.[1] The proposed rule clarifies the means for viewing and obtaining copies of the *Third Edition,* as well as prior editions of the *Compendium,* set forth in 37 CFR 201.2(b)(7).

III. Grammatical Amendments

The proposed rule corrects errors in spelling, capitalization, punctuation, spacing, and numbering, and addresses inconsistencies in the use of abbreviations, symbols, time periods, and italics. For example, the proposed rule revises 37 CFR 201.4 to reflect that registrations issued under the 1909 Act may contain a prefix consisting of one or two letters (*e.g.,* E, EU, F, G, K, etc.) as opposed to ''a two- or three-letter prefix,'' and corrects the word ''or'' to ''of'' in the definition of ''official certification.''

IV. Updated Citations and Cross-References to the Copyright Act and the Code of Federal Regulations

The proposed rule adopts the appropriate format for citing or cross-referencing other provisions of the Code of Federal Regulations, as recommended by the *Federal Register Document Drafting Handbook.* It also reserves §§ 201.15, 205.6 through 205.10, and 205.14 through 205.20 for future use.

In addition, the proposed rule revises erroneous cross-references to the Copyright Act and the Code of Federal Regulations. By way of example, the proposed rule corrects a cross-reference relating to the deposit requirements for certain sculptural works to make clear the Office's practice of allowing applicants, under certain circumstances, to submit a single copy of a board game (rather than two copies) instead of a photograph, as set forth in 37 CFR 202.20(c)(2)(i)(G) and (c)(2)(xi)(B).

V. Updated Terminology

The proposed rule reflects a number of changes in terminology. These changes replace outdated terms that are no longer used by the Office, but they do not represent a substantive change in policy. For example, the Office now uses the term ''applicant'' when referring to a person who submits an application for registration, and uses the term ''remitter'' when referring to a person who submits a document for recordation. The proposed rule adds these terms where they are missing from the regulations. The proposed rule also replaces the term ''certificate of record'' with ''certificate of recordation,'' ''Visual Arts Regulatory Statements'' with ''Visual Arts Registry Statements,'' ''vessel hulls'' with ''vessel designs,'' and ''restored works'' to ''restored copyright.'' It also removes references to information provided ''on the application'' for deposit accounts and the term ''preregistration.'' Finally, the proposed rule updates the name of Form SC from ''Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers'' in § 201.11(d)(2) to ''Statement of Account for Secondary Transmissions by Satellite Carriers of Distant Television Signals.''

VI. Improved Readability and Style

Consistent with the Office's longstanding policy,[2] the proposed rule replaces gender-specific references with gender-neutral references. The proposed rule also improves readability by renumbering certain provisions, by rewriting awkward phrases or paragraphs, and by deleting redundant provisions that repeat what is stated elsewhere in the same provision. For example, the Office's regulations governing Freedom of Information Act policies in § 203.4(f) and (g) were rewritten without substantive change to improve readability. In all cases, these changes are intended to clarify the

[1] *See* The Compendium of U.S. Copyright Office Practices, 79 FR 78911 (Dec. 31, 2014).

[2] Arthur Levine, *Memories of Barbara Ringer,* Copyright Notices, Apr. 2009, at 3, 6 (noting that Congress used male and female pronouns in the Copyright Act of 1976 at the request of Register of Copyrights Barbara Ringer), *available at http://www.copyright.gov/docs/barabara-ringer-special-edition-2009-04.pdf.*

existing regulations, but do not represent a substantive change in policy.

VII. Expired or Obsolete Provisions

The Office has identified a number of provisions that have expired or have become obsolete. Because these provisions no longer serve any purpose, the Office is removing them from its regulations.

Effective Date of Registration for Registrations Issued in 1991. The Copyright Fees and Technical Amendments Act of 1989 increased the filing fee for registering a claim to copyright from $10 to $20.[3] The proposed rule eliminates a provision in § 202.4 establishing a procedure for assigning an effective date of registration for claims received between January 3, 1991 and December 31, 1991 that were submitted with an insufficient filing fee, as these dates have passed.

Registration of Mask Works. The proposed rule removes language in § 211.4(b)(1) specifying that January 7, 1985 will be the effective date of registration for applications to register mask works received before that date[4] because any such applications have been processed by now.

Recordation of Statements of Intent to Enforce Filed Under the North American Free Trade Agreement. Because the deadline for filing a ''Statement of Intent'' to reclaim copyright protection for certain motion pictures fixed or published in Canada or Mexico that fell into the public domain in the United States due to a lack of a copyright notice under NAFTA expired on December 31, 1994,[5] and because the provision that authorized the Office to record these types of statements has been removed from the statute, the proposed rule removes the corresponding provision at 37 CFR 201.31 from the regulations.[6]

Registration of Restored Works. The proposed rule removes outdated language in § 201.31 related to a procedure for registering foreign works that were restored to copyright protection under section 104A of the Copyright Act (as amended by the URAA)[7] and describes the correct procedure for registering a restored work.

Recordation of Notices of Intent to Enforce a Restored Work Under the URAA. The proposed rule clarifies 37 CFR 201.33 and 201.34, which explain that a list of parties that filed a Notice of Intent to Enforce[8] a restored work under the URAA is available on the Office's Web site, by removing outdated instructions for logging onto the Office's Web site or for obtaining access to these records through terminals located in the Office and reflecting reliance upon email addresses rather than ''telefax number[s].''

Recordation of Voluntary Agreements Between Copyright Owners and Public Broadcasters. In accordance with statutory changes that removed the prior section 118(b)(2) from the Copyright Act,[9] and gave the Copyright Royalty Judges rather than the Register of Copyrights authority over the statutory license in section 118,[10] the Office is removing the obsolete regulatory provision at 37 CFR 201.9 relating to recordation of voluntary agreements between copyright owners and public broadcasting entities[11] from the regulations.

IBM–PC Compatible Disks for Recording Documents Pertaining to Computer Shareware. The Office is updating its administrative procedure in 37 CFR 201.26(d)(4)for recording documents pertaining to computer shareware to no longer indicate that they be submitted on both paper and diskette; they will now be accepted without a diskette. The Office has recorded less than two dozen shareware documents since the final rule was adopted.

Copyright Arbitration Royalty Panel Rules and Procedures. Subchapter B contains various regulations relating to the former Copyright Arbitration Royalty Panel or ''CARP,'' including legacy royalty rates for past accounting periods, which certain regulations were phased out by the Copyright Royalty and Distribution Reform Act of 2004.[12] The successor entity to the CARP, the Copyright Royalty Board, has issued its own set of rules and procedures.[13] Accordingly, the Office is removing obsolete CARP regulations, while retaining parts 254 and 256 which contain information related to coin-operated phonorecord players and the cable compulsory license, respectively. However, the Office notes that these legacy rates and regulations will remain accessible via past editions of the Code of Federal Regulations for any who may have need to consult them. In addition, legacy regulations are available on the Government Publishing Office's Federal Digital System (''FDsys'') at *www.gpo.gov/fdsys.*

Statements of Account covering compulsory licenses for secondary transmissions by cable systems. The Office is removing the portions of § 201.17(i) that relate to filings covering the accounting periods in 1983 that were affected by the 1982 cable rate adjustment,[14] as the Office does not expect to receive any additional filings covering these accounting periods. Similarly, the Office is removing § 201.17(m)(2)(iii), which applies only to statements for the 1978–1 accounting period, along with certain other references to pre-1978 activities in 201.17(e) and (f).

Verification of a Statement of Account for secondary transmissions made by cable systems and satellite carriers. Effective November 18, 2014, the Office implemented § 201.16, which sets forth procedures by which a copyright owner may audit a statement of account filed with the Office under 17 U.S.C. 111(d)(1) or 119(b)(1).[15] This regulation includes a provision outlining a procedure in the event the Office received a notice of intent to audit a statement of account prior to the effective date of the section. *See* 37 CFR 201.16(c)(7). Because the Office did not in fact receive any notice of intent to audit prior to the effective date of the section, that provision is now obsolete and may be removed.

Statements of Account for digital audio recording devices or media. Section 201.28(c)(3) includes provisions that solely concern Statements of Account filed for the period covering October 28, 1992 through the end of the first accounting year for importers/manufacturers of digital audio recording devices. Because the Office does not expect to receive any additional filings covering this accounting period, the Office is removing this language.

[3] Public Law 101–318, 104 Stat. 287, 287 (1990).

[4] *See* Mask Work Protection; Implementation of the Semiconductor Chip Protection Act of 1984, 50 FR 263 (Jan. 3, 1985); Mask Work Protection; Implementation of the Semiconductor Chip Protection Act of 1984, 50 FR 26714 (June 28, 1985).

[5] *See* Public Law 103–182, 107 Stat. 2057, 2115 (codified as 17 U.S.C. 104A (1993)); Public Law 103–465, 108 Stat. 4809, 4976–81 (1994).

[6] *See* Procedures for Copyright Restoration of Certain Motion Pictures and their Contents in Accordance With the North American Free Trade Agreement, 59 FR 58789 (Nov. 15, 1994).

[7] *See* Restoration of Certain Berne Works and WTO Works, 60 FR 50414 (Sept. 29, 1995); 17 U.S.C. 104A(e).

[8] 17 U.S.C. 104A(e).

[9] Public Law 106–44, 113 Stat. 221, 222 (1999).

[10] Public Law 108–419, 118 Stat. 2341, 2365–67 (2004).

[11] *See* Filing of Agreements Between Copyright Owners and Public Broadcasting Entities, 42 FR 16776 (Mar. 30, 1977).

[12] *See* Public Law 108–419, 118 Stat. 2341 (2004).

[13] *See* 37 CFR ch. III.

[14] *See* Adjustment of the Royalty Rate for Cable Systems; Federal Communications Commission's Deregulation of the Cable Industry, 47 FR 52146 (Nov. 19, 1982).

[15] *See* Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers, 79 FR 68623 (Nov. 18, 2014).

Forms on Copyright Office Web site. The proposed rule updates § 201.28 to reflect that forms relating to various statutory licenses are available on the Copyright Office Web site and removes references addressing requests by mail or facsimile.

Telegrams and Cablegrams. The existing regulations in §§ 201.13 and 201.22 allow copyright owners to serve certain types of notices required under sections 110(4)(B)(iii) [16] and 411(c) [17] by telegram or cablegram. The proposed rule updates these regulations to remove references to these obsolete forms of communication and instead allow for service of notices by email or fax.

Inspection of U.S. Copyright Office Records. The proposed rule removes § 201.2(b)(4)'s requirement that requests to inspect a pending application, deposit for a pending application,[18] or a document submitted for recordation[19] be limited to materials submitted within twelve months prior to the request, given that the processing time for a paper application may be longer than that in some cases.

Refunds. The proposed rule removes the reference to postage stamps in 37 CFR 201.6(c)(1) because in practice, the Office has never used this method of payment in issuing refunds.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

37 CFR Part 203

Freedom of information.

37 CFR Part 204

Privacy.

37 CFR Part 205

Legal processes.

37 CFR Part 210

Copyright, Phonorecords, Recordings.

37 CFR Part 211

Mask work.

37 CFR Part 212

Design, Vessel hulls, Registration.

37 CFR Part 253

Copyright, Public broadcasting entities, Radio, Television.

37 CFR Part 255

Copyright, Music, Recordings.

37 CFR Part 258

Copyright, Satellite, Rates.

37 CFR Parts 260 through 263

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 270

Copyright, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 37 CFR parts 201, 202, 203, 204, 205, 210, 211, 212, 253, 255, 258, 260, 261, 262, 263, and 270 as follows:

PART 201—GENERAL PROVISIONS

■ 1. Revise the authority citation for part 201 to read as follows:

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

■ 2. Amend § 201.1 as follows:

■ a. In paragraph (a), remove ''on-site deliveries from commercial and private couriers'' and add in its place ''direct deliveries from commercial couriers and messengers''.

■ b. In paragraph (b)(2), remove ''20559'' and add in its place ''20559–6000'', remove the term ''Hull'' from the ''Type of submission'' column of the table, and remove the term ''AD'' from the ''Code'' column of the table and add in its place the term ''CAD/AD''.

■ c. In paragraph (c)(1), remove ''Information and Records Division'' and add in its place ''Office of Public Information and Education''.

■ d. In paragraph (c)(2), remove ''Sections'' and add in its place ''sections''.

■ e. In paragraph (c)(4), remove ''hull'' and add in its place ''design''.

■ f. In paragraph (c)(5), remove ''Records Research and Certification,'' and add in its place ''Records Research and Certification Section,''.

■ g. In paragraphs (c)(6) and (c)(7), remove ''Section'' and add in its place ''section''.

■ h. In paragraph (c)(7), remove ''Ave.'' and add in its place ''Avenue''.

■ 3. Amend § 201.2 as follows:

■ a. In paragraph (b)(1), remove ''Certifications and Documents Section'' and add in its place ''Records Research and Certification Section''.

■ b. In paragraph (b)(3) introductory text, remove ''Information and Records Division'' and add in its place ''Office of Public Information and Education''.

■ c. In paragraph (b)(3)(i)(C), remove ''the remitter'' and add in its place ''the applicant or remitter''.

■ d. Redesignate the introductory text of paragraph (b)(4) as paragraph (b)(4)(i), redesignate paragraphs (b)(4)(i) and (ii) as paragraphs (b)(4)(i)(A) and (B), and designate the undesignated text preceding paragraph (b)(5) as paragraph (b)(4)(ii).

■ e. In newly redesignated paragraph (b)(4)(i), remove the phrase ''that were submitted within the twelve month period immediately preceding the request for access''.

■ f. In newly redesignated paragraph (b)(4)(ii), remove ''Copyright Information'' and add in its place ''Records Research and Certification''.

■ g. Revise paragraph (b)(7).

■ h. In paragraph (d)(1)(iv), remove ''Certifications'' and add in its place ''Certification''.

The revision reads as follows:

§ 201.2 Information given by the Copyright Office.

* * * * *

(b) * * *

(7) The Register of Copyrights has issued an administrative manual known as the Compendium of U.S. Copyright Office Practices, Third Edition. The Compendium explains many of the practices and procedures concerning the Office's mandate and statutory duties under title 17 of the United States Code. It is both a technical manual for the Copyright Office's staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public. The Third Edition and prior editions of the Compendium may be viewed, downloaded, or printed from the Office's Web site. They are also available for public inspection and copying in the Records Research and Certification Section.

* * * * *

§ 201.3 [Amended]

■ 4. Amend § 201.3 as follows:

■ a. In paragraph (c)(3), remove ''predominately'' and add in its place ''predominantly''.

■ b. In paragraph (c)(9), remove the period from the end of the first line and add in its place a colon and remove ''$130'' and add in its place ''130''.

■ c. In paragraph (c)(11), remove ''hull'' and add in its place ''design''.

■ d. In the heading of paragraph (d), remove ''*Service Fees*'' and add in its place ''*service fees*''.

■ e. In paragraph (d)(6), remove the period from the end of the term ''Variable'' in the ''Fees ($)'' column of the table.

[16] 17 U.S.C. 110(4)(B)(ii) and (iii).

[17] 17 U.S.C. 411(c)(1).

[18] 37 CFR 201.2(b)(4)(i).

[19] *See* Office Organization and Procedures in Providing Information, 50 FR 30169 (July 24, 1985).

■ f. In table heading of paragraph (e), remove ''division'' and add in its place ''Division''.

§ 201.4 [Amended]

■ 5. Amend § 201.4 as follows:
■ a. In the introductory text of paragraph (a)(1), remove '', as amended by Public Law 94–553''.
■ b. In paragraph (a)(2), remove '', as amended by Public Law 94–553''.
■ c. In paragraph (a)(3)(ii), remove ''or'' and add in its place ''of''.
■ d. In paragraph (c)(4)(ii)(D)(*4*), remove ''a two- or three-letter'' and add in its place ''a one-, two-, or three-letter''.
■ e. In paragraph (c)(4)(iii), add a period after ''Public Catalog'' and remove ''and the remitter'' and add in its place ''The remitter''.
■ f. In paragraph (e), remove ''record'' and add in its place ''recordation''.

§ 201.5 [Amended]

■ 6. Amend § 201.5 as follows:
■ a. In paragraphs (a)(1) introductory text, (a)(1)(i)(A) and (a)(1)(ii), remove '', as amended by Public Law 94–553''.
■ b. In paragraph (b)(2)(i), remove the semicolon from the end and add in its place a period.
■ c. In paragraph (b)(2)(iii)(B), remove ''; and'' and add in its place a period.

§ 201.6 [Amended]

■ 7. Amend § 201.6 as follows:
■ a. In paragraph (a), remove ''Register of Copyrights'' from the first sentence and add in its place ''U.S. Copyright Office''.
■ b. In paragraph (b)(3), remove the last sentence.
■ c. In paragraph (c)(1), remove ''hulls'' from the first sentence and add in its place ''designs''.
■ d. In paragraphs (c)(1) and (2), remove the phrase '', and refunds of less than $2 may be made in postage stamps''.
■ e. In paragraph (c)(3), remove the comma after the term ''Records'' in the last sentence.
■ f. In paragraph (d), remove ''transferred for the'' and add in its place ''transferred for use in the''.

§ 201.7 [Amended]

■ 8. Amend § 201.7 as follows:
■ a. In paragraph (c)(1), remove ''*de minimis''* from the first sentence and add in its place ''insufficiently creative'' and remove ''not in accordance with title 17 U.S.C., Chapters 1 through 8'' from the last sentence and add in its place ''not in accordance with U.S. copyright law''.
■ b. In paragraph (c)(2), remove ''remitter'' and add in its place ''applicant''.
■ c. In paragraph (d), remove ''remitter'' from the first sentence and add in its place ''applicant''.

§ 201.8 [Amended]

■ 9. Amend § 201.8 as follows:
■ a. In paragraphs (c)(1) introductory text paragraph and (c)(1)(i), remove ''claimant'' and add in its place ''applicant'' each place it appears.
■ b. In paragraph (d), remove ''certificate or registration'' and add in its place ''certificate of registration''.
■ c. In paragraphs (f)(2) and (3), remove ''mail'' and add in its place ''Mail''.
■ d. In paragraph (g), remove ''one of the addresses specified in § 201.1'' and add in its place ''the address specified in § 201.1(c)(1)''.

§ 201.9 [Removed and reserved]

■ 10. Remove and reserve § 201.9.

§ 201.10 [Amended]

■ 11. Amend § 201.10 as follows:
■ a. In the introductory text, remove ''sections 203, 304(c) and 304(d) of title 17, of the United States Code'' and add in its place ''17 U.S.C. 203, 304(c), and 304(d)''.
■ b. In paragraphs (b)(1) introductory text, remove ''sections 304(c) and 304(d) of title 17, U.S.C.,'' and add in its place ''17 U.S.C. 304(c) and 304(d)''.
■ c. In paragraph (b)(1)(vii)(B), remove ''section 304 of title 17, U.S.C.,'' and add in its place ''17 U.S.C. 304''.
■ d. In paragraph (b)(2) introductory text, remove ''section 203 of title 17, U.S.C.,'' and add in its place '' 17 U.S.C. 203''.
■ e. In paragraph (b)(2)(vii)(B), remove ''section 203 of title 17, U.S.C.'' and add in its place ''17 U.S.C. 203''.
■ f. In paragraph (c)(2), remove ''section 304(c) or section 304(d), whichever applies, of title 17, U.S.C.'' and add in its place ''17 U.S.C. 304(c) or 304(d), whichever applies''.
■ g. In paragraph (c)(3), remove ''section 203 of title 17, U.S.C.'' and add in its place ''17 U.S.C. 203''.
■ h. In paragraph (d)(2), remove ''section 203, section 304(c) or section 304(d) of title 17, U.S.C.'' and add in its place ''17 U.S.C. 203, 304(c), or 304(d)''.
■ i. In paragraph (d)(4), remove ''section 203, section 304(c), or section 304(d) of title 17, U.S.C.'' and add in its place ''17 U.S.C. 203, 304(c), or 304(d)''.
■ j. In paragraph (e)(1), remove ''section 203, section 304(c), or section 304(d) of title 17, U.S.C.'' and add in its place ''17 U.S.C. 203, section 304(c), or section 304(d)''.
■ k. In paragraph (d)(1), remove ''first-class'' and add in its place ''first class''.
■ l. In paragraph (d)(3), remove ''*reasonable investigation''* and add in its place ''reasonable investigation'' and remove '' ''reasonable investigation'' '' and add in its place ''reasonable investigation''.
■ m. In paragraph (f)(1) introductory text, remove ''paragraph (2) of this paragraph (f)'' and add in its place ''paragraph (f)(2) of this section''.
■ n. In paragraph (f)(1)(ii), remove ''first-class'' and add in its place ''first class''.
■ o. In paragraph (f)(3), remove ''record'' and add in its place ''recordation''.
■ p. In paragraph (f)(4), remove ''section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code'' and add in its place ''17 U.S.C. 203(a)(3) or 304(c)(3), whichever applies'' and remove ''§ 201.4(c)(3)'' and add in its place ''§ 201.4''.
■ q. In paragraph (f)(7), remove ''§ 201.1'' and add in its place ''§ 201.1(c)(2)''.

§ 201.11 [Amended]

■ 12. Amend § 201.11 as follows:
■ a. In paragraph (a), remove ''section 119(b)(1) and Section 122(a) of title 17 of the United States Code, as amended by Public Law 111–175'' and add in its place ''17 U.S.C. 119(b)(1), as amended by Public Law 111–175'', remove ''that'' and add in its place ''for'', and add the term ''to'' after the phrase ''private home viewing''.
■ b. In paragraph (b)(1), remove ''and'' and add in its place ''and'', remove ''Section 119(d) of title 17 of the United States Code, as amended by Public Law 111–175'' and add in its place ''17 U.S.C. 119(d), as amended by Public Law 111–175''.
■ c. In paragraph (c)(1), remove ''section 119(b)(1)(B) and (c)(3) of title 17'' and add in its place ''17 U.S.C. 119(b)(1)(B)'' and remove ''not later than'' and add in its place ''no later than'' each place it appears.
■ d. In paragraph (d)(1), remove the term ''U.S.'', and remove ''free upon request. Requests may be mailed to the address specified in § 201.1'' and add in its place ''free from the Copyright Office Web site''.
■ e. In paragraph (d)(2), remove ''Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers'' and add in its place ''Form SC (Statement of Account for Secondary Transmissions by Satellite Carriers of Distant Television Signals)''.
■ f. In paragraphs (e)(6) and (7), remove ''§ 258.3'' and add in its place ''§ 386.2''.
■ g. In paragraph (h)(3)(i), remove the second sentence and add in its place ''Telephone or similar unsigned requests that meet these conditions may be permitted, where a follow-up written request detailing the same information is received by the Copyright Office within fourteen days after the required thirty-day period.''.

§ 201.12 [Amended]

■ 13. Amend § 201.12 as follows:

■ a. In paragraph (a), remove ''section 111(e)(2) of title 17 of the United States Code as amended by Public Law 94–553'' and add in its place ''17 U.S.C. 111(e)(2)''.

■ b. In paragraph (b), remove ''§ 201.3'' and add in its place ''§ 201.3(e)''.

■ c. In paragraph (c), remove ''record'' from the last sentence and add in its place ''recordation''.

§ 201.13 [Amended]

■ 14. Amend § 201.13 as follows:

■ a. In paragraph (a), remove ''section 110(4) of title 17 of the United States Code as amended by Public Law 94–553'' and add in its place ''17 U.S.C. 110(4)''.

■ b. In paragraph (d)(3), remove ''a telegram'' and add in its place ''an email, fax,'' and remove ''said paragraph (e)'' and add in its place ''paragraph (e) of this section''.

■ c. In paragraph (e)(2)(iii), remove ''Telegram, cablegram,'' and add in its place ''Email, fax,''.

§ 201.14 [Amended]

■ 15. Amend § 201.14 as follows:

■ a. In paragraphs (a)(1) and (2), remove ''as amended by Public Law 94–553''.

■ b. In paragraph (c)(2), remove ''8'' and add in its place ''eight''.

§ 201.15 [Reserved]

■ 16. Add and reserve § 201.15.

§ 201.16 [Amended]

■ 17. Amend § 201.16 by removing paragraph (c)(7).

■ 18. Amend § 201.17 as follows:

■ a. In paragraph (a), remove ''Coypright'' and add in its place ''Copyright'' and remove ''section 111(d)(2) of title 17 of the United States Code'' and add in its place ''17 U.S.C. 111(d)(1)''.

■ b. In paragraph (b)(1), remove ''Gross receipts for the'' and add in its place ''*Gross receipts* for the''.

■ c. In paragraph (b)(2), remove ''§ 201.17 of'' each place it appears and remove ''section, shall be'' and add in its place ''section shall be''.

■ d. In paragraph (b)(5), remove ''Section 111(f) of title 17 of the United States Code, as amended by Public Law 94–553, Public Law 103–369, and Public Law 111–175'' and add in its place ''17 U.S.C. 111(f), as amended by Public Laws 94–553, 103–369, and 111–175''.

■ e. In paragraph (b)(7), remove ''translator station is,'' and add in its place ''*translator station* is''.

■ f. In paragraph (b)(9), remove ''FCC'', '' and add in its place ''FCC,'' ''.

■ g. Revise paragraph (c)(1).

■ h. In paragraph (d)(1), remove the term ''U.S.'', and remove ''upon request. Requests may be mailed to the address specified in § 201.1'' and add in its place ''from the Copyright Office Web site''.

■ i. In paragraph (e)(5)(iii), add a period to the end of the sentence.

■ j. Revise paragraph (e)(7)

■ k. Revise paragraph (f)(3).

■ l. Remove paragraph (i)(1)(vi).

■ m. Revise paragraph (i)(3).

■ n. Remove paragraphs (i)(4) and (5).

■ o. Redesignate paragraphs (i)(6) through (10) as paragraphs (i)(4) through (8), respectively.

■ p. In paragraph (m)(2)(i), remove ''incomplete;'' and add in its place ''incomplete; or''.

■ q. In paragraph (m)(2)(ii), remove ''low; or'' and add in its place ''low.''.

■ r. Remove paragraph (m)(2)(iii).

■ s. In paragraph (m)(4)(i), remove the second sentence and add in its place ''Telephone or similar unsigned requests that meet these conditions may be permitted, where a follow-up written request detailing the same information is received by the Copyright Office within fourteen days after the required sixty-day period.''

■ t. Remove paragraph (m)(4)(iii)(C).

■ u. In paragraph (m)(4)(iv)(A), remove the phrase ''(except those filed under paragraph (m)(2)(iii) of this section)''.

■ v. In paragraph (m)(4)(iv)(B), remove the comma after the phrase ''this paragraph (m)''.

The revisions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(c) * * *

(1) Statements of Account shall cover semiannual accounting periods of January 1 through June 30, and July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by 17 U.S.C. 111(d)(1)(B) through (F), by no later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by no later than the immediately following March 1, if the Statement of Account covers the July 1 through December 31 accounting period.

(e) * * *

(7) The designation ''Gross Receipts'', followed by the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmissions during the period covered by the Statement of Account.

(i) If the cable system maintains its revenue accounts on an accrual basis, gross receipts for any accounting period includes all such amounts accrued for secondary transmission service furnished during that period, regardless of when accrued:

(A) Less the amount of any bad debts actually written-off during that accounting period;

(B) Plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period.

(ii) If the cable system maintains its revenue accounts on a cash basis, gross receipts of any accounting period includes all such amounts actually received by the cable system during that accounting period.

* * * * *

(f) * * *

(3) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified in 17 U.S.C. 111(f)(5)(B), and which remain in force under that provision. Two prorated adjustments, as prescribed in that section, are permitted under certain conditions where:

(i) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(ii) A station is carried on a ''substitute'' basis under rules, regulations, or authorizations of the FCC in effect on October 19, 1976 (as defined in 17 U.S.C. 111(f)(5)(B)(ii)), which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.

* * * * *

(i) * * *

(3) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSEs accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981. The presumption of this section can be rebutted in whole or in part:

(i) By actual carriage of a particular distant signal prior to June 25, 1981, as reported in Statements of Account duly filed with the Copyright Office (''actual carriage''), unless the prior carriage was not permitted by the FCC; or

(ii) By carriage of no more than the number of distant signals which was or would have been allotted to the cable system under the FCC's quota for importation of network and

nonspecialty independent stations (47 CFR 76.59(b), 76.61 (b) and (c), and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981).

* * * * *

§ 201.18 [Amended]

■ 19. Amend 201.18 as follows:

■ a. In paragraph (a)(2), remove ''his'' and add in its place ''the''.

■ b. In paragraph (a)(4) introductory text, remove ''subparagraphs (ii) and (iii)'' and add in its place ''paragraphs (a)(4)(ii) and (iii) of this section'', and in paragraphs (a)(4)(i) and (ii), remove ''that that'' and add in its place ''that'' each place it appears.

■ c. In paragraph (a)(5), remove the phrase ''*copyright owner,''* and add in its place the phrase '' ''copyright owner,'' ''.

■ d. In paragraph (b), remove ''paragraph (a)(4)'' and add in its place ''paragraph (a)(6)'', and remove ''§ 210.11(e)'' and add in its place ''§ 210.16(g)''.

■ e. In paragraph (f)(3), remove the phrase ''filed by being'' from the fourth sentence.

■ f. In paragraph (f)(4), remove ''paragraph (a)(4)'' and add in its place ''paragraph (b)'' each place it appears.

§ 201.22 [Amended]

■ 20. Amend § 201.22 as follows:

■ a. In paragraphs (a)(1) and (c)(1)(i), remove ''411(b)'' and add in its place ''411(c)''.

■ b. In paragraph (d)(3), remove ''a telegram'' and add in its place ''an email, fax,''.

■ c. In paragraph (e)(1), remove ''411(b)(1)'' and add in its place ''411(c)(1)''.

■ d. In paragraph (e)(2)(iii), remove ''Telegram, cablegram,'' and add in its place ''Email, fax,''.

§ 201.23 [Amended]

■ 21. Amend § 201.23 as follows:

■ a. In paragraph (a), remove '', as amended by Pub. L. 94–553, 90 Stat. 2541, effective January 1, 1978'' and remove the phrase '', as amended by Pub. L. 94–553''.

■ b. In paragraph (b), remove ''*Provided,* That:'' and add in its place ''provided that:''.

■ c. In paragraphs (b)(1) through (3), remove the phrase '', as amended by Pub. L. 94–553'' wherever it appears.

§ 201.25 [Amended]

■ 22. Amend § 201.25 as follows:

■ a. In paragraph (c)(1), remove ''Regulatory'' from the first sentence and add in its place ''Registry''.

■ b. In paragraph (e), remove ''record'' from the second sentence and add in its place ''recordation''.

§ 201.26 [Amended]

■ 23. Amend § 201.26 as follows:

■ a. In paragraph (b), remove ''*Definitions–*''and add in its place ''*Definitions.* ''.

■ b. In paragraph (d), remove ''*Documents–*'' and add in its place ''*documents.* ''.

■ c. Remove paragraph (d)(4).

■ d. In paragraph (f), remove ''record'' from the second sentence and add in its place ''recordation''.

§ 201.27 [Amended]

■ 24. Amend § 201.27(b)(3) by removing the comma following the term ''cassette''.

§ 201.28 [Amended]

■ 25. Amend § 201.28 as follows:

■ a. In paragraph (c)(3), remove the third and fourth sentences.

■ b. In paragraph (d)(1), remove ''from the Licensing Division, Library of Congress'' and add in its place ''free from the Copyright Office Web site'', remove ''Forms and other information may be requested from the Licensing Division by facsimile transmission (FAX), but copies'' and add in its place ''Copies'' and remove ''FAX'' and add in its place ''fax''.

■ c. In paragraph (e)(5), remove ''facsimile (FAX)'' and add in its place ''fax''.

■ d. In paragraph (j)(3)(i), remove the third sentence and add in its place ''Telephone or similar unsigned requests that meet these conditions may be permitted, where a follow-up written request detailing the same information is received by the Copyright Office within 14 days after the required 60-day period.''.

§ 201.29 [Amended]

■ 26. Amend § 201.29 as follows:

■ a. In paragraph (e), remove the term ''5'' and add in its place the term ''five''.

■ b. In paragraph (h)(1), remove the parentheses from the around the phrase ''of the manufacturing party or importing party''.

■ c. In paragraph (h)(2), remove ''telefax'' and add in its place ''fax''.

■ d. In paragraph (h)(6), remove the term ''(AHRA)''.

§ 201.31 [Removed and reserved]

■ 27. Remove and reserve § 201.31.

■ 28. Amend § 201.33 as follows:

■ a. In paragraph (a), remove ''automated database, which can be accessed over the Internet'' from the last sentence and add in its place ''Web site''.

■ b. In paragraph (b)(2)(iii), remove the phrase ''the new'' each place it appears.

■ c. In paragraph (b)(3)(iii)(A), remove ''United States'' and add in its place ''U.S.''.

■ d. In paragraph (d)(3)(ii)(G), remove ''Telefax number'' and add in its place ''Email address''.

■ e. In paragraph (e)(2)(i), remove ''Register of Copyrights'' and add in its place ''U.S. Copyright Office''.

■ f. In paragraph (e)(2)(ii), remove ''U.S.'' from each place it appears in the paragraph heading and the paragraph body, and remove ''§ 201.1'' from the last sentence and add in its place ''§ 201.1(b)''.

■ g. In paragraph (e)(2)(iii), remove ''VISA, MasterCard and American Express'' from the first sentence and add in its place ''most major credit cards''.

■ h. Revise paragraph (f).

The revision reads as follow:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

* * * * *

(f) *Public access.* Notices of Intent to Enforce filed with the Copyright Office are available for public inspection and copying in the Records Research and Certification Section. Some of the information contained in these records is available on the Office's Web site, including the title of the work or a brief description if the work is untitled and the name of the copyright owner or owner of an exclusive right.

* * * * *

Appendix A to § 201.33 [Amended]

■ 29. Amend Appendix A to § 201.33 by removing ''Telefax'' from item 13 and adding in its place ''Fax''.

■ 30. Amend § 201.34 as follows:

■ a. In paragraph (d)(3)(viii)(D), remove ''telefax'' and add in its place ''fax''.

■ b. In paragraph (e), italicize ''Fee—'' in the paragraph heading.

■ c. Revise paragraph (f).

The revision reads as follows:

§ 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Rounds Agreement Act.

* * * * *

(f) *Public access.* Correction Notices of Intent to Enforce filed with the Copyright Office are available for public inspection and copying in the Records Research and Certification Section.

* * * * *

§ 201.38 [Amended]

■ 31. Amend § 201.38 in paragraph (e) by removing ''§ 201.1'' from the first sentence and adding in its place ''§ 201.1(c)(3)'' and by removing the sentence ''If mailed, the Interim Designation should be addressed to: Copyright GC/I&R, PO Box 70400, Washington, DC 20024.''.

§ 201.39 [Amended]

■ 32. Amend § 201.39 as follows:

■ a. In paragraph (g)(1), italicize the paragraph heading ''Method of filing.''.

■ b. In paragraph (g)(3)(i), remove ''Register of Copyrights'' and add in its place ''U.S. Copyright Office''.

■ c. In paragraph (g)(3)(ii), remove ''U.S.'' from each place it appears in the paragraph heading and the paragraph body and remove ''§ 201.1'' and add in its place ''§ 201.1(b)''.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 33. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.2 [Amended]

■ 34. Amend § 202.2 as follows:

■ a. In paragraph (b)(2), remove ''his'' and add in its place ''the producer's''.

■ b. In paragraph (b)(5), remove ''his name'' and add in its place ''that person's name''.

■ c. Redesignate paragraphs (b)(6)(i) through (iii) as paragraphs (b)(6)(i)(A) through (C), respectively, redesignate the introductory text of paragraph (b)(6) as (b)(6)(i), and designate the undesignated text preceding paragraph (b)(7) as (b)(6)(ii).

■ d. In newly redesignated paragraph (b)(6)(i)(C), remove ''*Provided, however,* That'' and add in its place ''Provided, however, that'' and remove ''three foregoing types of cases'' and add in its place ''three types of cases described in paragraphs (b)(6)(i)(A) through (C) of this section''.

§ 202.3 [Amended]

■ 35. Amend § 202.3 as follows:

■ a. In paragraph (a)(1), remove the phrase '', as amended by Public Law 94–553''.

■ b. In paragraph (b)(1)(v), italicize the paragraph heading ''Class SE: Serials.''.

■ c. In paragraph (b)(2)(i)(A), remove '' [*www.copyright.gov*]'' and add in its place ''(*www.copyright.gov*)''.

■ d. In paragraph (b)(2)(i)(D), remove the phrase ''a remitter'' and add in its place the phrase ''an applicant''.

■ e. In paragraph (b)(2)(ii)(C), remove ''the type of authorship that predominates'' from the fourth sentence and add in its place ''the predominant type of authorship''.

■ f. In paragraph (b)(2)(ii)(D), remove '' [*www.copyright.gov*]'' and add in its place ''(*www.copyright.gov*)''.

■ g. In paragraph (b)(6)(v), remove ''under 408(c)(1) of title 17'' and add in its place ''under 17 U.S.C 408(c)(1)''.

■ h. In paragraph (b)(8)(i), remove the phrase '', as amended by Public Law 94–553''.

§ 202.4 [Removed and reserved]

■ 36. Remove and reserve § 202.4.

§ 202.5 [Amended]

■ 37. Amend § 202.5 as follows:

■ a. In paragraph (a), remove the term ''hull''.

■ b. In paragraph (b)(2), remove ''§ 201.3(d)(3)(i)'' and add in its place ''§ 201.3(d)''.

■ c. In paragraph (b)(3), remove ''Registration Program written notice'' and add in its place ''written notice from the Registration Program'' and remove the term ''initial''.

■ d. In paragraph (c)(2), remove ''§ 201.3(d)(3)(ii)'' and add in its place ''§ 201.3(d)''.

■ e. In paragraph (d)(1), remove ''§ 201.1'' and add in its place ''§ 201.1(c)(4)''.

■ f. In paragraph (e), remove ''*wavier''* from the paragraph heading and add in its place ''*waiver''*.

■ 38. Amend § 202.12 as follows:

■ a. In paragraph (b)(1), italicize the terms ''restored work'' and ''source country'', and remove the term ''the URAA'' and add in its place the phrase ''17 U.S.C. 104(A)(g)(6) and (8)''.

■ b. Revise paragraph (c)(1).

■ c. Remove paragraph (c)(2).

■ d. Redesignate paragraphs (c)(3) and (4) as paragraphs (c)(2) and (3), respectively.

■ e. In newly redesignated paragraph (c)(2)(ii)(A), remove ''Register of Copyrights'' and add in its place ''U.S. Copyright Office''.

■ f. In newly redesignated paragraph (c)(2)(ii)(B), remove ''U.S.'' from each place it appears in the paragraph heading and the paragraph body.

■ g. In newly redesignated paragraph (c)(2)(ii)(C), remove ''URAA'' and add in its place ''GATT'' and remove ''VISA, MasterCard, and American Express'' and add in its place ''most major credit cards''.

■ h. In newly redesignated paragraph (c)(3)(i), remove ''the amended section 104A'' and add in its place ''17 U.S.C. 104A'' and remove ''paragraphs (c)(4)(ii)'' and add in its place ''paragraphs (c)(3)(ii)''.

■ i. In newly redesignated paragraph (c)(3)(iv), remove ''paragraph (c)(4)(i)'' and add in its place ''paragraph (c)(3)(i)''.

■ j. In newly redesignated paragraph (c)(3)(v), remove ''may seek an alternative deposit under special relief (37 CFR 202.20(d))'' and add in its place ''may submit an alternative deposit under a grant of special relief under § 202.20(d)''.

■ k. In newly redesignated paragraph (c)(3)(vi), remove ''telefax'' and add in its place ''fax''.

■ l. In paragraph (d), remove ''copyrights'' and add in its place ''works''.

The revision reads as follows:

§ 202.12 Restored copyrights.

* * * * *

(c) *Registration*—(1) *Application.* Applications for registration for single works restored to copyright protection under the URAA should be made on Form GATT. Copies of this form may be obtained from the Office's Web site or by contacting the Public Information Office at (202) 707–3000. Applicants should submit the completed application with the appropriate filing fee and deposit copies and materials required by paragraph (c)(3) of this section in the same package by mail.

* * * * *

§ 202.16 [Amended]

■ 39. Amend § 202.16 as follows:

■ a. In paragraph (a), remove ''Section 408(f) of 17 U.S.C.'' and add in its place ''17 U.S.C. 408(f).''.

■ b. Revise paragraph (c)(3).

■ c. In paragraph(c)(5)(ii)(A), italicize the paragraph heading ''Copyright Office deposit account.''

■ d. In paragraph (c)(5)(ii)(B), italicize the paragraph heading ''Credit cards, debit cards and electronic funds transfer.''

■ e. In paragraph (c)(5)(ii)(C), italicize the paragraph heading ''No refunds.''

■ f. Revise paragraph (c)(6)(i) and paragraphs (c)(6)(iii) through (v).

■ h. In paragraph (c)(6)(vi), remove the last sentence and add in its place ''The description may also explain the general presentation (*e.g.,* the lighting, background scenery, positioning of elements of the subject matter as it is seen in the photographs), and should provide any locations and events, if applicable, associated with the photographs.''

■ i. Revise paragraph (c)(10).

■ j. In paragraph (c)(11), remove ''Information and Records Division'' and add in its place ''Office of Public Information and Education''.

■ k. Revise paragraph (c)(12).

The revisions read as follows:

§ 202.16 Preregistration of copyrights.

* * * * *

(c) * * *

(3) *Application.* An application for preregistration must be submitted electronically on the Copyright Office Web site at: *http://www.copyright.gov.*

* * * * *

(6) * * *

(i) For motion pictures, the identifying description should include the following information to the extent known at the time of filing: The subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered.

* * * * *

(iii) For musical compositions, the identifying description should include the following information to the extent known at the time of filing: The subject matter of the lyrics, if any; the genre of the work (*e.g.,* classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); the performer, principal recording location, record label, motion picture, or other information relating to any sound recordings or motion pictures that are being prepared for commercial distribution and will include the musical composition; and any other detail or characteristic that may assist in identifying the particular musical composition.

(iv) For literary works in book form, the identifying description should include to the extent known at the time of filing: The genre of the book (*e.g.,* biography, novel, history, etc.), and should include a brief summary of the work including, the subject matter (*e.g.,* a biography of President Bush, a history of the war in Iraq, a fantasy novel); a description (where applicable) of the plot, primary characters, events, or other key elements of the content of the work; and any other salient characteristics of the book (*e.g.,* whether it is a later edition or revision of a previous work, as well as any other detail which may assist in identifying the literary work in book form).

(v) For computer programs (including videogames), the identifying description should include to the extent known at the time of filing: The nature, purpose and function of the computer program, including the programming language in which it is written and any particular organization or structure in which the program has been created; the form in which it is expected to be published (*e.g.,* as an online-only product; whether there have been previous versions and identification of such previous versions); the identities of persons involved in the creation of the computer program; and, if the work is a videogame, also the subject matter of the videogame and the overall object, goal, or purpose of the game, its characters, if any, and the general setting and surrounding found in the game.

* * * * *

(10) *Notification of preregistration.* Upon completion of the preregistration, the Copyright Office will email an official notification of the preregistration to the person who submitted the application.

* * * * *

(12) *Public record of preregistration.* The preregistration record also will be made available to the public on the Copyright Office Web site at: *http://www.copyright.gov.*

* * * * *

§ 202.17 [Amended]

■ 40. Amend § 202.17 as follows:

■ a. In paragraph (b)(1), remove ''[as'' and add in its place ''(as'' and remove ''(C)]'' and add in its place ''(C))''.

■ b. In paragraph (c)(2), remove ''409(11),'' and add in its place ''409(10),''.

■ c. In the heading to paragraph (e), remove ''*Section''* and add in its place ''*section''.*

■ d. In paragraph (e)(2), remove ''name[s]'' and add in its place ''name(s)'' each place it appears, remove ''claimant[s]'' and add in its place ''claimant(s)'' each place it appears, and remove ''sixty-seven year'' and add in its place ''67-year''.

■ e. In paragraph (e)(3), remove ''(b)(4)'' and add in its place ''(b)(3)''.

■ f. In paragraph (f)(2), remove ''(f)(1)(i)'' and add in its place ''(f)(1)''.

■ g. In paragraph (g)(1), remove ''U.S. Copyright Office homepage at *http://www.copyright.gov''* from the second sentence and add in its place ''Copyright Office Web site at: *http://www.copyright.gov'',* remove ''Request.'' and add in its place ''request.'', and remove ''§ 201.1'' and add in its place ''§ 201.1(b)''.

■ h. In paragraph (h)(3)(vii), remove ''[effective'' and add in its place ''(effective'' and remove ''1988]'' and add in its place ''1988)''.

■ 41. Amend § 202.19 as follows:

■ a. In paragraph (a), remove '', as amended by Public Law 94–553'' and remove ''of these regulations''.

■ b. Revise paragraph (b)(2).

■ c. In paragraph (b)(4), remove ''§ 202.19(c)(5) of this regulation'' and add in its place ''paragraph (c)(5) of this section''.

■ d. In paragraphs (c)(5) and (d)(2)(iii)(B), and (d)(2)(iv), remove ''of these regulations'' wherever it occurs.

■ e. Revise paragraph (d)(2)(iv).

■ f. In paragraph (d)(2)(vi), remove the comma after the term ''kits''.

■ g. In paragraph (e)(1)(iv), remove the phrase ''of these regulations''.

■ h. In paragraph (e)(3), remove ''for Registration Program'' and add in its place ''of Copyrights and Director of the Office of Registration Policy and Practice''.

■ i. In paragraph (f)(1), remove ''on the application'' and remove ''of these regulations''.

The revisions read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(b) * * *

(2) A *complete* copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from the mandatory deposit requirement under paragraph (c) of this section.

(i) In the case of sound recordings, a ''complete'' phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(ii) In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a ''complete'' copy; and

(B) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a ''complete'' copy.

(iii) In the case of a motion picture, a copy is ''complete'' if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(iv) In the case of an electronic work published in the United States and available only online, a copy is ''complete'' if it includes all elements constituting the work in its published form, *i.e.,* the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit.

* * * * *

(d) * * *

(2) * * *

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and:

(A) Less than five copies of the work have been published; or

(B) The work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

* * * * *

■ 42. Amend § 202.20 as follows:

■ a. In paragraph (a), remove ‘‘, as amended by Public Law 94–553’’ and remove ‘‘of these regulations’’.

■ b. In paragraph (b)(1), remove ‘‘*The*’’ and add in its place ‘‘The’’.

■ c. In paragraph (b)(2)(ii), remove ‘‘(b)(2) (iv)’’ and add in its place ‘‘(b)(2)(iv)’’.

■ d. Revise paragraph (b)(2)(iii).

■ e. In paragraph (b)(2)(v), remove ‘‘§ 202.19(b)(2) of these regulations;’’ and add in its place ‘‘§ 202.19(b)(2)(i).’’.

■ f. In paragraph (b)(2)(vi)(B), remove the term ‘‘copy;’’ and add in its place the term ‘‘copy.’’.

■ g. In paragraph (b)(6), remove ‘‘§ 202.20’’ and add in its place ‘‘section’’ and remove the term ‘‘as’’.

■ h. In paragraph (c)(2)(i)(G), remove ‘‘(c)(2)(xi)(B)(*5*)’’ and add in its place ‘‘(c)(2)(xi)(B)’’.

■ i. In paragraphs (c)(2)(ii), (c)(2)(iii)(B), (c)(2)(iv), and (c)(2)(v), remove the phrase ‘‘of these regulations’’ each place it appears.

■ j. In paragraph (c)(2)(vii)(A)(*2*), remove ‘‘units, entire’’ and add in its place ‘‘units, the entire’’ and remove ‘‘proportinately’’ and add in its place ‘‘proportionately’’.

■ k. In paragraphs (c)(2)(viii)(A) and (c)(2)(x), remove the phrase ‘‘of these regulations’’ each place it appears.

■ l. In paragraph (c)(2)(xi)(A), remove ‘‘of these regulations’’ and add in its place ‘‘of this chapter’’.

■ m. In paragraphs (c)(2)(xii) and (c)(2)(xiii), remove the phrase ‘‘of these regulations’’ each place it appears.

■ n. In paragraph (c)(2)(xvi), remove ‘‘the deposit phonorecord’’ and add in its place ‘‘the phonorecord’’.

■ o. In paragraph (c)(2)(xviii)(A), add footnote 6 after the first sentence, and designate the undesignated text after paragraph (c)(2)(xviii)(A)(*4*) as the text to footnote 6 with a superscript ‘‘6’’ preceding the text.

■ p. In paragraph (c)(2)(xviii)(B), remove the phrase ‘‘of these regulations’’ and add footnote 7 after the second sentence. Designate the undesignated text after paragraph (c)(2)(xviii)(B)(4) as the text to footnote 7 with a superscript ‘‘7’’ preceding the text.

■ q. In paragraphs (d)(1)(iv) and (d)(3), remove ‘‘of these regulations’’ each place it appears.

■ r. In paragraph (d)(3), remove ‘‘for Registration Program of the Copyright Office’’ and add in its place ‘‘of Copyrights and Director of the Office of Registration Policy and Practice’’.

■ s. In paragraph (e), remove ‘‘section 407 of title 17 and § 202.19 of these regulations’’ and add in its place ‘‘17 U.S.C. 407 and § 202.19’’, remove ‘‘of claim’’ and add in its place ‘‘of a claim’’, and remove the phrase ‘‘on the application’’.

The revision reads as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(b) * * *

(2) * * *

(iii) Works submitted for registration in digital formats. A ‘‘complete’’ electronically filed work is one which is embodied in a digital file which contains:

(A) If the work is unpublished, all authorship elements for which registration is sought; and

(B) If the work is published solely in an electronic format, all elements constituting the work in its published form, *i.e.,* the complete work as published, including metadata and authorship for which registration is not sought. Publication in an electronic only format requires submission of the digital file(s) in exact first-publication form and content.

(C) For works submitted electronically, any of the following file formats are acceptable for registration: PDF, TXT, WPD, DOC, TIF, SVG, JPG, XML, HTML, WAV, and MPEG family of formats, including MP3. This list of file formats is non-exhaustive and it may change, or be added to periodically. Changes will be noted in the list of acceptable formats on the Copyright Office Web site.

(D) Contact with the registration applicant may be necessary if the Copyright Office cannot access, view, or examine the content of any particular digital file that has been submitted for the registration of a work. For purposes of 17 U.S.C. 410(d), a deposit has not been received in the Copyright Office until a copy that can be reviewed by the Office is received.

* * * * *

§ 202.21 [Amended]

■ 43. Amend § 202.21 as follows:

■ a. In paragraph (a), remove ‘‘and to’’ from the first sentence and add in its place ‘‘and’’ and remove the phrase ‘‘of these regulations’’.

■ b. In paragraph (g)(1)(i), remove ‘‘and description’’ and add in its place ‘‘and a description’’.

■ c. In paragraph (h), remove the phrase ‘‘of these regulations’’.

§ 202.22 [Amended]

■ 44. Amend § 202.22 in paragraph (f)(1)(i) by removing the phrase ‘‘not later than’’ and adding in its place the phrase ‘‘no later than’’.

§ 202.23 [Amended]

■ 45. Amend § 202.23 as follows:

■ a. In paragraph (a)(1), remove ‘‘708(a)(11)’’ and add in its place ‘‘708(a)’’.

■ b. In paragraph (b)(2), remove ‘‘Chief, Information and Records Division of the Copyright Office,’’ add in its place ‘‘Director of the Office of Public Records and Repositories at the address specified in § 201.1(b)(1) of this chapter,’’, and remove ‘‘(i)’’ and ‘‘(ii)’’.

■ c. In paragraph (c)(2), remove the word ‘‘of’’ after ‘‘§ 202.20’’.

■ d. In paragraph (e)(1), remove ‘‘708(a)(11)’’ and add in its place ‘‘708(a)’’ and add ‘‘of this chapter’’ after ‘‘§ 201.3(d)’’.

■ e. In paragraph (e)(2), add ‘‘of this chapter’’ after ‘‘§ 201.3(d)’’ and remove ‘‘Register of Copyrights’’ and add in its place ‘‘U.S. Copyright Office’’.

§ 202.24 [Amended]

■ 46. Amend § 202.24 as follows:

■ a. In paragraphs (a)(1), (c)(1), and (c)(2) by removing ‘‘of these regulations’’.

■ b. In paragraph (d)(1)(i) by removing ‘‘section 407(d) of Title 17’’ and adding in its place ‘‘17 U.S.C. 407(d)’’.

Appendix B to Part 202 [Amended]

■ 47 Amend Appendix B to Part 202 as follows:

■ a. In the introductory text, designate the five undesignated paragraphs as a., b., c., d., and e., respectively.

■ b. In paragraph III.A., add a colon to the end of the term ‘‘Film’’ and add periods to the ends of paragraphs III.A.1. through III.A.4.

■ c. In paragraph III.B., add a colon to the end of the words ‘‘Video Formats’’ and add periods to the ends of paragraphs III.B.1. through III.B.4.

■ d. In paragraph VI.A.1., remove ‘‘*Vocal music:*’’ and add in its place ‘‘Vocal music:’’.

■ e. In paragraph VI.A.1.a., remove ‘‘accompaniment—’’ and add in its place ‘‘accompaniment:’’.

■ f. In paragraph VI.A.2., remove ‘‘*Instrumental music:*’’ and add in its place ‘‘Instrumental music:’’.

■ g. In paragraph VIII.A., add a colon to the end of the word ''Programs''.
■ h. In paragraph VIII.A.3., remove ''*Format:*'' and add in its place ''Format:''.
■ i. In paragraph VIII.B.4., remove ''*Format*'' and add in its place ''Format:''.
■ j. In paragraph IX.A., add a colon to the end of the word ''Serials''.
■ k. In paragraph IX.A.1., add a colon to the end of the word ''Format''.

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 48. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702, 5 U.S.C. 552, as amended.

■ 49. Revise § 203.2 to read as follows:

§ 203.2 Authority and functions.

The administration of the copyright law was entrusted to the Library of Congress by an act of Congress in 1870, and the Copyright Office has been a separate department of the Library since 1897. The statutory functions of the Copyright Office are contained in and carried out in accordance with the Copyright Act.

■ 50. Amend § 203.3 as follows:
■ a. Revise paragraphs (a) through (d).
■ b. Redesignate paragraphs (e) through (g) as paragraphs (i) through (k), respectively.
■ c. Add new paragraphs (e) through (g).
■ d. Revise paragraph (h).
■ e. In newly redesignated paragraph (j), remove ''Avenue, SE, Washington, DC'' and add in its place ''Avenue SE., Washington, DC''.
■ f. Add paragraph (l).

The revisions and additions read as follows:

§ 203.3 Organization.

(a) The Office of the Register of Copyrights has overall responsibility for the Copyright Office and its statutory mandate, specifically: For legal interpretation of the copyright law; administering the provisions of title 17 of the U.S.C.; promulgating copyright regulations; advising Congress and other government officials on domestic and international copyright policy and other intellectual property issues; determining personnel and other resource requirements for the Office; organizing strategic and annual program planning; and preparing budget estimates for inclusion in the budget of the Library of Congress and U.S. Government.

(b) The Office of the Chief of Operations is headed by the Chief of Operations (''COO''), who advises the Register on core business functions and coordinates and directs the day-to-day operations of the Copyright Office. The Office of the COO supervises financial controls, budget, human capital, statutory royalty investments, mandatory deposits and acquisitions, contracts, and strategic planning functions. This Office interacts with every other senior management office that reports to the Register and frequently coordinates and assesses institutional projects. The COO chairs the Copyright Office's operations committee. The following divisions fall under the oversight of the COO:

(1) The Receipt Analysis and Control Division is responsible for sorting, analyzing, and scanning incoming mail; creating initial records; labeling materials; and searching, assembling, and dispatching electronic and hardcopy materials and deposits to the appropriate service areas. The Division is responsible for operating the Copyright Office's central print room, mail functions, and temporary storage. The Division also processes all incoming fees and maintains accounts, related records, and reports involving fees received.

(2) The Licensing Division administers certain statutory licenses set forth in the Copyright Act. The Division collects royalty payments and examines statements of account for the cable statutory license (17 U.S.C. 111), the satellite statutory license for retransmission of distant television broadcast stations (17 U.S.C. 119), and the statutory license for digital audio recording technology (17 U.S.C. chapter 10). The Division also accepts and records documents associated with the use of the mechanical statutory license (17 U.S.C. 115).

(3) The Copyright Acquisitions Division administers the mandatory deposit requirements of the Copyright Act, acting as an intermediary between copyright owners of certain published works and the acquisitions staff in the Library of Congress. 17 U.S.C. 407. This Office creates and updates records for the copies received by the Copyright Office; demands particular works or particular formats of works as necessary; and administers deposit agreements between the Library and copyright owners.

(c) The Office of the General Counsel is headed by the General Counsel and Associate Register of Copyrights, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register in carrying out critical work of the Copyright Office regarding the legal interpretation of the copyright law. The General Counsel liaises with the Department of Justice, other federal departments, and the legal community on a wide range of copyright matters including litigation and the administration of title 17 of the U.S.C. The General Counsel also has primary responsibility for the formulation and promulgation of regulations and the adoption of legal positions governing policy matters and the practices of the Copyright Office.

(d) The Office of Policy and International Affairs is headed by the Associate Register of Copyrights and Director of Policy and International Affairs, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register with critical policy functions of the Copyright Office, including domestic and international policy analyses, legislative support, and trade negotiations. Policy and International Affairs represents the Copyright Office at meetings of government officials concerned with the international aspects of intellectual property protection, and provides regular support to Congress and its committees on statutory amendments and construction.

(e) The Office of Registration Policy and Practice is headed by the Associate Register of Copyrights and Director of Registration Policy and Practice, who is an expert copyright attorney and one of four legal advisors to the Register. This Office administers the U.S. copyright registration system and advises the Register of Copyrights on questions of registration policy and related regulations and interpretations of copyright law. This Office has three divisions: Literary, Performing Arts, and Visual Arts. It also has a number of specialized sections, for example, in the area of motion pictures. This Office executes major sections of the *Compendium of Copyright Office Practices,* particularly with respect to the examination of claims and related principles of law.

(f) The Office of Public Information and Education is headed by the Associate Register for Public Information and Education, who is an expert copyright attorney and one of four legal advisors to the Register. This Office informs and helps carry out the work of the Register and the Copyright Office in providing authoritative information about the copyright law to the public and establishing educational programs. The Office publishes the copyright law and other provisions of title 17 of the U.S.C.; maintains a robust and accurate public Web site; creates and distributes a variety of circulars, information sheets, and newsletters, including NewsNet; responds to public

inquiries regarding provisions of the law, explaining registration policies, procedures, and other copyright-related topics upon request; plans and executes a variety of educational activities; and engages in outreach with various copyright community stakeholders.

(g) The Office of Public Records and Repositories is headed by the Director, who is an expert in public administration and one of the Register's top business advisors. This Office is responsible for carrying out major provisions of title 17 of the U.S.C., including establishing records policies; ensuring the storage and security of copyright deposits, both analog and digital; recording licenses and transfers of copyright ownership; preserving, maintaining, and servicing copyright-related records; researching and providing certified and non-certified reproductions of copyright deposits; and maintaining the official records of the Copyright Office. Additionally, the Office engages regularly in discussions with leaders in the private and public sectors regarding issues of metadata, interoperability, data management, and open government.

(h) The Office of the Chief Information Officer is headed by the Chief Information Officer (''CIO''), who is the Register's top advisor on the development and implementation of technology policy and infrastructure. The Office of the CIO provides strategic leadership and direction for necessary planning, design, development, and implementation of the Copyright Office's automated initiatives. The Office of the CIO is a liaison to the central technology office of the Library of Congress, which administers the Copyright Office's networks and communications. The CIO also supervises the Copyright Technology Office. The Copyright Technology Office maintains certain Copyright Office enterprise-wide IT systems for registration, recordation, public records management and access, and related public services, as well as certain internal and external help-desk functions.

* * * * *

(l) The U.S. Copyright Office makes certain documents and records available to the public in electronic format pursuant to 5 U.S.C. 552(a)(2). Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including information regarding registrations and recorded documents, are available on the Office's Web site. Frequently requested Copyright Office circulars, announcements, recently proposed regulations, as well as final regulations are also available on the Office's Web site. The address for the Office's Web site is *www.copyright.gov.*

§ 203.4 [Amended]

■ 51. Amend § 203.4 as follows:

■ a. In paragraph (c), remove ''Avenue, SE'' and add in its place ''Avenue SE.''.

■ b. In paragraph (d), remove from the second sentence '', Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559–6000,'' and add in its place ''at the address specified in § 201.1(c)(1) of this chapter'', remove ''Avenue, SE,'' and add in its place ''Avenue SE.,'' and remove in the last sentence ''Office response'' and add in its place ''Office's response''.

■ c. Revise paragraphs (f) and (g).

■ d. In paragraph (i)(2), remove ''ten (10)'' and add in its place ''10''.

The revisions read as follows:

§ 203.4 Methods of operation.

* * * * *

(f) The Office will respond to all properly marked mailed requests and all personally delivered written requests for records within 20 working days of receipt by the Supervisory Copyright Information Specialist. If it is determined that an extension of time greater than 10 working days is necessary to respond to a request due to unusual circumstances, as defined in paragraph (h) of this section, the Supervisory Copyright Information Specialist shall so notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within 20 working days, or

(2) Arrange with the Office an alternative time frame for processing the request or a modified request.

(g) If a request is denied, the written notification will include the basis for the denial, names of all individuals who participated in the determination, and procedures available to appeal the determination. If a requester wishes to appeal a denial of some or all of his or her request for information, he or she must make an appeal in writing within 30 calendar days of the date of the Office's denial. The request should be directed to the General Counsel of the United States Copyright Office at the address specified in § 201.1(c)(1) of this chapter. The appeal should be clearly labeled ''Freedom of Information Act Appeal.'' The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the General Counsel or his or her delegate within 20 working days. If, on appeal, the denial is upheld in whole or in part, the written determination will include the basis for the appeal denial and will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

* * * * *

§ 203.6 [Amended]

■ 52. Amend § 203.6 as follows:

■ a. In paragraph (a), remove ''themseleves'' from the last sentence and add in its place ''themselves''.

■ b. In paragraph (e),

■ 1. Form the first sentence, remove ''amoun t'' and add in its place ''amount'', remove ''praticable'' and add in its place ''practicable'', remove ''his willingness'' and add in its place ''a willingness'',

■ 2. From the last sentence, remove ''offer him'' and add in its place ''offer the requester'', remove ''his request'' and add in its place ''the request'', and remove the ''his needs'' and add in its place ''the requester's needs''.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

■ 53. The authority citation continues to read as follows:

Authority: 17 U.S.C. 702, 5 U.S.C. 552(a).

§ 204.4 [Amended]

■ 54. Amend § 204.4 as follows:

■ a. In paragraph (a), remove ''Copyright Information Section, Copyright GC/I&R, P.O. Box 70400,, Washington, DC 20024'' and add in its place ''U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024–0400''.

■ b. In paragraph (b), remove ''Office'' and add in its place ''Office's''.

■ c. In paragraph (d), remove ''Records'' and add in its place ''records''.

§ 204.5 [Amended]

■ 55. Amend § 204.5 as follows:

■ a. In paragraph (a), remove ''Copyright Information Section, Copyright GC/I&R'' and add in its place ''U.S. Copyright Office'', remove ''20024'' and add in its place ''20024–0400'', and remove the phrase ''Avenue, SE'' and add in its place the phrase ''Avenue SE.''.

■ b. In paragraph (b), remove ''Office'' and add in its place ''Office's''.

§ 204.7 [Amended]

■ 56. Amend § 204.7 as follows:

■ a. In paragraph (a), remove ''Copyright Information Section, Copyright GC/I&R'' and add in its place ''U.S. Copyright Office'', remove ''20024'' and add in its place ''20024–0400'' and remove

''Avenue, SE'' and add in its place ''Avenue SE.''.

■ b. In paragraph (b), remove ''for Office response'' and add in its place ''for the Office's response'', remove ''section 408(d) of Public Law 94–553'' and add in its place ''17 U.S.C. 408(d)'' and remove '', the Office response'' and add in its place '', the Office's response''.

■ 57. Revise § 204.8 to read as follows:

§ 204.8 Appeal of refusal to correct or amend an individual's record.

(a) An individual who disagrees with a refusal of the Copyright Office to amend his or her record may request a review of the denial. The individual should submit a written appeal to the General Counsel of the United States Copyright Office at the address specified in § 201.1(c)(1) of this chapter. Appeals, and the envelopes containing them, should be plainly marked ''Privacy Act Appeal.'' Failure to so mark the appeal may delay the General Counsel's response. An appeal should contain a copy of the request for amendment or correction and a copy of the record alleged to be untimely, inaccurate, incomplete, or irrelevant.

(b) The General Counsel will issue a written decision granting or denying the appeal within 30 working days after receipt of the appeal unless, after showing good cause, the General Counsel extends the 30-day period. If the appeal is granted, the requested amendment or correction will be made promptly. If the appeal is denied, in whole or in part, the General Counsel's decision will set forth reasons for the denial. Additionally, the decision will advise the requester that he or she has the right to file with the Copyright Office a concise statement of his or her reasons for disagreeing with the refusal to amend the record and that such statement will be attached to the requester's record and included in any future disclosure of such record. If the requester is dissatisfied with the agency's final determination, the individual may bring a civil action against the Office in the appropriate United States district court.

PART 205—LEGAL PROCESSES

■ 58. The authority citation for part 205 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 59. Revise § 205.1 to read as follows:

§ 205.1 Definitions.

For the purpose of this part:

Demand means an order, subpoena or any other request for documents or testimony for use in a legal proceeding.

Document means any record or paper held by the Copyright Office, including, without limitation, official letters, deposits, recordations, registrations, publications, or other material submitted in connection with a claim for registration of a copyrighted work.

Employee means any current or former officer or employee of the Copyright Office, as well as any individual subject to the jurisdiction, supervision, or control of the Copyright Office.

General Counsel, unless otherwise specified, means the General Counsel and Associate Register of Copyrights or his or her designee.

Legal proceeding means any pretrial, trial, and post-trial stages of existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings. This phrase also includes state court proceedings (including grand jury proceedings) and any other state or local legislative and administrative proceedings.

Office means the Copyright Office, including any division, section, or operating unit within the Copyright Office.

Official business means the authorized business of the Copyright Office.

Testimony means a statement in any form, including a personal appearance before a court or other legal tribunal, an interview, a deposition, an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, a telephonic, televised, or videotaped statement or any response given during discovery or similar proceeding, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

United States means the Federal Government, its departments and agencies, individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

§ 205.2 [Amended]

■ 60. Amend § 205.2 as follows:

■ a. In paragraph (a), remove '', Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400'' and add in its place ''at the address specified in § 201.1(c)(1) of this chapter''.

■ b. In paragraph (b), remove the comma after ''Avenue''.

§§ 205.6 through 205.10 [Reserved]

■ 61. Add and reserve §§ 205.6 through 205.10 to subpart A.

§ 205.11 [Amended]

■ 62. Amend § 205.11 in paragraph (a) by removing ''Office response'' from the fourth sentence and adding in its place ''the Office's response''.

§ 205.13 [Amended]

■ 63. Amend § 205.13 by removing '', GC/I&R, P.O. Box 70400, Washington, DC 20024–0400'' and adding in its place ''at the address specified in § 201.1(c)(1) of this chapter'' and by removing the comma after ''Avenue''.

§§ 205.14 through 205.20 [Reserved]

■ 64. Add and reserve §§ 205.14 through 205.20 to subpart B.

§ 205.22 [Amended]

■ 65. Amend § 205.22 as follows:

■ a. In paragraph (a)(2), remove ''(*e.g.,* 37 CFR, Chapter II; Compendium II, Compendium of Copyright Office Practices'' and add in its place ''(*e.g.,* 37 CFR, Chapter II; Compendium of U.S. Copyright Office Practices, Third Edition'', and remove ''Copyright General Counsel'' and add in its place ''General Counsel of the Copyright Office''.

■ b. In paragraph (b), remove ''Counsel, no'' and add in its place ''Counsel of the Copyright Office, no'' and remove ''Copyright General Counsel'' and add in its place ''General Counsel of the Copyright Office''.

■ c. In paragraph (c), remove ''Copyright Office General Counsel'' and add in its place ''General Counsel of the Copyright Office'' and remove ''Copyright General Counsel'' and add in its place ''General Counsel''.

■ d. In paragraph (f), remove the colon from the end of the paragraph heading, add in its place a period, and wrap up the next paragraph (f)(1).

§ 205.23 [Amended]

■ 66. Amend § 205.23 as follows:

■ a. Redesignate paragraph (b)(4) as paragraph (c).

■ b. In newly redesignated paragraph (c), remove ''these limitations'' and add in its place ''the limitations set forth in paragraph (b) of this section'' and remove ''of this part''.

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS FOR NONDRAMATIC MUSICAL WORKS

■ 67. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

§ 210.15 [Amended]

■ 68. Amend § 210.15 introductory text by removing the term ''Permanently'' and adding in its place the term ''permanently''.

§ 210.17 [Amended]

■ 69. Amend § 210.17 as follows:
■ a. In paragraph (d)(3)(ix), remove ''Compact'' and add in its place ''compact'' and remove ''Limited'' and add in its place ''limited''.
■ b. In paragraph (h), remove ''6'' from the second sentence and add in its place ''six''.

PART 211—MASK WORK PROTECTION

■ 70. The authority citation for part 211 is revised to read as follows:

Authority: 17 U.S.C. 702, 908.

§ 211.1 [Amended]

■ 71. Amend § 211.1 in paragraph (a), by removing ''shall be addressed to: Library of Congress, Department MW, Washington, DC 20540'' and adding in its place ''should be sent to the address specified in § 201.1(b) of this chapter''.
■ 73. Amend § 211.4 by revising paragraph (b)(1), the introductory text of paragraph (d), and paragraph (d)(2) to read as follows:

§ 211.4 Registration of claims of protection in mask works.

* * * * *

(b) * * *

(1) For purposes of registration of mask work claims, the Register of Copyrights has designated ''Form MW'' to be used for all applications. Copies of the form are available free from the Copyright Office Web site or upon request to the Copyright Information Section, U.S. Copyright Office, Library of Congress, Washington, DC 20559–6000.

* * * * *

(d) *Registration as a single work.* Subject to the exception specified in paragraph (c)(2) of this section, for purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single work:

* * * * *

(2) In the case of a mask work that has been commercially exploited: All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask work is or are the same.

* * * * *

■ 74. Amend § 211.5 as follows:
■ a. In paragraph (b), remove ''of these regulations'' and in paragraph (b)(2)(i), remove the space between ''(b)(1)'' and ''(i)''.
■ b. Revise paragraphs (c)(1) and (2).
■ c. In paragraph (d), remove ''granted.,'' and add in its place ''granted.'' and remove ''for Registration Program, Library of Congress, Copyright Office—RPO, 101 Independence Avenue, SE, Washington, DC 20559–6200,'' and add in its place ''of Copyrights and Director of Registration Policy and Practice, P.O. Box 70400, Washington, DC 20024–0400,''.

§ 211.5 Deposit of identifying material.

* * * * *

(c) * * *

(1) *Mask works commercially exploited.* For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, ''identifying portions'' shall mean:

(i) A printout of the mask work design data pertaining to each withheld layer, reproduced in microform; or

(ii) Visually perceptible representations in accordance with paragraph (b)(1)(i), (ii), or (iii) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(2) *Mask work not commercially exploited.* (i) For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, ''identifying portions'' shall mean:

(A) A printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped; or

(B) Visually perceptible representations in accordance with paragraph (b)(2)(i) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(ii) The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

* * * * *

PART 212—PROTECTION OF VESSEL DESIGNS

■ 75. The authority citation for part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

■ 76. Revise the part heading as set forth above.
■ 77. In part 212 remove the terms ''hull'' and ''hulls'' each place they appear.

§ 212.1 [Amended]

■ 78. Amend § 212.1 by removing ''vessel'' and adding in its place ''vessels''.

§ 212.2 [Amended]

■ 79. Amend § 212.2 by removing ''vessel'' and adding in its place ''vessels''.

§ 212.3 [Amended]

■ 80. Amend § 212.3 in paragraph (h) introductory text by removing ''6'' and adding in its place ''six''.

§ 212.4 [Amended]

■ 81. In paragraph (a)(2), add ''hull'' after ''vessel''.

§ 212.5 [Amended]

■ 82. Amend § 212.5 as follows:
■ a. In paragraphs (a) through (c), remove ''of a vessel'' and add in its place ''of a vessel design''.
■ b. In paragraph (d), remove ''to: Dept. D–VH, Vessel Hull Registration, P.O. Box 71380, Washington, DC 20024–1380'' and add in its place ''to the address specified in § 201.1(b)(2) of this chapter''.

§ 212.6 [Amended]

■ 83. Amend § 212.6 by removing ''design protection of vessel'' and adding in its place ''the protection of vessel designs''.

§ 212.8 [Amended]

■ 84. Amend § 212.8 as follows:
■ a. In paragraph (c)(1)(iv), remove ''designers of the vessel'' and add in its place ''designers of the vessel design''.

■ b. In paragraph (c)(2), remove ''he'' and add in its place ''the'' and remove the comma after ''Avenue''.

PARTS 253, 255, 258, 260–263, and 270—[REMOVED AND RESERVED]

■ 85. Remove and reserve parts 253, 255, 258, 260, 261, 262, 263, and 270.

Dated: August 23, 2016.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–20495 Filed 9–30–16; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0529; FRL–9953–33–Region 7]

Approval of Missouri's Air Quality Implementation Plans and Operating Permits Program; Greenhouse Gas Tailoring Rule and Non-Substantive Definition and Language Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) and the 40 CFR part 70 operating permits program. EPA is proposing to approve revisions to two Missouri rule(s) entitled, ''Construction Permits Required,'' and ''Operating Permits.'' This proposed action is consistent with the July 12, 2013, U.S. Court of Appeals for the District of Columbia and the June 23, 2014, U.S. Supreme Court actions regarding Greenhouse Gas Prevention of Significant Deterioration and Title V Permitting. This action makes non-substantive changes to definitions, and language clarifications.

DATES: Comments must be received by November 2, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0529, *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7041, or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action to approve revisions to the Missouri Title V Operating Permits Program and the Missouri SIP. We have published a direct final rule approving the State's SIP revision(s) in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

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

Dated: September 21, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–23601 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2016–0197; FRL–9953–11–Region 8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of Wyoming; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Wyoming hospital/medical/infectious waste incinerator (HMIWI) Section 111(d)/129 plan (the ''plan''). The revision contains a modified state rule for solid waste combustion that was updated as a result of the October 6, 2009, amendments to federal emission guidelines (EG) and New Source Performance Standards (NSPS), 40 CFR part 60, subparts Ce and Ec, respectively. This revision and approval action relate only to HMIWI units.

DATES: Written comments must be received on or before November 2, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0377, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.,) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kendra Morrison, Air Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6145, *morrison.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is approving Wyoming's HMIWI plan revision as a direct final rule without prior proposal because the agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule. If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 17, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 26, 2016.

[FR Doc. 2016–23586 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 81, No. 191

Monday, October 3, 2016

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee for Review and Discussion of a Project Proposal To Study Civil Rights and Police Relations in Minnesota

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Minnesota Advisory Committee (Committee) will hold a meeting on Monday, October 31, 2016, at 1:00 p.m. CDT for the purpose of reviewing and discussing a project proposal to study civil rights and police relations in Minnesota.

DATES: The meeting will be held on Monday, October 31, 2016, at 1:00 p.m. CDT.

PUBLIC CALL INFORMATION: Dial: 877–857–6161, Conference ID: 6681139

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–857–6161, conference ID: 6681139. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=256*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions

Discussion of project proposal: Civil Rights and Police Relations in Minnesota

Public Comment

Future Plans and Actions

Adjournment

Dated: September 27, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–23730 Filed 9–30–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee for a Meeting for Final Review and Approval of the Committee's Report on Civil Rights and the School to Prison Pipeline in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Tuesday, November 15, 2016, at 4:00 p.m. EST for the purpose of discussing a draft report regarding the school to prison pipeline in the state.

DATES: The meeting will be held on Tuesday, November 15, 2016, at 4:00 p.m. EST

PUBLIC CALL INFORMATION: Dial: 888–455–2265, Conference ID: 3309385

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–455–2265, conference ID: 3309385. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the

conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office one week prior to the start of the meeting, by Tuesday November 8, 2016. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=247*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Introductions
Civil Rights Report, Final Review and Approval
Civil Rights and the School to Prison Pipeline in Indiana
Public Comment
Future Plans and Actions
Adjournment

Dated: September 27, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–23729 Filed 9–30–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee for a Meeting To Discuss an Updated Draft Report on Civil Rights and the School to Prison Pipeline in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Wednesday, October 19, 2016, at 2:00pm EDT for the purpose of discussing a draft report regarding the school to prison pipeline in the state.

DATES: The meeting will be held on Wednesday, October 19, 2016, at 2:00 p.m. EDT.

Public call information: Dial: 888–455–2265, Conference ID: 3309385.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–455–2265, conference ID: 3309385. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=247*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion Draft Report: Civil Rights and the School to Prison Pipeline in Indiana
Public Comment
Future Plans and Actions
Adjournment

Dated: September 27, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–23728 Filed 9–30–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: American Community Survey (ACS) Methods Panel, Online Communications Improving Survey Response Campaign.

OMB Control Number: 0607–0936.

Form Number(s): ACS–1, ACS–1 (Spanish), ACS CATI, ACS CAPI, ACS Internet.

Type of Request: Nonsubstantive Change Request.

Number of Respondents: None.

Average Hours per Response: None.

Burden Hours: No additional burden hours are requested under this nonsubstantive change request.

Needs and Uses: The American Community Survey collects detailed socioeconomic data from about 3.5 million households in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing, and evaluations aimed at improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods

Panel is a research program that is designed to address and respond to issues and survey needs. In line with the Census Bureau's goal to increase survey response rates through communications, the Census Bureau seeks to launch a pilot of a targeted digital advertising campaign. During the 2000 and 2010 decennial enumerations, the Census Bureau saw an uptick of ACS response rates.[1] A year-over-year increase of 6.4 percentage points was observed in the Savannah, GA media market during the 2015 Census Site Test.[2]

Outside of decennial years, traditional broad-based advertising methods are cost-prohibitive because of the relatively small sample size for most Census Bureau surveys compared to the general population. With the advent of digital advertising tactics, however, the Census Bureau now has the potential opportunity to cost-effectively deliver promotional messages to individual households within a survey sample. The ACS offers a large enough national sample to field a test of such tactics and determine whether they lift response rates. If digital advertisements encourage recipients to respond to a survey early in the process of data collection, including responding online, then the Census Bureau will save money on costly follow-up efforts to collect data from nonrespondents, including sending Census Bureau interviewers to respondents' households in person. Offsetting data-collection costs in this way would ultimately save taxpayers money. Findings from this pilot campaign will have applications across the range of the Census Bureau's collection efforts as advertisements will not be survey-specific and will focus on the value of the Census Bureau's work in general.

We propose to execute the pilot campaign aiming to using the January and February 2017 ACS production samples. We will deliver targeted digital advertisements to a panel of in-sample residents that can be linked by household address to digital profiles (including cookies and/or device ID) by a third-party data vendor. This technique is an emerging standard in online advertising, in line with the advertising households receive from companies and organizations every day. We will place video, display banners, and paid social media advertisements. Linked households will be served ads shortly before they receive a mailed survey questionnaire and during the ACS data collection process. Ads will not directly call on recipients to complete the ACS or any particular survey, nor will they mention any survey by name. Rather they will be designed to create positive associations with the Census Bureau's work generally and make the case for the importance of completing a Census Bureau questionnaire if selected. When an advertisement is clicked, the user will be directed to a *Census.gov* web landing page featuring general information about the value of the Census Bureau's work and a link to the ''Are You in a Survey?'' page.[3]

The purpose of this test is to study the impact of these changes on self-response behavior and assess any potential savings overall or with subgroups. The advertisements will include a mix of online video, banner display ads, and paid social media content on both desktop and mobile devices. They will be displayed around the web on various Web sites targeted to linked households in the treatment groups. Ad serving will be optimized based on audience reach and user engagement with the ads (measured in terms of video and click metrics). The optimal media mix will be applied evenly across both treatments. We will prioritize rich media placements including video and social video over standard placements such as banner display, with the goal to maximize video advertising to tell a compelling story to raise awareness of the Census Bureau's work.

This pilot will include two experimental treatments (a high-spend group and a low-spend group) as well as a control group. Households in the high-spend group will receive roughly twice the number of advertisement exposures as households in the low-spend treatment group, though the channel mix and content of the advertisements will remain the same between the two groups. The Control group will not receive any advertisements.

To field this test, we plan to use ACS production (clearance number: 0607–0810, expires 06/30/2018). Thus, there is no increase in burden from this test since the treatment will result in approximately the same burden estimate per interview (40 minutes). The ACS sample design consists of randomly assigning each monthly sample panel into 24 groups of approximately 12,000 addresses each. Each group, called a methods panel group, within a monthly sample is representative of the full monthly sample. Each monthly sample is a representative subsample of the entire annual sample and is representative of the sampling frame.

The test will include two months of production sample (aiming for January and February 2017). We will choose eight randomly selected methods panel groups per month for each of the two experimental treatments; the remaining eight methods panel groups will be the control. Over the two production months, each treatment will use 16 methods panel groups, or a mail out sample of roughly 192,000 addresses, which will be used for linking to establish eligibility for micro targeted digital advertising. We estimate that approximately 31 percent of the mailable addresses will be eligible for digital advertising, which is approximately 30,000 addresses for each of the two experimental treatments per month.

We will compare the Internet return rates at the cut date for the replacement mailing, the Internet, mail, and self-response return rates before the start of Computer Assisted Telephone Interviewing (CATI), and the Internet, mail, self-response, and CATI return rates prior to the start of Computer Assisted Personal Interviewing (CAPI). We will compare the self-response and CAPI return rates as well as the overall response rates when all data collection activities end. Additionally, the overall response rate will be calculated for all sample addresses. For each comparison, we will use $\alpha = 0.1$ and a two-tailed test so that we can measure the impact on the evaluation measure in either direction with 80 percent power. Based on previous year's data for the January and February panels we calculated effective sample sizes. We assumed an Undeliverable as Addressed (UAA) rate of 18.0 percent (these addresses may be advertised to, but will be removed from self-response analysis because they do not have an opportunity to respond), a self-response rate of 57.5 percent for all three groups, a CATI response rate of 25 percent, and a CAPI response rate of 85 percent. We expect to be able to detect self-response differences between the high- and low-spend treatment panel of 0.8 percentage points, and between a treatment panel and the control on the order of 0.8 percentage points. Additional metrics of interest include overall costs and response rates by subgroups.

Affected Public: Individuals or households.

[1] Chesnut, J. & M. Davis. (2011). ''Evaluation of the ACS Mail Materials and Mailing Strategy during the 2010 Census.'' *American Community Survey Research and Evaluation Program.* U.S. Census Bureau.

[2] Walejko, G. et al. (2015). ''Modeling the Effect of Diverse Communication Strategies on Decennial Census Test Response Rates.'' Presentation. *2015 Federal Committee on Statistical Methodology Research Conference.* December 2nd, 2015. Washington, DC.

[3] See *https://www.census.gov/programs-surveys/are-you-in-a-survey.html.*

Frequency: One-time test as part of the monthly American Community Survey.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

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.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–23821 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership on the Departmental Performance Review Board.

SUMMARY: In accordance with statutes on ratings for performance appraisals, the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Departmental Performance Review Board begins on October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nancy Osborn, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–5815.

SUPPLEMENTARY INFORMATION: In accordance with Ratings for Performance Appraisals, 5 U.S.C. 4314(c)(4), the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Jon Alexander, Deputy Director, Financial Management Systems, Career SES
2. Dennis Alvord, Senior Advisor for Policy and Program Integration, Career SES
3. Stephen Burke, Chief Financial Officer and Director for Administration, Career SES
4. Kathleen James, Chief Administrative Officer, Career SES
5. Lauren Leonard, Director of the Office of White House Liaison and Senior Advisor to the Secretary, Noncareer SES
6. Holly Vineyard, Deputy Assistant Secretary for Global Markets, Career SES

Dated: September 20, 2016.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2016–23659 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Membership of the Performance Review Board for the Office of the Secretary

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and Senior Level (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Office of the Secretary Performance Review Board begins on October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nancy Osborn, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–5815.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Office of the Secretary Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and Senior Level (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Office of the Secretary Performance Review Board begins on October 3, 2016. The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Gordon Alston, Director, Financial Reporting and Internal Controls, Career SES
2. Paige Atkins, Associate Administrator for Spectrum Management, Career SES
3. Kurt Bersani, Deputy Chief Financial and Administrative Officer, Career SES
4. Theodore LeCompte, Deputy Chief of Staff and Senior Advisor to the Secretary, Noncareer SES
5. Lauren Leonard, Director of the Office of White House Liaison and Senior Advisor to the Secretary, Noncareer SES

6. Catrina Purvis, Chief Privacy Officer and Director of Open Government, Career SES
7. Rodney Turk, Director of Cyber Security and Chief Information Security Officer, Career SES

Dated: September 20, 2016.

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2016–23655 Filed 9–30–16; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2016]

Foreign-Trade Zone (FTZ) 133—Quad-Cities, Iowa/Illinois; Authorization of Production Activity; Deere & Company, Subzone 133F, (Construction and Forestry Equipment), Dubuque, Iowa

On May 26, 2016, Deere & Company submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 133F, in Dubuque, Iowa.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 39890, June 20, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 23, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–23827 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–846, C–580–884]

Certain Hot-Rolled Steel Flat Products From Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing countervailing duty (CVD) orders on certain hot-rolled steel flat products (hot-rolled steel) from Brazil and the Republic of Korea (Korea). In addition, the Department is amending its final affirmative determination with respect to Korea to correct the rate assigned to POSCO.

DATES: *Effective* October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin at (202) 482–6478 (Brazil); and Katie Marksberry at (202) 482–7906 (Korea); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on August 4, 2016, the Department made final determinations that countervailable subsidies are being provided to producers and exporters of hot-rolled steel from Brazil and Korea.[1] Pursuant to section 705(d) of the Act, the Department published the affirmative final determinations on August 12, 2016.[2]

On August 12, 2016, Hyundai Steel and POSCO timely filed ministerial error comments, alleging that the Department made errors in the final determination of the CVD investigation of hot-rolled steel from Korea. On August 17, 2016, Nucor Corporation (Petitioner) filed rebuttal comments. We analyzed the allegations submitted by Hyundai Steel and POSCO, and determined that one ministerial error exists, as defined by section 705(e) of the Act and 19 CFR 351.224(f).[3] *See* ''Amendment to the Korea Final Determination'' section below for further discussion.

On September 26, 2016, the ITC notified the Department of its final determinations that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from Brazil and Korea, within the meaning of section 705(b)(1)(A)(i) of the Act and that critical circumstances do not exist with respect to imports of subject merchandise from Brazil.[4]

Scope of the Orders

The products covered by these orders are certain hot-rolled steel flat products. For a complete description of the scope of the orders, *see* Appendix I.

Amendment to the Korea CVD Final Determination

As discussed above, after analyzing the comments received from Hyundai Steel and POSCO, we determined, in accordance with section 705(e) of the Act and 19 CFR 351.224(f), that we made a ministerial error with regard to certain calculations in the *Korea CVD Final Determination* with respect to POSCO. This amended final CVD determination corrects these errors and revises the *ad valorem* subsidy rate for POSCO to 58.68 percent (from 57.04 percent).[5] There is no change to the ''all others'' rate because POSCO's rate was determined entirely under section 776 of the Act, and therefore, excluded from the ''all others'' rate calculation.

Countervailing Duty Orders

In accordance with sections 705(b)(1)(A)(i), and 705(d) of the Act, the ITC has notified the Department of its final determinations that the industry in the United States producing hot-rolled steel is materially injured by reason of subsidized imports of hot-rolled steel from Brazil and Korea, and that critical circumstances do not exist with respect to imports of subject merchandise from Brazil.[6] Therefore, in

[1] Pursuant to section 735(c)(2) of the Act, we have terminated the countervailing duty investigation of hot-rolled steel from Turkey because the ITC found imports subsidized by the government of Turkey to be negligible, *see* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving Williamson, Chairman of the U.S. International Trade Commission, regarding antidumping and countervailing duty investigations concerning imports of certain hot-rolled steel flat products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom (Investigation Nos. 701–TA–545–547 and 731–TA–1291–1297 (September 26, 2016) (ITC Letter).

[2] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part,* 81 FR 53416 (August 12, 2016) (*Brazil CVD Final Determination*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 53439 (August 12, 2016) (*Korea CVD Final Determination*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Final Affirmative Determination*, 81 FR 53433 (August 12, 2016).

[3] *See* Department Memorandum regarding ''Countervailing Duty Investigation: Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Response to Ministerial Error Comments filed by Hyundai Steel Co., Ltd. and POSCO,'' dated August 23, 2016 (Korea Ministerial Error Decision Memorandum).

[4] *See* ITC Letter.

[5] *See* Korea Ministerial Error Decision Memorandum. *See also* Department Memorandum regarding ''Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Determination Calculation Memorandum for POSCO,'' dated August 23, 2016.

[6] *See* ITC Letter.

accordance with section 705(c)(2) of the Act, we are publishing these CVD orders.

Brazil

As a result of the ITC's final determinations, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of hot-rolled steel from Brazil entered, or withdrawn from warehouse, for consumption on or after January 15, 2016, the date on which the Department published its preliminary affirmative countervailing duty determinations in the **Federal Register**,[7] and before May 14, 2016, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of hot-rolled steel from Brazil made on or after May 14, 2016, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for assessment of countervailing duties due to the Department's discontinuation, effective May 14, 2016, of the suspension of liquidation.

Korea

Because the Department's preliminary determination in the Korea CVD investigation was negative, we did not instruct CBP to suspend liquidation with regard to entries of hot-rolled steel from Korea.[8] The Department's final determination was affirmative, and therefore, we directed CBP to suspend liquidation.[9] Therefore, with regard to Korea, we will direct CBP to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of hot-rolled steel entered, or withdrawn from warehouse, for consumption on or after August 12, 2016, the date on which the Department published the *Korea CVD Final Determination* in the **Federal Register**.

Suspension of Liquidation

In accordance with section 706 of the Act, we will direct CBP to reinstitute the suspension of liquidation of hot-rolled steel from Brazil effective on the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to continue the suspension of liquidation of hot-rolled steel from Korea, effective on the date of publication of the Department's notice of final determination in the **Federal Register**. We will also direct CBP to assess, upon further instruction by the Department, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of hot-rolled steel from Brazil, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse for consumption on or after October 17, 2015 (*i.e.*, 90 days prior to the date of the publication of the CVD *Preliminary Determination*), but before January 15, 2016 (*i.e.*, the date of publication of the CVD *Preliminary Determination*).

On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Exporter/proucer from Brazil	Subsidy rate (percent)
Companhia Siderurgica Nacional (CSN)	11.30
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	11.09
All Others	11.20

Exporter/proucer from Korea	Subsidy rate (percent)
POSCO	58.68
Hyundai Steel Co., Ltd	3.89
All Others	3.89

Notifications to Interested Parties

This notice constitutes the CVD orders with respect to hot-rolled steel from Brazil and Korea, pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: September 27, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.*, products which have been ''worked after rolling'' (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[10] or countervailing duty[11] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

[7] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2168 (January 15, 2016) (*Brazil CVD Preliminary Determination*).

[8] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2172 (January 15, 2016) (*Korea CVD Preliminary Determination*).

[9] *See Korea CVD Final Determination*, 81 FR at 53440.

[10] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

[11] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [12]
- Ball bearing steels; [13]
- Tool steels; [14] and
- Silico-manganese steels; [15]

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2016–23835 Filed 9–30–16; 8:45 am]

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[12] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[13] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[14] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[15] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809, A–351–845, A–588–874, A–580–883, A–421–813, A–489–826, A–412–825]

Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on certain hot-rolled steel flat products (hot-rolled steel) from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom. In addition, the Department is amending its final determinations of sales at less-than-fair-value (LTFV) from Australia, the Republic of Korea, and the Republic of Turkey, as a result of ministerial errors.

DATES: Effective October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Frances Veith at (202) 482–4295 (Australia); Peter Zukowski at (202) 482–0189 (Brazil); Myrna Lobo at (202) 482–2371 (Japan); Matthew Renkey at (202) 482–2312 (the Republic of Korea (Korea)); Dmitry Vladimirov at (202) 482–0665, (the Netherlands); Toni Page at (202) 482–1398 (the Republic of Turkey (Turkey)); and Catherine Cartsos at (202) 482–1757 (the United Kingdom), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on August 4, 2016, the Department made affirmative final determinations in the LTFV investigations of certain hot-rolled steel flat from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom. Pursuant to section 735(d) of the Act, the Department published the

affirmative final determinations on August 12, 2016. [1]

On August 15, 2016, Petitioners [2] alleged that the Department made ministerial errors in the *Australia Final.*[3] A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.[4] On August 10, 2016, Petitioners and Hyundai Steel Company alleged that the Department made ministerial errors in the *Korea Final.* On August 15, 2016, POSCO submitted rebuttal comments to Petitioners' allegation, and Petitioners submitted rebuttal comments to Hyundai Steel Company's allegation.[5] On August 11 and 12, 2016, mandatory respondent Colakoglu Metalurji A.S. and its affiliates (collectively Colakoglu),[6] and Petitioners [7] alleged that the Department made ministerial errors in the *Turkey Final. See* ''Amendment to the Australia Final Determination,'' ''Amendment to the Korea Final Determination,'' and ''Amendment to the Turkey Final Determinations'' sections below for further discussion.

On September 26, 2016, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of LTFV imports of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom and of its determination that critical circumstances do not exist with respect to imports of hot-rolled steel from Brazil and Japan.[8]

Scope of the Orders

The product covered by these orders is hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom. For a complete description of the scope of these orders, *see* Appendix I.

Amendment to Australia Final Determination

As discussed above, the Department reviewed the record and agrees that the two errors referenced in Petitioners' allegation constitute ministerial errors within the meaning of section 735(e) of the Act and 19 CFR 351.224(f).[9] Specifically, the Department neglected to fully adjust BlueScope Steel Ltd.'s normal value for processing revenue and freight revenue.[10] Pursuant to 19 CFR 351.224(e), the Department is amending the *Australia Final* to reflect the correction of the ministerial errors described above. Based on our correction, BlueScope Steel Ltd.'s weighted-average dumping margin increased from 29.37 percent to 29.58 percent. Because the Australian ''all-others'' rate is based solely on BlueScope Steel Ltd.'s dumping margin, the corrections noted above also increase the all-others rate determined in the *Australia Final* to 29.58 percent.[11]

Amendment to Korea Final Determination

The Department reviewed the record and agrees that the error referenced in Petitioners' allegation with respect to POSCO constitutes a ministerial error within the meaning of section 735(e) of the Act and 19 CFR 351.224(f), whereas neither the errors alleged by Hyundai Steel Company, nor the error alleged by Petitioners with respect to Hyundai Steel Company, are ministerial errors.[12] Specifically, the programming code used in POSCO's final margin calculation program did not correctly implement certain revised indirect selling expense figures.[13] Additionally, we find that the alleged errors regarding our final Hyundai Steel Company margin calculation are methodological, rather than ministerial, in nature.[14] Pursuant to 19 CFR 351.224(e), the Department is amending the *Korea Final* to reflect the correction of the ministerial error in POSCO's final margin calculation described above. Based on our correction, POSCO's weighted-average dumping margin increased from 3.89 percent to 4.61 percent. Because the Korean ''all-others'' rate is based in part on POSCO's dumping margin, the correction noted above also increases the all-others rate determined in the *Korea Final* to 6.05 percent.[15]

Amendment to Turkey Final Determination

The Department reviewed the record and agrees that the error referenced in Colakoglu's allegation and the errors referenced in Petitioners' allegation constitute ministerial errors within the meaning of section 735(e) of the Act and 19 CFR 351.224(f).[16] Specifically, the Department utilized the incorrect denominator in its calculation of Colakoglu's indirect selling expenses ratio.[17] Pursuant to 19 CFR 351.224(e), the Department is amending the *Turkey Final* to reflect the correction of the ministerial error described above. Based

[1] *See Certain Hot-Rolled Steel Flat Products From Australia: Final Determination of Sales at Less Than Fair Value,* 81 FR 53406 (August 12, 2016) (''*Australia Final*''); *Certain Hot-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 53426 (August 12, 2016) (''*Brazil Final*''); *Certain Hot-Rolled Steel Flat Products From Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 53409 (August 12, 2016) (''*Japan Final*''); *Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 81 FR 53419 (August 12, 2016) (''*Korea Final*''); *Certain Hot-Rolled Steel Flat Products From the Netherlands: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances,* 81 FR 53421 (August 12, 2016) (''*Netherlands Final*''); Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 81 FR 53428 (August 12, 2016) (''*Turkey Final*''); *Certain Hot-Rolled Steel Flat Products From the United Kingdom: Final Determination of Sales at Less Than Fair Value,* 81 FR 53436, (August 12, 2016) (''*United Kingdom Final*'').

[2] United States Steel Corporation (U.S. Steel) submitted comments on behalf of petitioners, *i.e.,* AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively ''Petitioners'').

[3] *See* Letter to the Secretary of Commerce from U.S. Steel, dated August 15, 2016.

[4] *See* section 735(e) of the Act and 19 CFR 351.224(f).

[5] *See* Letter to the Secretary of Commerce from POSCO, dated August 15, 2016.

[6] *See* Letter to the Secretary of Commerce from Colakoglu, dated August 11, 2016.

[7] *See* Letter to the Secretary of Commerce from Petitioners, dated August 12, 2016.

[8] *See* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving Williamson, Chairman of the U.S. International Trade Commission, regarding antidumping and countervailing duty investigations concerning imports of certain hot-rolled steel flat products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom (Investigation Nos. 701–TA–545–547 and 731–TA–1291–1297 (September 26, 2016) (ITC Letter).

[9] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Australia: Allegation of Ministerial Errors in the Final Determination,'' (September 16, 2016).

[10] *Id.*

[11] *Id.*

[12] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Korea: Allegation of Ministerial Errors in the Final Determination,'' (September 23, 2016).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Allegation of Ministerial Errors in the Final Determination,'' (September 27, 2016) (Turkey Ministerial Error Memorandum).

[17] *Id.*

on our correction, Colakoglu's weighted-average dumping margin decreased from 7.15 percent to 6.77 percent.[18] In reference to the ministerial errors alleged by Petitioners, the Department inadvertently omitted direct credit expenses from the calculation of Ereğli Demir ve Çelik Fabrikalari T.A.Ş. and its Affiliates (collectively Erdemir) comparison market gross unit price adjustment.[19] The Department also erred in inputting raw data into the comparison market program to account for the control numbers that were sold but not produced during the POI for Erdemir.[20] Finally, the Department incorrectly applied the export subsidy adjustment to the U.S. net price for Erdemir.[21] Pursuant to 19 CFR 351.224(e), the Department is amending the *Turkey Final* to reflect the correction of the ministerial errors described above. However, because the ITC found imports subsidized by the government of Turkey to be negligible,[22] thereby resulting in the termination of the companion countervailing duty investigation of hot-rolled steel from Turkey,[23] we are further amending the *Turkey Final* to eliminate any adjustment to cash deposit rates for export subsidies.[24] Based on our corrections, Erdemir's weighted-average dumping margin increased from 3.66 percent to 4.15 percent.[25] Because the Turkish ''all-others'' rate is based on Colakoglu's and Erdemir's dumping margins, the corrections noted above also increases the all-others rate determined in the *Turkey Final* to 6.41 percent.[26]

Antidumping Duty Orders

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC has notified the Department of its final determinations that an industry in the United States is materially injured by reason of the LTFV imports of certain hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom.[27] Therefore, in accordance with section 735(c)(2) of the Act, we are publishing these antidumping duty orders. Because the ITC determined that imports of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom are materially injuring a U.S. industry, unliquidated entries of such merchandise from these countries, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom. Antidumping duties will be assessed on unliquidated entries of hot-rolled steel products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after March 22, 2016, the date of publication of the preliminary determination, [28] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[29] The ''all others'' rate applies to all producers or exporters not specifically listed, as appropriate. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from Brazil and Korea have been adjusted, as appropriate, for export subsidies found in the final determinations of the companion countervailing duty investigations of this merchandise imported from Brazil and Korea.[30] For Turkey, as noted above, because of the ITC's finding of negligible subsidized imports, we have not made any adjustment to cash deposit rates for export subsidies for imports of subject merchandise from Turkey.[31]

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, the Department extended the four-month period to six months in each case.[32] In the underlying investigations, the Department published the preliminary determinations on March 22, 2016. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on September 17, 2016. Furthermore, section 737(b) of the Act states that

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *See* ITC Letter.

[23] *See* section 735(c)(2) of the Act.

[24] *See* Turkey Ministerial Error Memorandum.

[25] *Id.*

[26] *Id.*

[27] *See* ITC Letter.

[28] *See Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 15241 (March 22, 2016) (''*Australia Prelim*''); *Certain Hot-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 15235 (March 22, 2016) (*Brazil Prelim*); *Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 15222 (March 22, 2016) (*Japan Prelim*); *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 81 FR 15228 (March 22, 2016) (*Korea Prelim*); *Certain Hot-Rolled Steel Flat Products from the Netherlands: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 15225 (March 22, 2016) (*Netherlands Prelim*); *Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 15231 (March 22, 2016) (*Turkey Prelim*); and *Certain Hot-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 15244 (March 22, 2016) (*United Kingdom Prelim*).

[29] *See* section 736(a)(3) of the Act.

[30] *See Brazil Final* and *Korea Final.*

[31] *See* ITC Letter; *see also* Turkey Ministerial Error Memorandum.

[32] *See Australia Prelim, Brazil Prelim, Japan Prelim, Korea Prelim, Netherlands Prelim, Turkey Prelim, and United Kingdom Prelim.*

definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice,[33] we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom entered, or withdrawn from warehouse, for consumption after September 17, 2016, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of hot-rolled steel from Brazil and Japan, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of hot-rolled steel from Brazil and Japan entered, or withdrawn from warehouse, for consumption on or after December 23, 2015 (*i.e.,* 90 days prior to the date of publication of the preliminary determinations), but before March 22, 2016 (*i.e.,* the date of publication of the preliminary determinations).

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages are as follows:

Exporter/producer	Weighted-average margin (%)	Cash-deposit rate (%)
Australia		
BlueScope Steel Ltd.	29.58	.....
All Others	29.58	.....
Brazil [34]		
Companhia Siderurgica Nacional	33.14	29.07
Usinas Siderurgicas de Minas Gerais	34.28	30.51
All Others	33.14	29.07
Japan		
JFE Steel Corporation	7.51	.....
Nippon Steel & Sumitomo Metal Corporation	4.99	.....
All Others	5.58	.....
Korea [35]		
Hyundai Steel Company	9.49	9.49
POSCO	4.61	0.00
All Others	6.05	6.05
Netherlands		
Tata Steel Ijmuiden B.V	3.73	.....
All Others	3.73	.....
Turkey		
Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S	6.77	.....
Ereğli Demir ve Çelik Fabrikaları T.A.Ş/Iskenderun Demir ve Çelik T.A.Ş	4.15	.....
All Others	6.41	.....
United Kingdom		
Tata Steel U.K. Ltd	33.06	.....
All Others	33.06	.....

[33] *See, e.g., Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016).

This notice constitutes the antidumping duty orders with respect to hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 27, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The products covered by these orders are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping [36] or countervailing duty [37] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in these scopes regardless of levels of boron and titanium.

For example, specifically included in these scopes are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [38]
  - Ball bearing steels; [39]
  - Tool steels; [40] and
- Silico-manganese steels; [41]

The products covered by these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products covered by these orders may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs

[34] The cash deposit rates are adjusted to account for the applicable export subsidy rates.

[35] *Id.*

[36] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[37] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

[38] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[39] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[40] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[41] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

purposes only. The written description of the scope of these orders is dispositive.

[FR Doc. 2016–23836 Filed 9–30–16; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') order(s) listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order(s).

DATES: Effective on October 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–899	731–TA–1091	PRC	Artist Canvas (2nd Review)	David Goldberger, (202) 482–4136.
A–570–832	731–TA–696	PRC	Pure Magnesium (4th Review)	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt*, prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F),

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 22, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–23828 Filed 9–30–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after October 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to

[6] *See* 19 CFR 351.218(d)(1)(iii).

extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of October 2016,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period of review
Antidumping Duty Proceedings Period of Review	
Brazil: Carbon and Certain Alloy Steel Wire Rod, A–351–832	10/1/15–9/30/16
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/15–9/30/16
Italy: Pressure Sensitive Plastic Tape, A–475–059	10/1/15–9/30/16
Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/15–9/30/16
Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805	10/1/15–9/30/16
The People's Republic of China: Barium Carbonate, A–570–880	10/1/15–9/30/16
The People's Republic of China: Barium Chloride, A–570–007	10/1/15–9/30/16
The People's Republic of China: Boltless Steel Shelving Units Prepackaged for Sale, A–570–018	4/1/15–9/30/16
The People's Republic of China: Electrolytic Manganese Dioxide, A–570- 919	10/1/15–9/30/16
The People's Republic of China: Helical Spring Lock Washers, A–570–822	10/1/15–9/30/16
The People's Republic of China: Polyvinyl Alcohol, A–570–879	10/1/15–9/30/16
The People's Republic of China: Steel Wire Garment Hangers, A–570–918	10/1/15–9/30/16
Trindad And Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/15–9/30/16
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, C–351–833	1/1/15–12/31/15
Iran: Roasted In Shell Pistachios, C–507–601	1/1/15–12/31/15
The People's Republic of China: Boltless Steel Shelving Units Prepackaged for Sale, C–570–019	1/30/15–12/31/15
Suspension Agreements	
Russia: Uranium, A–821–802	10/1/15–9/30/16

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

(although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov.*[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2016. If the Department does not receive, by the last day of October 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–23829 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE917

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 18, 2016 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Monkfish Committee will receive an update on Plan Development Team (PDT) analysis on Days-at-sea (DAS) allocation and trip limits. The will also receive an overview from the Monkfish PDT on draft alternatives and impacts for Framework 10 regarding specifications for FY 2017–19 and DAS allocation and/or possession limit alternatives. The Committee will select preferred alternatives for Framework 10 as well as review and discuss 5 year research priorities for monkfish. The will discuss other business, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 28, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–23799 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE919

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 19, 2016 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Hotel, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will review and discuss the draft scoping document for the upcoming limited access amendment to the Northeast Skate Complex Fishery Management Plan. They will also develop recommendations for 2017 Council priorities as well as review and discuss 5 year research priorities for skates.

Other business will be discussed. The Committee will also have a closed session to review Advisory Panel applications for 2018–20 and make recommendations for approval to the Council's Executive committee.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 28, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–23814 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE675

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Air Force 86 Fighter Weapons Squadron Conducting Long Range Strike Weapon Systems Evaluation Program at the Pacific Missile Range Facility at Kauai, Hawaii

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Air Force 86 Fighter Weapons Squadron (86 FWS) to incidentally harass marine mammals during Long Range Strike Weapons System Evaluation Program (LRS WSEP) activities in the Barking Sands Underwater Range Extension (BSURE) area of the Pacific Missile Range Facility (PMRF) at Kauai, Hawaii.

DATES: This authorization is effective from October 1, 2016, through November 30, 2016.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The NDAA of 2004 (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated earlier and amended the definition of harassment as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Summary of Request

On May 12, 2016, NMFS received an application from 86 FWS for the taking of marine mammals, by harassment, incidental to the LRS WSEP within the PMRF in Kauai, Hawaii from September 1, 2016 through August 31, 2017. 86 FWS submitted a revised version of the renewal request on June 9, 2016 and June 20, 2016, which we considered adequate and complete. After completion of the application, the planned LRS WSEP training activities were pushed back to October 2016.

86 FWS proposes actions that include LRS WSEP test missions of the Joint Air-To-Surface Stand-off Missile (JASSM) and the Small Diameter Bomb-I/II (SDB–I/II) including detonations at the water surface. These activities qualify as military readiness activities under the MMPA.

The following aspects of the planned LRS WSEP training activities have the potential to take marine mammals: Munition strikes and detonation effects (overpressure and acoustic components). Take, by Level B harassment of individuals of dwarf sperm whale, pygmy sperm whale, Fraser's dolphin, and minke whale could potentially result from the specified activity. Additionally, 86 FWS has requested authorization for Level A Harassment of one individual dwarf sperm whale. 86 FWS's LRS WSEP training activities may potentially impact marine mammals at or near the water surface. In the absence of mitigation, marine mammals could potentially be injured or killed by exploding and non-exploding projectiles, falling debris, or ingestion of military expended materials. However, based on analyses provided in 86 FWS's 2016 application, 2016 Environmental Assessment (EA), and for reasons discussed later in this document, we do not anticipate that 86 FWS's LRS WSEP activities would result in any serious injury or mortality to marine mammals.

Description of the Specified Activity

Overview

86 FWS plans to conduct an air-to-surface mission in the BSURE area of the PMRF. The LRS WSEP test objective is to conduct operational evaluations of long range strike weapons and other munitions as part of LRS WSEP operations to properly train units to execute requirements within Designed Operational Capability Statements, which describe units' real-world operational expectations in a time of war. Due to threats to national security, increased missions involving air-to-surface activities have been directed by the Department of Defense (DoD). Accordingly, the U.S. Air Force needs to conduct operational evaluations of all phases of long range strike weapons within the U.S. Navy's Hawaii Range Complex (HRC). The actions will fulfill the Air Force's requirement to evaluate full-scale maneuvers for such weapons, including scoring capabilities under operationally realistic scenarios. LRS WSEP objectives are to evaluate air-to-

surface and maritime weapon employment data, evaluate tactics, techniques, and procedures in an operationally realistic environment, and to determine the impact of tactics, techniques, and procedures on combat Air Force training. The munitions associated with the planned activities are not part of a typical unit's training allocations, and prior to attending a WSEP evaluation, most pilots and weapon systems officers have only dropped weapons in simulators or used the aircraft's simulation mode. Without WSEP operations, pilots would be using these weapons for the first time in combat. On average, half of the participants in each unit drop an actual weapon for the first time during a WSEP evaluation. Consequently, WSEP is a military readiness activity and is the last opportunity for squadrons to receive operational training and evaluations before they deploy.

Dates and Duration

86 FWS plans to schedule the LRS WSEP training missions over one day in October 2016. The planned missions would occur on a weekday during daytime hours only, with all missions occurring in one day. This IHA is valid from October 1, 2016 through November 30, 2016.

Specified Geographic Region

The specific planned impact area is approximately 44 nautical miles (nm) (81 kilometers (km)) offshore of Kauai, Hawaii, in a water depth of about 15,240 feet (ft) (4,645 meters (m)) (see Figure 2–2 of 86 FWS's application). All activities will take place within the PMRF, which is located in Hawaii off the western shores of the island of Kauai and includes broad ocean areas to the north, south, and west (see Figure 2–1 of 86 FWS's application). Within the PMRF, activities would occur in the BSURE area, which lies in Warning Area 188 (W–188).

NMFS provided detailed descriptions of the activity area in a previous notice for the proposed authorization (81 FR 44277) (July 7, 2016). The information has not changed between the notice of proposed authorization and this final notice announcing the issuance of the authorization.

Detailed Description of Activities

The LRS WSEP training missions, classified as military readiness activities, refer to the deployment of live (containing explosive charges) missiles from aircraft toward the water surface. The actions include air-to-surface test missions of the JASSM and the SDB–I/II including detonations at the water surface.

Aircraft used for munition releases would include bombers and fighter aircraft. Additional airborne assets, such as the P–3 Orion or the P–8 Poseidon, would be used to relay telemetry (TM) and flight termination system (FTS) streams between the weapon and ground stations. Other support aircraft would be associated with range clearance activities before and during the mission and with air-to-air refueling operations. All weapon delivery aircraft would originate from an out base and fly into military-controlled airspace prior to employment. Due to long transit times between the out base and mission location, air-to-air refueling may be conducted in either W–188 or W–189. Bombers, such as the B–1, would deliver the weapons, conduct air-to-air refueling, and return to their originating base as part of one sortie. However, when fighter aircraft are used, the distance and corresponding transit time to the various potential originating bases would make return flights after each mission day impractical. In these cases, the aircraft would temporarily (less than one week) park overnight at Hickam Air Force Base (HAFB) and would return to their home base at the conclusion of each mission set. The LRS WSEP missions scheduled for 2016 are planned to occur in one day. Approximately 10 Air Force personnel would be on temporary duty to support the mission.

Aircraft flight maneuver operations and weapon release would be conducted in W–188A boundaries of PMRF. Chase aircraft may be used to evaluate weapon release and to track weapons. Flight operations and weapons delivery would be in accordance with published Air Force directives and weapon operational release parameters, as well as all applicable Navy safety regulations and criteria established specifically for PMRF. Aircraft supporting LSR WSEP missions would primarily operate at high altitudes—only flying below 3,000 feet (914.1 m) for a limited time as needed for escorting non-military vessels outside the hazard area or for monitoring the area for protected marine species (*e.g.,* marine mammals, sea turtles). Protected marine species aerial surveys would be temporary and would focus on an area surrounding the weapon impact point on the water. Post-mission surveys would focus on the area down current of the weapon impact location. Range clearance procedures for each mission would cover a much larger area for human safety. Weapon release parameters would be conducted as approved by PMRF Range Safety. Daily mission briefs would specify planned release conditions for each mission. Aircraft and weapons would be tracked for time, space, and position information. The 86 FWS test director would coordinate with the PMRF Range Safety Officer, Operations Conductor, Range Facility Control Officer, and other applicable mission control personnel for aircraft control, range clearance, and mission safety.

NMFS provided detailed descriptions of the components of the planned mission activities in a previous notice for the proposed authorization (81 FR 44277) (July 7, 2016). The information has not changed between the notice of proposed authorization and this final notice announcing the issuance of the authorization.

Initial phases of the LRS WSEP operational evaluations are planned for October 2016 and would consist of releasing only one live JASSM/JASSM–ER and up to eight SDB-Is in military controlled airspace (Table 1).

TABLE 1—SUMMARY OF PROPOSED TESTING AT PMRF IN 2016

Munition	Fusing option	Net explosive weight (lb)	Detonation scenario	Annual total number of munitions
JASSM/JASSM–ER	Live/Instantaneous	300	Surface	1
SDB–I	Live/Instantaneous	37	Surface	8

ER = Extended Range; JASSM = Joint Air-to-Surface Stand-off Missile; lb = pounds; SDB = Small Diameter Bomb.

A typical mission day would consist of pre-mission checks, safety review, crew briefings, weather checks, clearing airspace, range clearance, mitigations/monitoring efforts, and other military protocols prior to launch of weapons.

Potential delays could be the result of multiple factors including, but not limited to: Adverse weather conditions leading to unsafe take-off, landing, and aircraft operations, inability to clear the range of non-mission vessels or aircraft, mechanical issues with mission aircraft or munitions, or presence of protected species in the impact area. If the mission is cancelled due to any of these, one back-up day has also been scheduled as a contingency. These standard operating procedures are usually done in the morning, and live range time may begin in late morning once all checks are complete and approval is granted from range control. The range would be closed to the public for a maximum of four hours per mission day.

Comments and Responses

A notice of NMFS' proposal to issue an Authorization to 86 FWS published in the **Federal Register** on July 7, 2016 (81 FR 44277). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one relevant comment from a private citizen. Following is the comment from the Commission and NMFS' response and the comment received from a private citizen and NMFS' response.

Comment 1: The Commission recommends that NMFS and the Air Force assess practicable ways to supplement the Air Force's mitigation and monitoring measures with PAM (passive acoustic monitoring), including obtaining access to the Navy's hydrophone array data at PMRF.

Response: NMFS agrees that the use of PAM would be beneficial for monitoring and mitigation for mission activities. For this one-day mission, NMFS considered the use of PAM for mitigation and monitoring but, due to timing and logistical constraints, the use of PAM will not be required. For any future actions by the applicant in this area, the use of PAM for mitigation or monitoring purposes will be considered.

Comment 2: One private citizen requested notice of this military training exercise to be posted in the Kauai newspaper to help generate adequate public awareness and facilitate a healthy amount of discussion on this IHA prior to commencing activities.

Response: NMFS made the information available to the public during our 30-day public comment period by publishing the proposed IHA in the **Federal Register** on July 7, 2016 (81 FR 44277) and by posting all of the documents to our Web site. In addition, the USAF posted their draft EA in *The Garden Island* and *Honolulu Star Advertiser* newspapers, as well as other places, describing the action and the potential impacts of the action on the environment. A 30-day public comment period was available for public input.

Description of Marine Mammals in the Area of the Specified Activity

There are 25 marine mammal species with potential or confirmed occurrence in the activity area; however, not all of these species occur in this region during the project timeframe. Table 2 lists and summarizes key information regarding stock status and abundance of these species. Please see NMFS' 2015 Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars* for more detailed accounts of these stocks' status and abundance.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE BSURE AREA

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence in BSURE area
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family: Balaenopteridae					
Humpback whale (*Megaptera novaeangliae*) [4].	Central North Pacific	E/D; Y	10,103 (0.300; 7,890; 2006).	83	Seasonal; throughout known breeding grounds during winter and spring (most common November through April).
Blue Whale (*Balaenoptera musculus*).	Central North Pacific	E/D; Y	81 (1.14; 38; 2010)	0.1	Seasonal; infrequent winter migrant; few sightings, mainly fall and winter; considered rare.
Fin whale (*Balaenoptera physalus*).	Hawaii	E/D; Y	58 (1.12; 27; 2010)	0.1	Seasonal, mainly fall and winter; considered rare.
Sei whale (*Balaenoptera borealis*).	Hawaii	E/D; Y	178 (0.90; 93; 2010)	0.2	Rare; limited sightings of seasonal migrants that feed at higher latitudes.
Bryde's whale (*Balaenoptera brydei/edeni*).	Hawaii	-; N	798 (0.28; 633; 2010)	6.3	Uncommon; distributed throughout the Hawaiian EEZ.
Minke whale (*Balaenoptera acutorostrata*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Regular but seasonal (October–April).
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Physeteridae					
Sperm whale (*Physeter macrocephalus*).	Hawaii	E/D; Y	3,354 (0.34; 2,539; 2010)	10.2	Widely distributed year round; more likely in waters > 1,000 m depth, most often > 2,000 m.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE BSURE AREA—Continued

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence in BSURE area
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Kogiidae					
Pygmy sperm whale (*Kogia breviceps*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Widely distributed year round; more likely in waters > 1,000 m depth.
Dwarf sperm whale (*Kogia sima*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Widely distributed year round; more likely in waters > 500 m depth.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family delphinidae					
Killer whale (*Orcinus orca*)	Hawaii	-; N	101 (1.00; 50; 2010)	1	Uncommon; infrequent sightings.
False killer whale (*Pseudorca crassidens*).	Hawaii Pelagic	-; N	1,540 (0.66; 928; 2010)	9.3	Regular.
	NWHI Stock	-; N	617 (1.11; 290; 2010)	2.3	Regular.
Pygmy killer whale (*Feresa attenuata*).	Hawaii	-; N	3,433 (0.52; 2,274; 2010)	23	Year-round resident.
Short-finned pilot whale (*Globicephala macrorhynchus*).	Hawaii	-; N	12,422 (0.43; 8,872; 2010)	70	Commonly observed around Main Hawaiian Islands and Northwestern Hawaiian Islands.
Melon headed whale (*Peponocephala electra)*.	Hawaii Islands stock	-; N	5,794 (0.20; 4,904; 2010)	4	Regular.
Bottlenose dolphin (*Tursiops truncatus*).	Hawaii pelagic	-; N	5,950 (0.59; 3,755; 2010)	38	Common in deep offshore waters.
Pantropical spotted dolphin (*Stenella attenuata*).	Hawaii pelagic	-; N	15,917 (0.40; 11,508; 2010).	115	Common; primary occurrence between 100 and 4,000 m depth.
Striped dolphin (*Stenella coeruleoala*).	Hawaii	-; N	20,650 (0.36; 15,391; 2010).	154	Occurs regularly year round but infrequent sighting during survey.
Spinner dolphin (*Stenella longirostris*).	Hawaii pelagic	-; N	n/a (n/a; n/a; 2010)	Undet.	Common year-round in offshore waters.
Rough-toothed dolphins (*Steno bredanensis*).	Hawaii stock	-; N	6,288 (0.39; 4,581; 2010)	46	Common throughout the Main Hawaiian Islands and Hawaiian Islands EEZ.
Fraser's dolphin (*Lagenodelphis hosei*).	Hawaii	-; N	16,992 (0.66; 10,241; 2010).	102	Tropical species only recently documented within Hawaiian Islands EEZ (2002 survey).
Risso's dolphin (*Grampus griseus*).	Hawaii	-; N	7,256 (0.41; 5,207; 2010)	42	Previously considered rare but multiple sightings in Hawaiian Islands EEZ during various surveys conducted from 2002–2012.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Ziphiidae					
Cuvier's beaked whale (*Ziphius cavirostris*).	Hawaii	-; N	1,941 (n/a; 1,142; 2010)	11.4	Year-round occurrence but difficult to detect due to diving behavior.
Blainville's beaked whale (*Mesoplodon densirostris*).	Hawaii	-; N	2,338 (1.13; 1,088; 2010)	11	Year-round occurrence but difficult to detect due to diving behavior.
Longman's beaked whale (*Indopacetus pacificus*).	Hawaii	-; N	4,571 (0.65; 2,773; 2010)	28	Considered rare; however, multiple sightings during 2010 survey.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE BSURE AREA—Continued

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence in BSURE area
Order—Carnivora—Superfamily Pinnipedia (seals, sea lions)					
Family: Phocidae					
Hawaiian monk seal (*Neomonachus schauinslandi*).	Hawaii	E/D; Y	1,112 (n/a; 1,088; 2013)	Undet.	Predominantly occur at Northwestern Hawaiian Islands; approximately 138 individuals in Main Hawaiian Islands.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2015 Pacific SARs, except humpback whales—see comment 4.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] Values for humpback whales are from the 2015 Alaska SAR.

Of these 25 species, five are listed as endangered under the ESA and as depleted throughout its range under the MMPA. These are: Blue whale, fin whale, sei whale, sperm whale, and the Hawaiian monk seal. Humpback whales were listed as endangered under the ESA in 1973. NMFS evaluated the status of this population, and on September 8, 2016, NMFS divided the globally listed humpback whale into 14 distinct population segment (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259). The remaining nine DPSs were not listed because it was determined that they are not threatened or endangered under the ESA. The Hawaiian DPS of humpback whales, which would be present in the action area, were not listed under the ESA in NMFS final rule.

Of the 25 species that may occur in Hawaiian waters, only certain stocks occur in the impact area, while others are island-associated or do not occur at the depths of the impact area (*e.g.* false killer whale insular stock, island-associated stocks of bottlenose, spinner, and spotted dolphins). Only five species are considered likely to be in the impact area during the one day of project activities. This number has increased from the proposed IHA based on changes to the project dates. Dates have moved back to October (from September), and the use of fall densities are now used. The species now modeled to have take exposures include dwarf sperm whale, pygmy sperm whale, Fraser's dolphin, minke whale, and humpback whale. Other species are seasonal and only occur in these waters later in the winter (blue whale, fin whale, sei whale, killer whale); some are rare in the area or unlikely to be impacted due to small density estimates (Longman's beaked whale, Bryde's whale, false killer whale, pygmy killer whale, short-finned pilot whale, melon-headed whale, bottlenose dolphin, pantropical spotted dolphin, striped dolphin, spinner dolphin, rough-toothed dolphin, Risso's dolphin, Cuvier's beaked whale, Blainville's beaked whale, and Hawaiian monk seal). Because these 19 species are unlikely to occur within the BSURE area based on modeling predictions, 86 FWS has not requested, and NMFS will not issue take authorizations for them. Thus, NMFS does not consider these species further in this notice.

We have reviewed 86 FWS's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. We refer the reader to Sections Three and Four of 86 FWS's application rather than reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts. We provided additional information for two of the marine mammals (dwarf and pygmy sperm whales) with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (81 FR 44277) (July 7, 2016). Since that publication, the dates for the LRS WSEP activities changed to later in the year; therefore, different densities were used to calculate take. Because of this, two additional species were included in take exposures. Species descriptions for these three species are provided below.

Fraser's dolphin

Fraser's dolphin are distributed worldwide in tropical waters (Caretta *et al.,* 2011). Very little is known about this species, which was first documented within Hawaiian waters in 2002. There is a single stock in Hawaii with a current population estimate of 16,992 animals and PBR at 102 animals (Caretta *et al.,* 2016). Current population trends are not available for this species. This species is not listed under the Endangered Species Act (ESA), and is not considered strategic or designated as depleted under the Marine Mammal Protection Act (MMPA) (Caretta *et al.,* 2016). The biggest threat to the species is fishery-related injuries (Caretta *et al.,* 2011).

Minke whale

Minke whales are found worldwide in deep waters. There are three stocks in the Pacific: The Hawaiian stock, the California/Oregon/Washington stock, and the Alaskan stock. Only the Hawaiian stock is affected by the project activities. Minke whales occur seasonally in Hawaiian waters (October–April). Current abundance estimates, PBR, and population trends for this stock are unknown. This stock is not listed under the ESA, nor are they considered strategic, or designated as depleted under the MMPA. One of the suggested habitat concerns for this stock is the increasing levels of anthropogenic

noise in the world's oceans (Caretta *et al.,* 2014).

Humpback whale

Humpback whales are found worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres. These wintering grounds are used for mating, giving birth, and nursing new calves. Humpback whales migrate nearly 3,000 mi (4,830 km) from their summer foraging grounds to these wintering grounds in Hawaii away. The average date of the first sighting of humpback whales in Hawaii is approximately the first week in October, with whales seen earlier and earlier in the past five years (E. Lyman, personal communication, August 2016).

Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and continued to list humpbacks as endangered. Because the recent rule by NMFS did not consider the Hawaii DPS of humpbacks to be threatened or endangered under the ESA, this DPS is not listed under the ESA. The current abundance estimate for this DPS is 11,398 individuals and its population trend estimate is 5.5–6 percent (81 FR 62259).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section of the notice of the proposed Authorization (81 FR 44277) (July 7, 2016) included a summary and discussion of the ways that components (*e.g.,* munition strikes and detonation effects) of the specified activity, including mitigation, may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include a quantitative analysis of the number of individuals that we expect 86 FWS to take during this activity. The *Negligible Impact Analysis* section will include the analysis of how this specific activity would impact marine mammals, and will consider the content of this section, the *Estimated Take by Incidental Harassment* section and the *Mitigation* section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

In summary, the LRS WSEP training exercises proposed for taking of marine mammals under an Authorization have the potential to take marine mammals by exposing them to overpressure and acoustic components generated by live ordnance detonation at or near the surface of the water. Exposure to energy or pressure resulting from these detonations could result in Level A harassment (physical injury and permanent threshold shift, or PTS) and Level B harassment (temporary threshold shift, or TTS and behavioral disturbances). Based on modeled predictions, LRS WSEP activities are not expected to result in serious injury or mortality.

NMFS provided detailed information on these potential effects in the notice of the proposed Authorization (81 FR 44277) (July 7, 2016). The information presented in that notice has not changed.

Anticipated Effects on Habitat

Detonations of live ordnance would result in temporary changes to the water environment. An explosion on the surface of the water from these weapons could send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. However, these effects would be temporary and not expected to last more than a few seconds. Similarly, 86 FWS does not expect any long-term impacts with regard to hazardous constituents to occur. 86 FWS considered the introduction of fuel, debris, ordnance, and chemical materials into the water column within its EA and determined the potential effects of each to be insignificant. NMFS provided a summary of the analyses in the notice for the proposed Authorization (81 FR 44277) (July 7, 2016). The information presented in that notice has not changed.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

NMFS and 86 FWS have worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.'' We refer the reader to Section 11 of 86 FWS's application for more detailed information on the planned mitigation measures which are also described below.

Visual Aerial Surveys: For the LRS WSEP activities, mitigation procedures consist of visual aerial surveys of the impact area for the presence of protected marine species (including marine mammals). During aerial observation, Navy test range personnel may survey the area from an S–61N helicopter or C–62 aircraft that is based at the PMRF land facility (typically when missions are located relatively close to shore). Alternatively, when missions are located farther offshore, surveys may be conducted from mission aircraft (typically jet aircraft such as F–15E, F–16, or F–22) or a U.S. Coast Guard C–130 aircraft.

Protected species surveys will begin within one hour of weapon release and as close to the impact time as feasible, given human safety requirements. Survey personnel must depart the human hazard zone before weapon release, in accordance with Navy safety standards. Personnel conduct aerial surveys within an area defined by an approximately 2-nm (3,704 m) radius around the impact point, with surveys typically flown in a star pattern. This survey distance is consistent with requirements already in place for similar actions at PMRF. Observers would consist of aircrew operating the C–26, S–61N, and C–130 aircraft from PMRF and the Coast Guard. These aircrew are trained and have had prior experience conducting aerial marine mammal surveys and have provided similar support for other missions at PMRF. Aerial surveys are typically conducted at an altitude of about 200 feet (61 m), but altitude may vary somewhat depending on sea state and atmospheric conditions. The C–26 and other aircraft would generally be operated at a slightly higher altitude than the S–61N helicopter. If adverse weather conditions preclude the ability for aircraft to safely operate, missions would either be delayed until the weather clears or cancelled for the day. For 2016 LRS WSEP missions, one day has been designated as a weather back-

up day. The observers will be provided with the GPS location of the impact area. Once the aircraft reaches the impact area, pre-mission surveys typically last for 30 minutes, depending on the survey pattern. The fixed-wing aircraft are faster than the helicopter; and, therefore, protected species may be more difficult to spot. However, to compensate for the difference in speed, the aircraft may fly the survey pattern multiple times.

If a protected species is observed in the impact area, weapon release would be delayed until one of the following conditions is met: (1) The animal is observed exiting the impact area; (2) the animal is thought to have exited the impact area based on its course and speed; or (3) the impact area has been clear of any additional sightings for a period of 30 minutes. All weapons will be tracked and their water entry points will be documented.

Post-mission surveys would begin immediately after the mission is complete and the Range Safety Officer declares the human safety area is reopened. Approximate transit time from the perimeter of the human safety area to the weapon impact area would depend on the size of the human safety area and vary between aircraft but is expected to be less than 30 minutes. Post-mission surveys would be conducted by the same aircraft and aircrew that conducted the pre-mission surveys and would follow the same patterns as pre-mission surveys but would focus on the area down current of the weapon impact area to determine if protected species were affected by the mission (observation of dead or injured animals). If physical injury or mortality occurs to a protected species due to LRS WSEP missions, NMFS would be notified immediately.

Based on the ranges presented in Table 5 and factoring operational limitations (*e.g.* fuel constraints) associated with the mission, 86 FWS estimates that during pre-mission surveys, the planned monitoring area would be approximately 2 nm (3,704 m) from the target area radius around the impact point, with surveys typically flown in a star pattern, which is consistent with requirements already in place for similar actions at PMRF and encompasses the entire TTS threshold ranges (sound exposure level, or SEL) for mid-frequency cetaceans, half of the PTS SEL range for high-frequency cetaceans, the entire PTS ranges for low-frequency cetaceans, and half of the TTS range for LF cetaceans. Given operational constraints, surveying these larger areas would not be feasible.

We have carefully evaluated 86 FWS's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to stimuli that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to training exercises that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of 86 FWS's proposed measures, as well as other measures that may be relevant to the specified activity, we have determined that the mitigation measures, including visual aerial surveys and mission delays if protected species are observed in the impact area, provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance (while also considering personnel safety, practicality of implementation, and the impact of effectiveness of the military readiness activity).

Monitoring and Reporting

In order to issue an Authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

86 FWS submitted measures for marine mammal monitoring and reporting in their IHA application. Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.

• Mitigation and monitoring effectiveness.

NMFS will include the following measures in the LRS WSEP Authorization. They are:

(1) 86 FWS will track the use of the PMRF for mission activities and protected species observations, through the use of mission reporting forms.

(2) 86 FWS will submit a summary report of marine mammal observations and LRS WSEP activities to the NMFS Pacific Islands Regional Office (PIRO) and the Office of Protected Resources 90 days after expiration of the current Authorization. This report must include the following information: (i) Date and time of each LRS WSEP exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of LRS WSEP exercises on marine mammal populations; (iii) an accounting of the munitions use; and (iv) results of the LRS WSEP exercise monitoring, including number of marine mammals (by species) that may have been harassed due to presence within the activity zone.

(3) 86 FWS will monitor for marine mammals in the proposed action area. If 86 FWS personnel observe or detect any dead or injured marine mammals prior to testing, or detects any injured or dead marine mammal during live fire exercises, 86 FWS must cease operations and submit a report to NMFS within 24 hours.

(4) 86 FWS must immediately report any unauthorized takes of marine mammals (*i.e.,* serious injury or mortality) to NMFS and to the respective Pacific Islands Region stranding network representative. 86 FWS must cease operations and submit a report to NMFS within 24 hours.

Estimated Numbers of Marine Mammals Taken by Harassment

The NDAA amended the definition of harassment as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

NMFS previously described the physiological responses, and behavioral responses that could potentially result from exposure to explosive detonations. In this section, we will relate the potential effects to marine mammals from detonation of explosives to the MMPA regulatory definitions of Level A and Level B harassment. This section will also quantify the effects that might occur from the planned military readiness activities in PMRF BSURE area.

86 FWS thresholds used for onset of temporary threshold shift (TTS; Level B Harassment) and onset of permanent threshold shift (PTS; Level A Harassment) are consistent with the thresholds outlined in the Navy's report titled, ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report,'' which the Navy coordinated with NMFS. The report is available on the internet at: *http://nwtteis.com/Portals/NWTT/DraftEIS2014/SupportingDocs/NWTT_NMSDD_Technical_Report_23_January%202014_reduced.pdf*

In August 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing, which established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** Notice announcing the Guidance (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of acoustic analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well consideration of where the agency is in the decision-making pipeline. In that Notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new guidance, including: How far in the MMPA process the applicant has progressed; the scope of the effects; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the Guidance is expected to affect our analysis.

In this case, the Air Force has requested an authorization for a one-day activity that would include one explosive release and two explosive bursts of four munitions timed a few seconds apart and occur in October. Our analysis in the proposed IHA for this action (81 FR 44277) (July 7, 2016) includes the consideration of, and we proposed to authorize, takes of small numbers of marine mammals by both Level A and Level B harassment. The extremely short duration of the activity (essentially three instantaneous events within a day) and the robust monitoring and mitigation measures we proposed minimize the likelihood that Level A harassment will occur. In short, although the new thresholds were not used in the calculation of take, we believe that the existing analysis, mitigation, and authorization adequately address the likely effects and protective measures.

Level B Harassment

Of the potential effects described earlier in this document, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the above definition, when resulting from exposures to non-impulsive or impulsive sound, is Level B harassment. Some of the lower level physiological stress responses discussed earlier would also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When predicting Level B harassment based on estimated behavioral responses, those takes may have a stress-related physiological component.

Temporary Threshold Shift—As discussed in the proposed **Federal Register** notice (81 FR 44277) (July 7, 2016), TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. NMFS classifies TTS (when resulting from exposure to explosives and other impulsive sources) as Level B harassment, not Level A harassment (injury).

Level A Harassment

Of the potential effects that were described earlier, the following are the types of effects that fall into the Level A Harassment category:

Permanent Threshold Shift—PTS (resulting from exposure to explosive detonations) is irreversible and NMFS considers this to be an injury.

Gastrointestinal (GI) Tract Injury—GI tract injury includes contusions and lacerations from blast exposures, particularly in air-containing regions of the tract.

Slight Lung Injury—These injuries may include slight blast injuries to the lungs but would be survivable.

Mortality

Mortality may include injuries that lead to mortality including primary

(moderate to severe) blast injuries and barotrauma. Thresholds are based on the level of impact that would cause extensive lung injury resulting in mortality to one percent of exposed animals (Finneran and Jenkins, 2012).

Table 4 outlines the explosive thresholds used by NMFS for this Authorization when addressing noise impacts from explosives.

Table 4. Explosive thresholds for Marine Mammals used by 86 FWS in its current acoustics impacts modeling.

Functional Hearing Group	Mortality*	Level A Harassment			Level B Harassment	
		Slight Lung Injury*	GI Tract Injury	PTS	TTS	Behavioral
LF Cetaceans	$91.4M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	$39.1M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 187 dB re 1 μPa^2·s	Weighted SEL: 172 dB re 1 μPa^2·s	Weighted SEL: 167 dB re 1 μPa^2·s
				Unweighted SPL: 230 dB re 1 μPa	Unweighted SPL: 224 dB re 1 μPa (23 psi PP)	
MF Cetaceans			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 187 dB re 1 μPa^2·s	Weighted SEL: 172 dB re 1 μPa^2·s	Weighted SEL: 167 dB re 1 μPa^2·s
				Unweighted SPL: 230 dB re 1 μPa	Unweighted SPL: 224 dB re 1 μPa (23 psi PP)	
HF Cetaceans			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 161 dB re 1 μPa^2·s	Weighted SEL: 146 dB re 1 μPa^2·s	Weighted SEL: 141 dB re 1 μPa^2·s
				Unweighted SPL: 201 dB re 1 μPa	Unweighted SPL: 195 dB re 1 μPa (1 psi PP)	
Phocids (in water)			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 192 dB re 1 μPa^2·s	Weighted SEL: 177 dB re 1 μPa^2·s	Weighted SEL: 172 dB re 1 μPa^2·s
				Unweighted SPL: 218 dB re 1 μPa	Unweighted SPL: 212 dB re 1 μPa (6 psi PP)	

M = Animal mass based on species (kilograms); *D* = Water depth (meters); dB re 1 μPa = decibels referenced to 1 microPascal; dB re 1 μPa^2·s = decibels reference to 1 microPascal-squared–seconds; GI = gastrointestinal; PTS = permanent threshold shift; SEL = sound exposure level; TTS = temporary threshold shift; SPL = sound pressure level; PP = peak pressure

*Expressed in terms of acoustic impulse (Pascal – seconds (Pa·s))

86 FWS completed acoustic modeling to determine the distances to NMFS's explosive thresholds from their explosive ordnance, which was then used with each species' density to determine number of exposure estimates. Below is a summary of those modeling efforts.

The zone of influence is defined as the area or volume of ocean in which marine mammals could be exposed to various pressure or acoustic energy levels caused by exploding ordnance. Refer to Appendix A of 86 FWS's application for a description of the method used to calculate impact areas for explosives. The pressure and energy levels considered to be of concern are defined in terms of metrics, criteria, and thresholds. A metric is a technical standard of measurement that describes the acoustic environment (*e.g.,* frequency, duration, temporal pattern, and amplitude) and pressure at a given location. Criteria are the resulting types of possible impact and include mortality, injury, and harassment. A threshold is the level of pressure or noise above which the impact criteria are reached.

Standard impulsive and acoustic metrics were used for the analysis of underwater energy and pressure waves in this document. Several different metrics are important for understanding risk assessment analysis of impacts to marine mammals: SPL is the ratio of the absolute sound pressure to a reference level, SEL is measure of sound intensity and duration, and positive impulse is the time integral of the pressure over the initial positive phase of an arrival.

The criteria and thresholds used to estimate potential pressure and acoustic impacts to marine mammals resulting from detonations were obtained from Finneran and Jenkins (2012) and include mortality, injurious harassment (Level A), and non-injurious harassment (Level B). In some cases, separate thresholds have been developed for different species groups or functional hearing groups. Functional hearing groups included in the analysis are low-frequency cetaceans, mid-frequency cetaceans, high-frequency cetaceans, and Phocid pinnipeds.

The maximum estimated range, or radius, from the detonation point to which the various thresholds extend for all munitions planned to be released in a 24-hour time period was calculated for each species based on explosive acoustic characteristics, sound propagation, and sound transmission loss in the Study Area, which incorporates water depth, sediment

type, wind speed, bathymetry, and temperature/salinity profiles (Table 5). The ranges were used to calculate the total area (circle) of the zones of influence for each criterion/threshold. To eliminate ''double-counting'' of animals, impact areas from higher impact categories (*e.g.,* mortality) were subtracted from areas associated with lower impact categories (*e.g.,* Level A harassment). The estimated number of marine mammals potentially exposed to the various impact thresholds was then calculated as the product of the adjusted impact area, animal density, and number of events. Since the model accumulates the energy from all detonations within a 24-hour timeframe, it is assumed that the same population of animals is being impacted within that time period. The population would refresh after 24 hours. In this case, only one mission day is planned for 2016, and therefore, only one event is modeled that would impact the same population of animals. Details of the acoustic modeling method are provided in Appendix A of the application.

The resulting total number of marine mammals potentially exposed to the various levels of thresholds is shown in Table 7. An animal is considered ''exposed'' to a sound if the received sound level at the animal's location is above the background ambient acoustic level within a similar frequency band. The exposure calculations from the model output resulted in decimal values, suggesting in most cases that a fraction of an animal was exposed. To eliminate this, the acoustic model results were rounded to the nearest whole animal to obtain the exposure estimates from 2016 missions. Furthermore, to eliminate ''double-counting'' of animals, exposure results from higher impact categories (*e.g.,* mortality) were subtracted from lower impact categories (*e.g.,* Level A harassment). For impact categories with multiple criteria and/or thresholds (*e.g.,* three criteria and four thresholds associated with Level A harassment), numbers in the table are based on the threshold resulting in the greatest number of exposures. These exposure estimates do not take into account the required mitigation and monitoring measures, which may decrease the potential for impacts.

TABLE 5—DISTANCES (M) TO EXPLOSIVE THRESHOLDS FROM 86 FWS'S EXPLOSIVE ORDNANCE

Species	Mortality [1]	Level A harassment [2]				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS	Behavioral	
			237 dB SPL	Applicable SEL*	Applicable SPL*	Applicable SEL*	Applicable SPL*	Applicable SEL*
Humpback Whale	38	81	165	2,161	330	6,565	597	13,163
Blue Whale	28	59	165	2,161	330	6,565	597	13,163
Fin Whale	28	62	165	2,161	330	6,565	597	13,163
Sei Whale	38	83	165	2,161	330	6,565	597	13,163
Bryde's Whale	38	81	165	2,161	330	6,565	597	13,163
Minke Whale	55	118	165	2,161	330	6,565	597	13,163
Sperm Whale	33	72	165	753	330	3,198	597	4,206
Pygmy Sperm Whale	105	206	165	6,565	3,450	20,570	6,565	57,109
Dwarf Sperm Whale	121	232	165	6,565	3,450	20,570	6,565	57,109
Killer Whale	59	126	165	753	330	3,198	597	4,206
False Killer Whale	72	153	165	753	330	3,198	597	4,206
Pygmy Killer Whale	147	277	165	753	330	3,198	597	4,206
Short-finned Pilot Whale	91	186	165	753	330	3,198	597	4,206
Melon-headed Whale	121	228	165	753	330	3,198	597	4,206
Bottlenose Dolphin	121	232	165	753	330	3,198	597	4,206
Pantropical Spotted Dolphin	147	277	165	753	330	3,198	597	4,206
Striped Dolphin	147	277	165	753	330	3,198	597	4,206
Spinner Dolphin	147	277	165	753	330	3,198	597	4,206
Rough-toothed Dolphin	121	232	165	753	330	3,198	597	4,206
Fraser's Dolphin	110	216	165	753	330	3,198	597	4,206
Risso's Dolphin	85	175	165	753	330	3,198	597	4,206
Cuvier's Beaked Whale	51	110	165	753	330	3,198	597	4,206
Blainville's Beaked Whale	79	166	165	753	330	3,198	597	4,206
Longman's Beaked Whale	52	113	165	753	330	3,198	597	4,206
Hawaiian Monk Seal	135	256	165	1,452	1,107	3,871	1,881	6,565

[1] Based on Goertner (1982)
[2] Based on Richmond *et al.* (1973)
* Based on the applicable Functional Hearing Group

Density Estimation

Density estimates for marine mammals were derived from the Navy's draft 2016 Technical Report of Marine Species Density Database (NMSDD). NMFS refers the reader to Section 3 of 86 FWS's application for detailed information on all equations used to calculate densities; also presented in Table 6.

TABLE 6—MARINE MAMMAL FALL DENSITY ESTIMATES WITHIN 86 FWS'S PMRF

Species	Density (animals/km ^{2})
Humpback Whale	0.0211
Blue Whale	0.00005
Fin Whale	0.00006
Sei Whale	0.00016
Bryde's Whale	0.00010

TABLE 6—MARINE MAMMAL FALL DENSITY ESTIMATES WITHIN 86 FWS'S PMRF—Continued

Species	Density (animals/km ^{2})
Minke Whale	0.00423
Sperm Whale	0.00156
Pygmy sperm whale	0.00291
Dwarf sperm whale	0.00714
Killer Whale	0.00006

TABLE 6—MARINE MAMMAL FALL DENSITY ESTIMATES WITHIN 86 FWS'S PMRF—Continued

Species	Density (animals/km 2)
False Killer Whale (insular)	0.00050
False Killer Whale (NWHI, pelagic)	0.00071
Pygmy Killer Whale	0.00440
Short-finned Pilot Whale	0.00919
Melon-headed Whale	0.00200
Bottlenose Dolphin	0.00316
Pantropical Spotted Dolphin	0.00623
Striped Dolphin	0.00335
Spinner Dolphin	0.00204

TABLE 6—MARINE MAMMAL FALL DENSITY ESTIMATES WITHIN 86 FWS'S PMRF—Continued

Species	Density (animals/km 2)
Rough-toothed Dolphin	0.00470
Fraser's Dolphin	0.02100
Risso's Dolphin	0.00470
Cuvier's Beaked Whale	0.00030
Blainville's Beaked Whale	0.00086
Longman's Beaked Whale	0.00310
Hawaiian Monk Seal	0.00003

Take Estimation

Table 7 indicates the modeled potential for lethality, injury, and non-injurious harassment (including behavioral harassment) to marine mammals in the absence of mitigation measures. All other species had zero takes modeled for each category. 86 FWS and NMFS estimate that one marine mammal species could be exposed to injurious Level A harassment noise levels (187 dB SEL) and five species could be exposed to Level B harassment (TTS and Behavioral) noise levels in the absence of mitigation measures.

TABLE 7—MODELED NUMBER OF MARINE MAMMALS POTENTIALLY AFFECTED BY LRS WSEP OPERATIONS

Species	Mortality	Level A harassment (PTS only)	Level B harassment (TTS)	Level B harassment (Behavioral)
Dwarf sperm whale	0	1	9	64
Pygmy sperm whale	0	0	3	26
Fraser's dolphin	0	0	1	0
Minke whale	0	0	1	2
Humpback whale	0	0	3	9
TOTAL	0	1	17	101

Based on the mortality exposure estimates calculated by the acoustic model, zero marine mammals are expected to be affected by pressure levels associated with mortality or serious injury. Zero marine mammals are expected to be exposed to pressure levels associated with slight lung injury or gastrointestinal tract injury.

NMFS considers PTS to fall under the injury category (Level A Harassment). There are different degrees of PTS ranging from slight/mild to moderate and from severe to profound. Profound PTS or the complete loss of the ability to hear in one or both ears is commonly referred to as deafness. In the case of authorizing Level A harassment, NMFS has estimated that one dwarf sperm whale could experience permanent threshold shifts of hearing sensitivity (PTS).

Negligible Impact Analysis and Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all the species listed in Table 7 for which we propose to authorize incidental take for 86 FWS's activities.

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document, including modeling predictions that estimated no serious injury or death for any species, the use of mitigation measures, and the short duration of the activities, 86 FWS's specified activities are not likely to cause long-term behavioral disturbance, serious injury, or death. The takes from Level B harassment would be due to behavioral disturbance and TTS. The takes from Level A harassment would be due to PTS. We anticipate that any PTS incurred would be in the form of only a small degree of PTS and not total deafness.

While animals may be impacted in the immediate vicinity of the activity, because of the short duration of the actual individual explosions themselves (versus continual sound source operation) combined with the short duration of the LRS WSEP operations, NMFS has determined that there will not be a substantial impact on marine mammals or on the normal functioning of the nearshore or offshore waters off Kauai and its ecosystems. We do not expect that the planned activity would impact rates of recruitment or survival of marine mammals since we do not expect mortality (which would remove individuals from the population) or

serious injury to occur. In addition, the planned activity would not occur in areas (and/or times) of significance for the marine mammal populations potentially affected by the exercises (*e.g.,* feeding or resting areas, reproductive areas), and the activities would only occur in a small part of their overall range, so the impact of any potential temporary displacement would be negligible and animals would be expected to return to the area after the cessations of activities. Although the planned activity could result in Level A (PTS only) and Level B (behavioral disturbance and TTS) harassment of marine mammals, the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals because the number of exposed animals is expected to be low due to the short-term (*i.e.,* four hours a day or less on one day) and site-specific nature of the activity. We do not anticipate that the effects would be detrimental to rates of recruitment and survival because we do not expect serious or extended behavioral responses that would result in energetic effects at the level to impact fitness.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, and the short duration of the activities, NMFS finds that 86 FWS's LRS WSEP operations will result in the incidental take of marine mammals, by Level A and Level B harassment, and that the taking from the LRS WSEP exercises will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS prepared an EA in accordance with the NEPA. NMFS determined that these activities will not have a significant effect on the human environment and signed a Finding of No Significant Impact (FONSI) in September 2016.

Authorization

As a result of these determinations, NMFS has issued an IHA to 86 FWS for conducting LRS WSEP activities, for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 27, 2016.

Donna S. Wieting,

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

[FR Doc. 2016–23725 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE923

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC).

DATES: The SSC will meet 1:30 p.m. to 5:30 p.m., Tuesday, October 18, 2016; 8:30 a.m. to 5:30 p.m., Wednesday, October 19, 2016; and 8:30 a.m. to 3 p.m., Thursday, October 20, 2016.

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Blvd., Charleston, SC 29403; phone: (843) 723–3000 or (800) 968–3569.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The following agenda items will be addressed by the SSC during this meeting:

1. NMFS Stock Assessment Prioritization tool application to selected South Atlantic stocks.
2. Receive an update on Southeast Data, Assessment and Review (SEDAR) activities.
3. Receive an update on 2015 Landings, Annual Catch Limits (ACLs), Acceptable Biological Catches (ABCs) and Accountability Measures (AMs).
4. Discuss modifications to the ABC Control Rule.
5. Further consider the SEDAR stock assessment update and fishing level recommendations for Golden Tilefish.
6. Review Snapper Grouper Amendment 43, including Red Snapper reference points, consider fishing level recommendations, and reliability of NOAA Fisheries' Marine Recreational Information Program estimates.
7. Review a study on Black Sea Bass commercial pot mesh size.
8. Review the draft Council management analysis review process.
9. Consider fishing level recommendations for Spiny Lobster.
10. Review Snapper Grouper Amendment 41 for Mutton Snapper.
11. Discuss proposed topics for the next National SSC meeting.
12. Receive an update on the Council's work plan and current amendments.
13. Discuss revisions to the SSC Public Comment Policy.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Written comment on SSC agenda topics is to be distributed to the Committee through the Council office. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. The deadline for submission of written comment is 12 p.m. Tuesday, October 11, 2016. Two opportunities for comment on agenda items will be provided during the SSC meeting and noted on the agenda. The first will be at the beginning of the meeting, and the second near the conclusion, when the SSC reviews its recommendations.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary

aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 28, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–23802 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE920

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Subcommittee of the Scientific and Statistical Committee will hold a joint methodology review meeting with the Salmon Technical Team.

DATES: The meeting will be held on Tuesday, October 18, 2016, from 1 p.m. until business for the day is complete.

ADDRESSES: The meeting will be held in the Large Conference Room of the Pacific Council.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council; (503) 820–2414.

SUPPLEMENTARY INFORMATION: The purpose of the methodology review meeting is to discuss and review proposed changes to analytical methods used in salmon management. Recommendations from the methodology review meeting will be presented at the November 13–21, 2016 Council meeting in Garden Grove, CA where the Council is scheduled to take final action on the proposals. One topic, a forecast model for Sacramento River winter Chinook, was adopted by the Council at their September 12–20, 2016 meeting in Boise, ID for consideration at the methodology review meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 10 business days prior to the meeting date.

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

Dated: September 28, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–23801 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE664

Marine Mammals; File No. 20481

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the British Broadcasting Company (BBC) Natural History Unit, 23 Whiteladies Road, Bristol BS8 2LR, United Kingdom, commercial and educational photography on California sea lions (*Zalophus californianus*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa González or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 25, 2016, notice was published in the **Federal Register** (81 FR 48394) that a request for a permit to commercial and educational photography on California sea lions had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 20481 authorizes filming California sea lions along the California coast and offshore from Point Año Nuevo south to the Channel Islands. Up to 1000 California sea lions may be approached for filming from land, vessel, and underwater (snorkelers or scuba divers). In addition, up to1000 long-beaked common dolphins (*Delphinus capensis*) and 1000 short-beaked common dolphins (*D. delphis*) may be incidentally harassed and filmed during operations. The permit expires on August 31, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 27, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23723 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE918

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 18, 2016, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Boston Logan,

100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will review information provided by the Council's Scallop Plan Development Team (PDT) and recommend the overfishing levels (OFLs) and acceptable biological catches (ABCs) for Atlantic sea scallops for fishing years 2016 and 2017. They will discuss other issues related to improving control rules and ABC recommendations for groundfish and other stocks, including ecosystem information, how to deal with information from multiple stock assessment models and other information. Other business will be discussed as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 28, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–23800 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Applications and Reporting Requirements for the Incidental Take of Marine Mammals by Specified Activities (Other Than Commercial Fishing Operations) Under the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 2, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dale Youngkin, (301) 427–8401 or *ITP.Youngkin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) prohibits the ''take'' of marine mammals unless otherwise authorized or exempted by law. Among the provisions that allow for lawful take of marine mammals, sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), within a specified geographical region if, after notice and opportunity for public comment, we find that the taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The National Marine Fisheries Service (NMFS) also must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (mitigation); and requirements pertaining to the monitoring and reporting of such taking.

Issuance of an incidental take authorization (Authorization) under section 101(a)(5)(A) or 101(a)(5)(D) of the MMPA requires three sets of information collection: (1) A complete application for an Authorization, as set forth in our implementing regulations at 50 CFR 216.104, which provides the information necessary for us to make the necessary statutory determinations, including estimates of take and an assessment of impacts on the affected species and stocks; (2) information relating to required monitoring; and (3) information related to required reporting. These collections of information enable us to: (1) Evaluate the proposed activity's impact on marine mammals; (2) arrive at the appropriate determinations required by the MMPA and other applicable laws prior to issuing the authorization; and (3) monitor impacts of activities for which we have issued Authorizations to determine if our predictions regarding impacts on marine mammals remain valid.

On August 4, 2016, NMFS published a **Federal Register** Notice (81 FR 51694) notifying the public of its new Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This guidance established new thresholds for predicting auditory injury, which equates to Level A harassment (a type of take) under the MMPA. In that **Federal Register** Notice we stated that we would consider the effect of the Guidance, specifically whether a revision in the burden hour estimates is appropriate, and invite public comment on its assessment.

Although NMFS has updated the acoustic thresholds and these changes may necessitate new methodologies for calculating impacts, NMFS does not anticipate that the new guidance will substantially add to the overall burden to applicants for incidental take authorizations. This is due to the fact that, recognizing that action proponents have varying abilities to model and estimate exposure, and that the new guidance may be more complex than some action proponents are able to incorporate, NMFS provided an alternative methodology with an associated spreadsheet for use as an aid. Action proponents already using more

complex modeling capabilities would simply modify their modeling efforts using the new criteria, and action proponents without the ability to do more complex modeling may opt to use the alternative methodology spreadsheet. Therefore, the estimated time per response is not affected by the guidance.

II. Method of Collection

Respondents have a choice of submitting either electronic or paper forms. Methods of submittal include email, mail, overnight delivery service, and/or facsimile transmissions.

III. Data

OMB Control Number: 0648–0151.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Not-for-profit institutions; state, local, or tribal governments; businesses or other for-profit organizations.

Estimated Number of Respondents: 95.

Estimated Time per Response: 255 hours for an Incidental Harassment Authorization (IHA) application; 11 hours for an IHA interim report (if applicable); 115 hours for an IHA draft annual report; 14 hours for an IHA final annual report (if applicable); 1,100 hours for the initial preparation of an application for new regulations; 70 hours for an annual Letter of Authorization (LOA) application; 220 hours for an LOA draft annual report; 65 hours for a LOA final annual report (if applicable); 625 hours for a LOA draft comprehensive report; and 300 hours for an LOA final comprehensive report. Response times will vary for the public based upon the complexity of the requested action.

Estimated Total Annual Burden Hours: 14,109.

Estimated Total Annual Cost to Public: $360 in recordkeeping/reporting costs and $0 in capital costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 27, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–23743 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE297

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Construction and Support Facilities Project, Port Angeles, WA

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass marine mammals during construction activities associated with the Pier Construction and Support Facilities Project at Port Angeles, WA.

DATES: This authorization is effective from November 1, 2016 to October 31, 2017.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm.* A memorandum describing our adoption of the Navy's Environmental Assessment (2016) and our associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb

a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On September 11, 2015, we received a request from the Navy for authorization to take marine mammals incidental to pile driving associated with the construction of a pier and support facilities at the U.S. Coast Guard (USCG) Air Station/Sector Field Office Port Angeles (AIRSTA/SFO Port Angeles), located in Port Angeles Harbor on the Ediz Hook peninsula, Port Angeles. The Navy submitted a revised version of the request on February 19, 2016, which we deemed adequate and complete on February 22, 2016.

The Navy will initiate this multi-year project, lasting up to 18 months, involving impact and vibratory pile driving conducted within the approved in-water work windows. In water work is expected to begin on November 1, 2016 in order to minimize impacts to an Atlantic Salmon net pen farm located in close proximity to the project area. In water work will conclude on February 15, 2017, and begin again from July 16 to October 31, 2017. If in-water work will extend beyond the effective dates of the IHA, a second IHA application will be submitted by the Navy.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Take, by Level B Harassment, may impact individuals of five species of marine mammals (harbor porpoise (*Phocoena phocoena),* harbor seal (*Phoca vitulina),* Northern elephant seal (*Mirounga angustirostris),* Steller sea lion (*Eumatopias jubatus),* and California sea lion (*Zalophus californianus)*). As the next paragraph explains, we have also determined based on the best available information that there also may be a small number of take by Level A Harassment of harbor seals.

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** Notice (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well as consideration of where the action is in the agency's decision-making pipeline. In that Notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new Guidance, including: the scope of effects; how far in the process the applicant has progressed; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the guidance is expected to affect our analysis.

In this case, the Navy initially submitted a request for authorization on September 11, 2015, followed by an adequate and complete request determination on February 22, 2016. The Navy requires issuance of the authorization in order to ensure that this critical national security infrastructure project is able to meet its necessary start date. The Guidance indicates that there is a greater likelihood of auditory injury for Phocid pinnipeds (*i.e.,* harbor seals) and for high-frequency cetaceans (*i.e.,* harbor porpoise) than was considered in our notice of proposed authorization. In order to address this increased likelihood, we increased the shutdown zones required for harbor seals to 100 m and for harbor porpoise to 150 m. With these changes, and in addition to other required mitigation measures, the Navy has a robust monitoring and mitigation program that we believe is effective in minimizing impacts to the affected species or stocks.

In addition, to account for the potential that not all harbor seals may be observed, we authorize the taking by Level A harassment of one harbor seal per day of projected construction activity. In this analysis, we considered the potential for small numbers of harbor seals to incur auditory injury and found that it would not impact our preliminary determinations. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis contained herein and appropriate protective measures are in place in the IHA.

Description of the Specified Activity

Overview

The Navy has increased security for in-transit Fleet Ballistic Missile Submarines (SSBNs) in inland marine waters of northern Washington by establishing a Transit Protection System (TPS) that relies on the use of multiple escort vessels. The purpose of the Pier and Support Facilities for TPS project is to provide a staging location for TPS vessels and crews that escort incoming and outgoing SSBNs between dive/surface points in the Strait of Juan de Fuca and Naval Base (NAVBASE) Kitsap Bangor.

Specific activities that can be expected to result in the incidental taking of marine mammals are limited to the driving of steel piles used for installation of the trestle/fixed pier/floating docks, and the removal of temporary indicator piles.

Vibratory pile driving is the preferred method for production piles and would be the initial starting point for each installation; however, impact pile driving methods may be necessary based on substrate conditions. Once a pile hits ''refusal,'' which is where hard solid or dense substrate (*e.g.,* gravel, boulders) prevents further pile movement by vibratory methods, impact pile driving is used to drive the pile to depth.

All piles will be driven with a vibratory hammer for their initial embedment depths, while select piles may be finished with an impact hammer for proofing, as necessary. There will be no concurrent pile driving or multiple hammers operating simultaneously. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (*i.e.,* bubble curtain) would be used during all impact hammer operations.

Dates and Duration

Under the action, in-water construction is anticipated to begin in 2016 and require two in-water work window seasons. The allowable season for in-water work, including pile driving, at AIRSTA/SFO Port Angeles is November 1, 2016 through February 15, 2017, and July 16, 2017 through October 31, 2017, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect juvenile salmon (*Oncorhynchus spp.*) and bull trout (*Salvelinus confluentus*). Overall, a maximum of 75 days of pile driving are anticipated within these in-water work windows. All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 23 when impact

pile driving/removal will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets (an Endangered Species Act (ESA)-listed bird under the jurisdiction of USFWS) during nesting season (April1-September 23). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

Specific Geographic Region

AIRSTA/SFO Port Angeles is located in the Strait of Juan de Fuca, approximately 62 miles (100 km) east of Cape Flattery, and 63 miles (102 km) northwest of Seattle, Washington on the Olympic Peninsula (see Figure 1–1 in the Navy's application). The Strait of Juan de Fuca is a wide waterway stretching from the Pacific Ocean to the Salish Sea. The strait is 95 miles (153 km) long, 15.5 miles (25 km) wide, and has depths ranging from 180 m to 250 m on the pacific coast and 55 m at the sill. Please see Section 2 of the Navy's application for detailed information about the specific geographic region, including physical and oceanographic characteristics.

Detailed Description of Activities

The purpose of the Pier and Support Facilities for TPS project (the project) is to provide a staging location for TPS vessels and crews that escort incoming and outgoing SSBNs between dive/surface points in the Strait of Juan de Fuca and Naval Base (NAVBASE) Kitsap Bangor. The Navy has increased security for in-transit Fleet Ballistic Missile Submarines (SSBNs) in inland marine waters of northern Washington by establishing a Transit Protection System (TPS) that relies on the use of multiple escort vessels. Construction of the pier and support facilities is grouped into three broad categories: (1) Site Work Activities (2) Construction of Upland Facilities (Alert Forces Facility (AFF) and Ready Service Armory (RSA)), and (3) Construction of Trestle/Fixed Pier/Floating Docks.

The trestle, fixed pier, and floating docks will result in a permanent increase in overwater coverage of 25,465 square feet (ft^2) (2,366 square meters (m^2)). An estimated 745 ft^2 (69 m^2) of benthic seafloor will be displaced from the installation of the 144 permanent steel piles. The fixed pier will lie approximately 354 ft (108 m) offshore at water depths between −40 ft (−12 m) and −63 ft (19 m) mean lower low water (MLLW). It will be constructed of precast concrete and be approximately 160 feet long and 42 feet wide (49 m by 13 m). The fixed pier will have two mooring dolphins that connect to the fixed pier via a catwalk, and will be supported by 87 steel piles and result in 10,025 ft^2 (931 m^2) of permanent overwater coverage. The floating docks including brows will be supported by 21 steel piles and result in 5,380 ft^2 (500 m^2) of permanent overwater coverage. The trestle will provide vehicle and pedestrian access to the pier and convey utilities to the pier. It will be installed between +7 ft (2 m) MLLW and −45 ft (−14 m) MLLW. The trestle will be approximately 355 feet long (108 m) long and 24 feet (7 m) wide and constructed of precast concrete. The trestle will be designed to support a 50 pound per square foot (psf) (244 kilograms (kg) per square m) live load or a utility trailer with a total load of 3,000 pounds (1,360 kg), and will be supported by 36 steel piles and result in 10,060 ft^2 (935 m^2) of permanent overwater coverage.

For the entire project, pile installation will include the installation and removal of 80 temporary indicator piles, installation of 60 permanent sheet piles, and installation of 144 permanent steel piles (Table 1). The indicator piles are required to determine if required bearing capacities will be achieved with the production piles, and to assess whether the correct vibratory and impact hammers are being used. The process will be to vibrate the piles to within 5 ft (1.5 m) of the target embedment depth required for the project, let the piles rest in place for a day, and then impact drive the piles the final 5 ft (1.5 m). If the indicator piles cannot be successfully vibrated in, then a larger hammer will be used for the production piles. The impact driving will also provide an indication of bearing capacity via proofing. Each indicator pile would then be vibratory extracted (removed) using a vibratory hammer.

A maximum of 75 days of pile driving may occur. Table 1 summarizes the number and nature of piles required for the entire project.

TABLE 1—SUMMARY OF PILES REQUIRED FOR PIER CONSTRUCTION

[in total]

Feature	Quantity and size
Total number of in-water piles.	Up to 284.*
Indicator temporary	24-in: 80.
Sheet pile wall	PZC13 Steel sheet piles: 60.
Trestle	18-in: 16. 24-in: 12. 36-in: 8.
Fixed pier piles	24-in: 28. 30-in: 49. 36-in: 10.
Floating docks	24-in: 3. 30-in: 6. 36-in: 12.
Maximum pile driving duration.	75 days (under one-year IHA).

* Pile installation would include the installation and removal of 80 temporary indicator piles, installation of 60 permanent sheet piles, and installation of 144 permanent steel piles.

Pile installation will utilize vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles will be able to be vibratory driven to within several feet of the required depth. Pile drivability is, to a large degree, a function of soil conditions and the type of pile hammer. Most piles should be able to be driven with a vibratory hammer to proper embedment depth. However, difficulties during pile driving may be encountered as a result of obstructions, such as rocks or boulders, which may exist throughout the project area. If difficult driving conditions occur, increased usage of an impact hammer will occur.

Pile production rates are dependent upon required embedment depths, the potential for encountering difficult driving conditions, and the ability to drive multiple piles without a need to relocate the driving rig. If difficult subsurface driving conditions (*e.g.,* cobble/boulder zones) are encountered that cause refusal with the vibratory equipment, it may be necessary to use an impact hammer to drive some piles for the remaining portion of their required depth. The worst-case scenario is that a pile would be driven for its entire length using an impact hammer. Given the uncertainty regarding the types and quantities of boulders or cobbles that may be encountered, and the depth at which they may be encountered, the number of strikes necessary to drive a pile its entire length would vary. All piles driven or struck with an impact hammer would be surrounded by a bubble curtain over the full water column to minimize in-water sound. Pile production rate (number of piles driven per day) is affected by many factors: Size, type (vertical versus angled), and location of piles; weather; number of driver rigs operating; equipment reliability; geotechnical (subsurface) conditions; and work stoppages for security or environmental reasons (such as presence of marine mammals).

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on April 4, 2016 (81 FR 19326). We received one comment, a letter from the Marine Mammal Commission concurring with NMFS's preliminary findings.

Comment: The Commission recommends the issuance of the IHA, subject to the inclusion of the proposed mitigation, monitoring, and reporting measures.

Response: We appreciate the Commission's concurrence with our findings and appreciate their input and support. We look forward to working with them on similar issues in the future.

Description of Marine Mammals in the Area of the Specified Activity

There are eleven marine mammal species with recorded occurrence in the Strait of Juan de Fuca (Table 2), including seven cetaceans and four pinnipeds. Of these eleven species, only five are expected to have a reasonable potential to be in the vicinity of the project site. These species are harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), Northern elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumatopias jubatus*), and California sea lion (*Zalophus californianus*). Harbor seals occur year round throughout the nearshore inland waters of Washington. Harbor seals are expected to occur year round in Port Angeles Harbor, with a nearby haul-out site on a log boom located approximately 1.7 miles (2.7 km) west of the project site and another haul-out site 1.3 miles (2.1 km) south of the project. Steller sea lions and California sea lions may occur in the area, but there are no site-specific surveys on these species. Harbor porpoises and Northern elephant seal are rare through the project area. The Dall's porpoise (*Phocoenoides dalli dalli*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), gray whale (*Eschrichtius robustus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and killer whales (*Orcinus orca*) are extremely rare in Port Angeles Harbor, and we do not believe there is a reasonable likelihood of their occurrence in the project area during the period of validity for this IHA.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Strait of Juan de Fuca (DoN, 2006). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed February 1, 2016). We provided additional information for marine mammals with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (April 4, 2016; 81 FR 19326).

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF AIRSTA/SFO PORT ANGELES

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in Strait of Juan de Fuca; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Phocoenidae (porpoises)					
Harbor porpoise	Washington inland waters [5]	-; N	10,682 (0.38; 7,841; 2003)	63	Possible regular presence in the Strait of Juan de Fuca, but unlikely near PAH; year-round.
Dall's porpoise	CA/OR/WA	-; N	42,000 (0.33; 32,106; 2008).	257	Rare.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Delphinidae (dolphins)					
Pacific white-sided dolphin	CA/OR/WA	-; N	26,930 (0.28; 21,406; 2008).	171	Rare.
Killer whale	West coast transient	-; N	243 (n/a; 243; 2009)	2.4	Unlikely.
	Southern resident	E; S	78 (n/a; 78; 2014)	0.14	
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Balaenopteridae					
Humpback whale	CA/OR/WA	E; S	1,918 (0.03; 1,855; 2011)	11	Unlikely.
Minke whale	CA/OR/WA	-; N	478 (1.36; 202; 2008)	2	Unlikely.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Eschrichtiidae					
Gray whale	Eastern N. Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	Unlikely.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF AIRSTA/SFO PORT ANGELES—Continued

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in Strait of Juan de Fuca; season of occurrence
Order Carnivora—Superfamily Pinnipedia					
Family Otariidae (eared seals and sea lions)					
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	Seasonal/common; Fall to late spring (Aug to Jun).
Steller sea lion	Eastern U.S.	-; S	60,131- 74,448 (n/a; 36,551; 2013) [6].	1,645 [7]	Seasonal/occasional; Fall to late spring (Sep to May).
Family Phocidae (earless seals)					
Harbor seal [8]	Washington inland waters [5]	-; N	11,036 (0.15; n/a; 1999)	n/a	Common; Year-round resident.
Northern elephant seal	California breeding stock	-; N	179,000 (n/a; 81,368; 2010).	4,882	Seasonal/rare: Spring to late fall (Apr to Nov).

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2015 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*) except harbor seals. See comment 8.

[5] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[6] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (*i.e.,* high fecundity or low juvenile mortality).

[7] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

[8] Values for harbor seal presented here are from the 2013 SAR.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

Our **Federal Register** notice of proposed authorization (April 4, 2016; 81 FR 19326) provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals and their habitat.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see Estimated Take by Incidental Harassment); these values were used to develop mitigation measures for pile driving activities at Port Angeles harbor. The ZOIs effectively represent the mitigation zone that will be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Mitigation Monitoring and Shutdown for Pile Driving

The following measures will apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which injury may occur. The purpose of a shutdown zone is to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. During impact pile driving, the Navy will implement a minimum shutdown zone of 10 m radius for all marine mammals around all pile driving activity. Additionally, the Navy will implement a 100 m shutdown for harbor seals and a 150 m shutdown for harbor porpoises. These additional shutdown zones were added to prevent injury based off of NMFS's new acoustic guidance. During vibratory driving, the

shutdown zone will be 10 m distance from the source for all animals. These precautionary measures are intended to further reduce any possibility of acoustic injury, as well as to account for any undue reduction in the modeled zones stemming from the assumption of 8 dB attenuation from use of a bubble curtain (see discussion later in this section).

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals will be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone will be monitored.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. The received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational data, and a precise accounting of observed incidents of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity will be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary noise attenuation piles (TNAP)), and cushion blocks. The Navy proposes to use bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. The use of a confined or unconfined bubble curtain will be determined by the Navy's contractor based on the activity location's conditions; however, an unconfined bubble curtain is the likely the design that will be used. Our **Federal Register** notice of proposed authorization (April 4, 2016; 81 FR 19326) provides a general background on bubble curtains.

To avoid loss of attenuation from design and implementation errors, the

Navy has required specific bubble curtain design specifications, including testing requirements for air pressure and flow prior to initial impact hammer use, and a requirement for placement on the substrate. Bubble curtains shall be used during all impact pile driving. The device will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, and the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. We considered eight dB as potentially the best estimate of average SPL (rms) reduction, assuming appropriate deployment and no problems with the equipment. Therefore, an eight dB reduction was used in the Navy's analysis of pile driving noise in the environmental analyses.

Timing Restrictions

In Port Angeles Harbor, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids and other spawning forage fish are likely to be present. In-water work will be conducted between November 1, 2016–February 15, 2017, and July 16–October 31, 2017. All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 23 when impact pile driving/removal will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during nesting season (April 1–September 23). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity.

For impact driving, soft start will be required, and contractors will provide an initial set of strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. The reduced energy of an individual hammer cannot be quantified because of variation in individual drivers. The actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' Soft start for impact driving will be required at the beginning of each day's pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of serious injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; or

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

The Navy submitted a marine mammal monitoring plan as part of the IHA application for this project. It can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan will implement the following procedures for pile driving:

- A minimum of three Marine Mammal Observers (protected species observers (PSOs)) will be present during both impact and vibratory pile driving/removal and would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity will be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report will be submitted within ninety calendar days of the completion of the in-water work window or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first.. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

All anticipated takes would be by Level A and Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior (Level B) and permanent threshold shift (PTS) (Level A).

Low level responses to sound (*e.g.,* short-term avoidance of an area, short-term changes in locomotion or vocalization) are less likely to result in fitness effects on individuals that would ultimately affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individual animals could potentially be significant and could potentially translate to effects on annual rates of recruitment or survival (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Specific understanding of the activity and the effected species are necessary to predict the severity of impacts and the likelihood of fitness impacts, however, we start with the estimated number of takes, understanding that additional analysis is needed to understand what those takes mean. Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, taking the duration of the activity into consideration. This practice provides a good sense of the number of instances of take, but potentially overestimates the numbers of individual marine mammals taken. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances and PTS that could result from anthropogenic sound associated with

these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, Northern elephant seals, and harbor porpoises in Port Angeles Harbor that may result from pile driving during construction activities associated with the pier construction and support facilities project. We described applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidents of take in detail in our **Federal Register** notice of proposed authorization (April 4, 2016; 81 FR 19326). All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 3. NMFS's new acoustic guidance established new thresholds for predicting auditory injury (Level A Harassment). The Guidance indicates that there is a greater likelihood of auditory injury for Phocid pinnipeds (*i.e.,* harbor seals) and for high-frequency cetaceans (*i.e.,* harbor porpoise) than was considered in our notice of proposed authorization. In order to address this increased likelihood, we increased the shutdown zones required for harbor seals to 100 m and for harbor porpoise to 150 m. In addition, to account for the potential that not all harbor seals may be observed, we authorize the taking by Level A harassment of one harbor seal per day of projected construction activity.

Although radial distance and area associated with the zone ensonified to 160 dB (the behavioral harassment threshold for pulsed sounds, such as those produced by impact driving) are presented in Table 3, this zone would be subsumed by the 120-dB zone produced by vibratory driving. Thus, behavioral harassment of marine mammals associated with impact driving is not considered further here. Since the 160-dB threshold and the 120-dB threshold both indicate behavioral harassment, pile driving effects in the two zones are equivalent. Although not considered as a likely construction scenario, if only the impact driver was operated on a given day incidental take on that day would likely be lower because the area ensonified to levels producing Level B harassment would be smaller (although actual take would be determined by the numbers of marine mammals in the area on that day).

TABLE 3—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Steel pile size (inch)	Distance (m)	Area (km^2)
Impact driving, disturbance (160 dB)	24	464	0.43
	30	631	0.75
	36	398	0.33
Vibratory driving, disturbance (120 dB)	24	6,310	20.4
	30-inch	13,594	29.9
	36	13,594	29.9

Port Angeles Harbor does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120-dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Marine Mammal Densities

The Navy has developed, with input from regional marine mammal experts, estimates of marine mammal densities in Washington inland waters for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.,* 2015) describes methodologies and available information used to derive these densities, which are generally considered the best available information for Washington inland waters, except where specific local abundance information is available. Here, we rely on NMSDD density information for the Steller sea lions and California see lions, and use local abundance data for harbor seals. For species without a predictable occurrence, like the harbor porpoise and Northern elephant seal, estimates are based on historical likelihood of encounter. Please see Appendix A of the Navy's application for more information on the NMSDD information.

For all species, the most appropriate information available was used to estimate the number of potential incidences of take. For harbor porpoise and Northern elephant seals, this involved reviewing historical occurrence and numbers, as well as group size to develop a realistic estimate of potential exposure. For Steller sea lion and California sea lions, this involved NMSDD data. For harbor seals, this involved site-specific data from published literature describing harbor seal research conducted in Washington and Oregon, including counts from haul-outs near Port Angeles Harbor (WDFW, 2015). Therefore, density was calculated as the maximum number of individuals expected to be present at a given time (Houghton *et al.,* 2015) divided by the area of Port Angeles Harbor.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Port Angeles Harbor. The formula was developed for calculating take due to pile driving activity and applied to each group-specific sound impact threshold. The formula is founded on the following assumptions:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- There were will be 75 total days of in-water activity and the largest ZOI equals 29.9 km^2;
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is the estimated range of impact to the sound criteria. The relevant distances specified in Table 3 were used to calculate ZOIs around each pile. The ZOI impact area took into consideration the possible affected area of Port Angeles harbor from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the shoreline. Because of the close proximity of some of the piles to the shore, the narrowness of the harbor at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. Acoustic monitoring has demonstrated that Level B harassment zones for vibratory pile driving are likely to be smaller than the zones estimated through modeling based on measured source levels and practical spreading loss. Also of note is the fact that the effectiveness of mitigation measures in reducing takes is typically not quantified in the take estimation process. See Table 4 for total estimated incidents of take.

Harbor Porpoise—In Washington inland waters, harbor porpoises are most abundant in the Strait of Juan de Fuca, San Juan Island area, and Admiralty Inlet. Although harbor porpoise occur year round in the Strait of Juan de Fuca, harbor porpoises are a rare occurrence in Port Angeles Harbor, and density-based analysis does not adequately account for their unique temporal and spatial distributions. Estimates are based on historical likelihood of encounter. Based on the assumption that 3 harbor porpoise may be present intermittently in the ZOI (Hall, 2004), a total of 225 harbor porpoise exposures were estimated over 75 days of construction. These exposures would be a temporary behavioral harassment and would not impact the long-term health of individuals; the viability of the population, species, or stocks would remain stable.

California Sea Lion—The California sea lion is most common in the Strait of Juan de Fuca from fall to late spring. California sea lion haul-outs are greater than 30 miles (48 km) away. Animals could be exposed when traveling, resting, or foraging. Primarily only male California sea lions migrate through the Strait of Juan de Fuca (Jeffries *et al.,* 2000). Based on the NMSDD data showing that 0.676 California sea lions per km^2 may be present intermittently in the ZOI, 1,500 exposures were estimated for this species. These exposures would be a temporary behavioral harassment. It is assumed that this number would include multiple behavioral harassments of the same individual(s).

Steller Sea Lion—Steller sea lions occur seasonally in the Strait of Juan de Fuca from September through May. Steller sea lion haul-outs are 13 miles (21 km) away. Based on the NMSDD data showing that 0.935 Steller sea lion per km^2 may be present intermittently in the ZOI, 2,100 exposures were estimated for this species. These exposures would be a temporary behavioral harassment. It is assumed that this number would include multiple behavioral harassments of the same individual(s).

Harbor Seal—Harbor seals are present year round with haul-outs in Port Angeles Harbor. Prior Navy IHAs have successfully used density-based estimates; however, in this case, density estimates were not appropriate because there is a haul-out nearby on a log boom approximately 1.7 miles (2.7 km) west of the project site that was last surveyed in March 2013 and had a total count of 73 harbor seals (WDFW 2015). Another haul-out site is 1.3 miles (2.1 km) south of the project but is across the harbor that was last surveyed in July 2010 and had a total count of 87 harbor seals (WDFW 2015). Density was calculated as the maximum number of individuals expected to be present at a given time (160 animals), times the number of days of pile activity. Based on the assumption that there could be 160 harbors seals hauled out in proximity to the ZOI, 12,000 exposures were estimated for this stock over 75 days of construction. Additionally, to account for the potential that all harbor seals may not be observed in an area that may incur PTS, we authorize the taking by Level A harassment of one harbor seal per day of projected construction activity for a total of 75 Level A takes.

We recognize that over the course of the day, while the proportion of animals in the water may not vary significantly, different individuals may enter and exit the water. Therefore, an instantaneous estimate of animals in the water at a given time may not produce an accurate assessment of the number of individuals that enter the water over the daily duration of the activity. However, no data exist regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals may potentially be exposed to underwater sound.

A typical pile driving day (in terms of the actual time spent driving) is somewhat shorter than may be assumed (*i.e.,* 8–15 hours) as a representative pile driving day based on daylight hours. Construction scheduling and notional production rates in concert with typical delays mean that hammers are active for only some fraction of time on pile driving ''days.''

Harbor seals are not likely to have a uniform distribution as is assumed through use of a density estimate, but are likely to be relatively concentrated near areas of interest such as the haul-outs or foraging areas. The estimated 160 harbor seals is the maximum number of animals at haul-outs outside of the airborne Level B behavioral harassment zone; the number of exposures to individual harbor seals foraging in the underwater behavioral harassment zone would likely be much lower.

This tells us that (1) there are likely to be significantly fewer harbor seals in the majority of the action area than the take estimate suggests; and (2) pile driving actually occurs over a limited timeframe on any given day (*i.e.,* less total time per day than would be assumed based on daylight hours and non-continuously), reducing the amount of time over which new individuals might enter the action area within a given day. These factors lead us to believe that the approximate number of seals that may be found in the action area (160) is more representative of the number of animals exposed than the number of Level B Harassment takes requested for this species, and only represents 1.5 percent of the most recent estimate of this stock of harbor seals. Moreover, because the Navy is typically unable to determine from field observations whether the same or different individuals are being exposed, each observation is recorded as a new take, although an individual theoretically would only be considered as taken once in a given day.

Northern elephant seal—Northern elephant seals are rare visitors to the Strait of Juan de Fuca. However, individuals, primarily juveniles, have been known to sporadically haul out to molt on Dungeness Spit about 12 miles (19 km) from Port Angeles. One elephant seal was observed hauled-out at Dungeness Spit in each of the following years: 2000, 2002, 2004, 2005, and 2006 (WDFW 2015). Elephant seals are primarily present during spring and summer months. If a northern elephant seal was in the ZOI, it would likely be a solitary juvenile. Northern elephant seals are a rare occurrence in Port Angeles Harbor, and density-based analysis does not adequately account for their unique temporal and spatial distributions; therefore, estimates are based on historical likelihood of encounter. Based on the assumption that one elephant seal may be present intermittently in the ZOI, 75 exposures were calculated for this species. These exposures would be a temporary behavioral harassment.

TABLE 4—NUMBER OF POTENTIAL INCIDENTAL INSTANCES OF TAKE OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Underwater		% of stock
		Level A	Level B (120 dB) [1]	
California sea lion	0.676 animal/sq. km *	0	1,500	0.5
Steller sea lion	0.935 animals/sq. km*	0	2,100	4
Harbor seal	160 [2]	75	[4] 12,000/160	100/1.5
Northern elephant seal	1 [3]	0	75	0.04
Harbor porpoise	3 [3]	0	225	2

* For species with associated density, density was multiplied by largest ZOI (*i.e.,* 29.9 km^2). The resulting value was rounded to the nearest whole number and multiplied by the 75 days of activity. For species with abundance only, that value was multiplied directly by the 75 days of activity. We assume for reasons described earlier that no takes would result from airborne noise.

[1] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

[2] For this species, site-specific data was used from published literature describing research conducted in Washington and Oregon, including counts from haul-outs near Port Angeles Harbor. Therefore, density was calculated as the maximum number of individuals expected to be present at a given time.

[3] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month (see Section 6.6 in application). Abundance numbers are rounded to the nearest whole number for take estimation.

[4] The maximum number of harbor seal anticipated to be in the vicinity to be exposed to the sound levels is 160 animals based on counts from the two nearby haul out sites. This small number of individuals is expected to be the same animals exposed repeatedly, instead of new individuals being exposed each day. These animals, to which any incidental take would accrue, represent 1.5 percent of the most recent estimate of the stock abundance from the 2013 SAR.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level A and Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat. To avoid repetition, the discussion of our analyses applies to all the species listed in Table 4, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is no information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities associated with the pier construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A (PTS) and Level B harassment (behavioral disturbance), from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening, which is likely to occur because (1) harbor seals are frequently observed in Port Angeles harbor in two known haul-out locations; or (2) cetaceans or pinnipeds transit the outer edges of the larger Level B harassment zone outside of the harbor.

No serious injury or mortality is anticipated given the methods of installation and measures designed to minimize the possibility of serious injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause serious injury to marine mammals due to the relatively low source levels produced and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (use of a sound attenuation system, which reduces overall source levels as well as dampening the sharp, potentially injurious peaks, and implementation of shutdown zones) significantly reduce any possibility of serious injury. Given sufficient ''notice'' through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Port Angeles harbor further enables the

implementation of shutdowns to avoid serious injury or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in disruption of foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

Effects on individuals that are taken by Level A harassment would be in the form of PTS. In this analysis, we considered the potential for small numbers of harbor seals to incur auditory injury and found that it would not impact our determinations.

For pinnipeds, no rookeries are present in the project area, but there are two haul-outs within 2.5 mi (4 km) of the project site. However, the project area is not known to provide foraging habitat of any special importance (other than is afforded by the known migration of salmonids). No cetaceans are expected within the harbor.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of serious injury or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior and the anticipated incidences of Level A harassment would be in the form of PTS to a small number of only one species; (3) the absence of any major rookeries and only a few haul-out areas near or adjacent to the project site; (4) the absence of cetaceans within the harbor and generally sporadic occurrence outside of the ensonified area; (5) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA or designated as depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted in nearby locations, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, we find that the total marine mammal take from Navy's pier construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for harbor porpoise, Northern elephant seal, and Steller and California sea lions would be considered small relative to the relevant stocks or populations (less than one percent for Northern elephant seal and California sea lion, less than four percent for Steller sea lion, and less than two percent for harbor porpoise) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring in the nearshore areas, there will almost certainly be some overlap in individuals present day-to-day. Further, for the pinniped species, these takes could potentially occur only within some small portion of the overall regional stock. For example, of the estimated 296,750 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

For harbor seals, takes are likely to occur only within some portion of the population, rather than to animals from the Washington inland waters stock as a whole. It is estimated that, based on counts from the two nearby haul out sites, 160 harbor seals could potentially be in the vicinity to be exposed to the sound levels. This small number of individuals is expected to be the same animals exposed repeatedly, instead of new individuals being exposed each day. These animals, to which any incidental take would accrue, represent 1.5 percent of the most recent estimate of the stock abundance from the 2013 SAR. It is estimated that one individual harbor seal per day may be exposed to sound levels that may incur PTS. This represents only 0.68% of the stock abundance.

As summarized here, the estimated numbers of potential incidents of harassment for these species are likely much higher than will realistically occur. This is because (1) we use the maximum possible number of days (75) in estimating take, despite the fact that multiple delays and work stoppages are likely to result in a lower number of actual pile driving days; and (2) sea lion estimates rely on the averaged maximum daily abundances per month, rather than simply an overall average which would provide a much lower abundance figure. In addition, potential efficacy of mitigation measures in terms of reduction in numbers and/or intensity of incidents of take has not been quantified. Therefore, these estimated take numbers are likely to be overestimates of individuals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented

by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) for this project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) in September 2016.

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described pier and support facilities for the transit protection system U.S. Coast Guard Air Station/Sector Field Office Port Angeles, Washington from November 1, 2016 through February 15, 2017, and July 16 through October 31, 2017 provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 27, 2016.

Donna S. Wieting,

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

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC599

Marine Mammals; File No. 17845

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Rachel Cartwright, Ph.D., Keiki Kohola Project, 4945 Coral Way, Oxnard, CA 93035, has applied for an amendment to Scientific Research Permit No. 17845.

DATES: Written, telefaxed, or email comments must be received on or before November 9, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17845 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 17845 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 17845, issued on January 25, 2014 (79 FR 5382), authorizes the permit holder to conduct Level A and B harassment of humpback whales (*Megaptera novaeangliae*) during photo-identification, behavioral follows, and surface and underwater observations in Hawaii, Alaska, and California. Nine other cetacean species may be studied opportunistically and two species of pinnipeds may be incidentally harassed. The permit expires on January 31, 2019. The permit holder is requesting the permit be amended to authorize Level B playbacks for humpback whales to estimate their hearing range using behavioral observation audiometry. The sounds will be presented to a maximum of 300 humpback whales and their behavioral responses will be measured through visual and acoustic recordings including an unmanned aerial system. The research will take place from January through April, annually, in Hawaii. Only humpback whales will be targeted for active playback, but incidental harassment to additional species may occur including bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), false killer whales (*Pseudorca crassidens*), melon headed whales (*Peponocephala electra*), and short-finned pilot whales (*Globicephala macrorhynchus*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 27, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23724 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

Date and Time: Tuesday, October 18, 2016, 2:00 p.m.–3:30 p.m. (CT).

Place: Main Conference Room, AmeriCorps NCCC Southern Region Campus, 2715 Confederate Avenue, Vicksburg, MS 39180.

Call-In Information: This meeting is available to the public through the following toll-free call-in number: 888–324–9650 conference call access code number 2943297. Pete McRoberts will be the lead on the call. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 888–566–0571. The end replay date: November 17, 2016, 10:59 p.m. (CT).

Status: Open.

Matters To Be Considered

I. Meeting Convenes
II. Approval of Minutes
III. Directors Report
IV. Program Updates
V. Public Comment

Accommodations: Anyone who needs an interpreter or other accommodations should notify the Corporation's contact person by 5:00 p.m. Friday, October 7, 2016.

Contact Person for More Information: Matthew Payne, NCCC, Corporation for National and Community Service, 3rd Floor, Room 3241D, 250 E St. SW., Washington, DC 20525. Phone 202–606–6907. Fax 202–606–3465. TTY: 800–833–3722. Email address: *mpayne@cns.gov.*

Dated: September 28, 2016.

Jeremy Joseph,

General Counsel.

[FR Doc. 2016–23962 Filed 9–29–16; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Software and Documentation for Licensing

AGENCY: Air Force Research Laboratory, Department of the Air Force.

ACTION: Availability of MESHMORPH software and documentation for licensing.

SUMMARY: Pursuant to the provisions of Section 801 of Public Law 113–66 (2014 National Defense Authorization Act); the Department of the Air Force announces the availability of MESHMORPH software and related documentation for Automated Computational Mesh Metamorphosis, which automatically updates an existing source mesh of three dimensional points and connectivities to a target mesh generated from a three dimensional coordinate measurement system or computer aided design system.

ADDRESSES: Licensing interests should be sent to: Air Force Research Laboratory, Aerospace Systems Directorate, AFRL/RQOB, 2130 8th Street, Wright-Patterson AFB, OH 45433; Facsimile: (937) 255–6788.

FOR FURTHER INFORMATION CONTACT: Air Force Research Laboratory, Aerospace Systems Directorate, AFRL/RQOB, 2130 8th Street, Wright-Patterson AFB, OH 45433; Facsimile: (937) 255–6788.

SUPPLEMENTARY INFORMATION: MESHMORPH Software is applicable to any field where a computational mesh needs to be modified to match new target geometries, such as a new design configuration or measured geometries of manufactured components. This would include almost all fields related to engineering including mechanical, biomedical, aeronautical, and aerospace engineering disciplines. These fields base their design processes on computational meshes, whether they be finite element structural and heat transfer models or computational fluid dynamics predictions. The computer graphs industry also relies heavily on updating tessellated surfaces to new locations and would also benefit from use of this software.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–23776 Filed 9–30–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

AGENCY: Air University, Department of the Air Force, Department of Defense.

ACTION: Notice of meeting of the Air University Board of Visitors.

SUMMARY: 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, the Department of Defense announces that the Air University Board of Visitors' fall meeting will take place on Monday, November 14th, 2016, from approximately 8:00 a.m. to approximately 5:00 p.m. and Tuesday, November 15th, 2016, from approximately 7:30 a.m. to approximately 3:00 p.m. The meeting will be held at the Headquarters Air University, in the Commander's Conference Room, Building 800, on Maxwell Air Force Base, Alabama. The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. Specific to this agenda includes topics relating to AU's policy and organizational structure, transformation updates, and a faculty senate out-brief and BOV ethics and membership review.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meetings' will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors' should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least ten 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 Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, public attendance at the AU/BOV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. Any member of the public wishing to attend this meeting should contact the Designated Federal Officer listed below at least ten calendar days prior to the meeting for information on base entry procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Arnold, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–2989.

Henry Williams,

Acting Air Force Federal Register Officer.

[FR Doc. 2016–23777 Filed 9–30–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Two-Year Extension of TRICARE Co-Pay Waiver at Captain James A. Lovell Federal Health Care Center Demonstration Project

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of two-year extension of TRICARE Co-Pay Waiver at Captain James A. Lovell Federal Health Care Center Demonstration Project.

SUMMARY: This notice is to advise interested parties of a two-year extension of a demonstration project entitled ''TRICARE Co-Pay Waiver at

Captain James A. Lovell Federal Health Care Center (FHCC) Demonstration Project.'' The original waiver notice was published on September 27, 2010 (75 FR 59237–59238).

DATES: *Effective Date:* This two-year extension will be effective from October 1, 2016 to September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Bouchard, Director, DoD/VA Program Coordination Office, Defense Health Agency, Telephone 703–275–6300.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE co-pay waiver demonstration at the Captain James A. Lovell Federal Health Care Center (FHCC) demonstration project, please see 75 FR 59237–59238. Under this demonstration, there would be no deductibles, cost shares, or co-pays for eligible beneficiaries seeking care at the FHCC, under the authority of 10 U.S.C. 1092(a)(1)(B). The original demonstration notice explained that the co-pay waiver demonstration would be used to determine if increased utilization at FHCC actually occurred as a result of eliminated co-payments, which would in turn influence decisions regarding financial integration at future Department of Defense (DoD)/Department of Veterans Affairs (VA) models of this nature. A report on the demonstration project concluded that utilization increased at FHCC during the time of the co-pay waiver demonstration project. Admission and encounter utilization data from 2010 to 2014 shows that DoD utilization of FHCC increased by 10,295. This demonstration is integral to the success of the integration effort at FHCC; without it, FHCC would see a marked reduction in DoD beneficiaries.

B. Description of Extension of Demonstration Project

Under this demonstration, DoD has waived TRICARE co-payments for DoD beneficiaries seen at the FHCC. The National Defense Authorization Act (NDAA) for fiscal year (FY) 2010 Section 1701 requires a report to Congress evaluating the exercise of authorities in that title at FHCC. That report was delivered on July 26, 2016, and recommends continuation of the FHCC demonstration project. If Congress agrees, it is likely Congress will clarify that access to care under section 1705 should apply to the entire joint facility and not be limited to the DoD assets within the facility. If so, that will negate the requirement for further extensions to the TRICARE co-pay waiver demonstration project beyond FY17.

In order to allow seamless continuation of services to DoD beneficiaries at FHCC, the TRICARE co-pay waiver is extended through September 30, 2018. This waiver applies to all inpatient, outpatient, and ancillary services, and all outpatient prescription drugs provided at FHCC. This waiver is consistent with current policies and procedures followed at all military treatment facilities. According to an Independent Government Cost Estimate (IGCE), the estimated two-year impact for the co-pay waiver in FY2017 and FY2018 is $246,499.

C. Evaluation

An independent evaluation was performed and determined that without this waiver, DoD beneficiary utilization of the FHCC in North Chicago would have significantly decreased. Since DoD and VA have recommended to Congress to continue the demonstration project, a permanent solution regarding DoD beneficiary co-pays is expected to be in place for FY18 and will ensure that DoD beneficiaries are not levied cost shares, as FHCC represents the former Naval Hospital Great Lakes.

Dated: September 28, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–23819 Filed 9–30–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Vietnam War Commemoration Advisory Committee (''the Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Committee's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/*. The Committee provides the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on the DoD program to commemorate the 50th Anniversary of the Vietnam War. The Committee shall be composed of no more than 20 members who represent Vietnam Veterans, their families, and the American public. Members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees are appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each member is appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Committee and must report all recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Committee's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Committee/subcommittee meeting. The public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Committee meetings. All written statements must be submitted to the Committee's DFO who will ensure the written statements are

provided to the membership for their consideration.

Dated: September 28, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–23822 Filed 9–30–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Annual Notice of Variable Interest Rates of Federal Student Loans Made Under the Federal Family Education Loan Program Prior to July 1, 2010

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.032.

SUMMARY: In accordance with section 427A of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. 1077a, the Chief Operating Officer for Federal Student Aid announces the variable interest rates for the period July 1, 2016, through June 30, 2017, for certain loans made under the Federal Family Education Loan (FFEL) Program. The Chief Operating Officer takes this action to give notice of FFEL Program loan variable interest rates to the public.

DATES: This notice is effective October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Rene Tiongquico, U.S. Department of Education, 830 First Street NE., 11th Floor, Washington, DC 20202. Telephone: (202) 377–4270 or by email: *Rene.Tiongquico@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 427A of the HEA, provides formulas for determining the interest rates charged to borrowers on loans made under the Federal Family Education Loan (FFEL) Program, including Federal Subsidized and Unsubsidized Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans.

The FFEL Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the FFEL Program before July 1, 2006, have variable interest rates that change each year. In most cases, the variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Under section 427A(l) of the HEA, FFEL Program loans first disbursed on or after July 1, 2006, and before July 1, 2010, have a fixed interest rate. The Chief Operating Officer is discontinuing providing the fixed interest rates for FFEL Program loans first disbursed on or after July 1, 2006 and before July 1, 2010. Interest rates for these loans may be found in a **Federal Register** notice published on September 15, 2015 (80 FR 55342).

Federal Consolidation Loans made prior to November 13, 1997, and on or after October 1, 1998, have a fixed interest rate that is based on the weighted average of the loans that are consolidated.

Interest rates for Federal Consolidation Loans made between November 13, 1997 and September 30, 1998 are provided in Chart 3.

FFEL variable interest rates are based on formulas that use the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on. These formulas apply to: All Federal Subsidized and Unsubsidized Stafford Loans first disbursed before October 1, 1992, that have been converted to variable rate loans; all Federal Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992, and before July 1, 2006; Federal PLUS Loans first disbursed on or after July 1, 1998, and before July 1, 2006; and Federal Consolidation Loans for which the Federal Consolidation Loan application was received on or after November 13, 1997, and before October 1, 1998. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 31, 2016, which is used to calculate the interest rates on these loans, is 0.345 rounded up to 0.35 percent.

For Federal PLUS loans first disbursed before July 1, 1998, the interest rate is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 27, 2016, which is used to calculate the interest rate on these loans, is 0.55 percent.

This notice includes three charts containing specific information on the calculation of variable interest rates for loans made under the FFEL Program:

Chart 1 contains information on the interest rates for Federal Subsidized and Unsubsidized Stafford Loans that were made as fixed-rate loans, but were subsequently converted to variable-rate loans.

Chart 2 contains information on the interest rates for variable-rate Federal Subsidized and Unsubsidized Stafford Loans.

Chart 3 contains information on the interest rates for variable-rate Federal PLUS Loans, certain Federal Consolidation Loans, and Consolidation Loans that include loans made by the U.S. Department of Health and Human Services under subpart I of part A of title VII of the Public Health Service Act.

CHART 1—"CONVERTED" VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Cohort		Original fixed interest rate	Max. rate (%)	91-Day T-bill rate (%)	Margin (%)	Total rate (%)
First disbursed on or after	First disbursed before					
7/1/1988	7/23/1992	8.00%, increasing to 10.00%	10.00	0.35	3.25	3.60
7/23/1992	10/1/1992	8.00%, increasing to 10.00%	10.00	0.35	3.25	3.60
7/23/1992	7/1/1994	7.00%	7.00	0.35	3.10	3.45
7/23/1992	7/1/1994	8.00%	8.00	0.35	3.10	3.45
7/23/1992	7/1/1994	9.00%	9.00	0.35	3.10	3.45

CHART 1—"CONVERTED" VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017—Continued

Cohort		Original fixed interest rate	Max. rate (%)	91-Day T-bill rate (%)	Margin (%)	Total rate (%)
First disbursed on or after	First disbursed before					
7/23/1992	7/1/1994	8.00%, increasing to 10.00%	10.00	0.35	3.10	3.45

Note: The FFEL Program loans represented by the second row of the chart were only made to "new borrowers" on or after July 23, 1992. Whether the FFEL Program loans represented by the third through sixth rows of the chart were made to a specific borrower depends on the interest rate on the borrower's existing loans (see the 'Original Fixed Interest Rate' column in Chart 1) at the time the borrower received the loan(s) on or after July 23, 1992 and prior to July 1, 1994.

In Charts 2 and 3, a dagger following a date in a cohort field indicates that the trigger for the rate to apply is a period of enrollment for which the loan was intended either "ending before" or "beginning on or after" the date in the cohort field.

CHART 2—VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Cohort		Max. rate (%)	91-Day T-bill rate (%)	Margin		Total rate	
First disbursed on or after	First disbursed before			In-school, grace, deferment (%)	All other periods (%)	In-school, grace, deferment (%)	All other periods (%)
10/1/1992	7/1/1994	9.00	0.35	3.10	3.10	3.45	3.45
7/1/1994	7/1/1994 †	9.00	0.35	3.10	3.10	3.45	3.45
7/1/1994	7/1/1995	8.25	0.35	3.10	3.10	3.45	3.45
7/1/1995	7/1/1998	8.25	0.35	2.50	3.10	2.85	3.45
7/1/1998	7/1/2006	8.25	0.35	1.70	2.30	2.05	2.65

Note: The FFEL Program loans represented in the first row in Chart 2 were only made to "new borrowers" on or after October 1, 1992. The FFEL Program loans represented in the second row in Chart 2 were only made to "new borrowers" on or after July 1, 1994. The FFEL Program loans represented in the third row in Chart 2 must—in addition to having been first disbursed on or after July 1, 1994, and before July 1, 1995—have been made for a period of enrollment that began on or included July 1, 1994.

CHART 3—VARIABLE-RATE FEDERAL PLUS, SLS, AND CONSOLIDATION LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Loan type	Cohort		Max. rate (%)	Index rate		Margin (%)	Total rate (%)
	First disbursed on or after	First disbursed before		91-Day T-bill rate (%)	1-Year constant treasury maturity		
PLUS and SLS		10/1/1992	12.00		0.55	3.25	3.80
SLS	10/1/1992	† 7/1/1994	11.00		0.55	3.10	3.65
PLUS	10/1/1992	7/1/1994	10.00		0.55	3.10	3.65
PLUS	7/1/1994	7/1/1998	9.00		0.55	3.10	3.65
PLUS	7/1/1998	7/1/2006	9.00	0.35		3.10	3.45
Loan type	**Application received on or after**	**Application received before**	**Max. rate (%)**	**91-Day T-bill rate (%)**	**Average of the bond equivalent rates of the 91-Day T-bill for the quarter prior to July 1**	**Margin (%)**	**Total rate (%)**
Consolidation	11/13/1997	10/1/1998	8.25	0.35		3.10	3.45
HHS Portion of Consolidation	11/13/1997				0.27	3.00	3.27

The last row in Chart 3 refers to portions of Federal Consolidation Loans attributable to loans made by the U.S. Department of Health and Human Services under subpart I of part A of title VII of the Public Health Service Act.

Note: No new loans have been made under the FFEL Program since June 30, 2010.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is

available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1071 *et seq.*

Dated: September 27, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–23766 Filed 9–30–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0103]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Designation as an Eligible Institution Under the Title III and Title V Programs and To Request a Waiver of the Non-Federal Cost Share Reimbursement (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0103. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jason Cottrell, 202–453–7530.

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: Designation As An Eligible Institution Under the Title III and Title V Programs and to Request A Waiver of the Non-Federal Cost Share Reimbursement (1894–0001).

OMB Control Number: 1840–0103.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 250.

Total Estimated Number of Annual Burden Hours: 1,750.

Abstract: This collection of information is necessary in order for the Secretary of Education to designate an institution of higher education eligible to apply for funding under Title III, Part A and Title V of the Higher Education Act of 1965, as amended. An institution must apply to the Secretary to be designated as an eligible institution. The programs authorized include the Strengthening Institutions, Alaskan Native and Native Hawaiian-Serving Institutions, Asian-American and Native American Pacific Islander-Serving Institutions, Native American Serving Institutions, Hispanic-Serving Institutions, Hispanic-Serving Institutions (Science, Technology, Engineering and Math and Articulation), Promoting Postbaccalaureate Opportunities for Hispanic Americans, and Predominantly Black Institutions Programs. These programs award discretionary grants to eligible institutions of higher education so that they might increase their self-sufficiency by improving academic programs, institutional management and fiscal stability.

This collection of information is gathered electronically by the Department for the purpose of determining an institution's eligibility to participate in the Title III and Title V programs based on its enrollment of needy students and low average educational and general (E&G) expenditures per full-time equivalent undergraduate student. This collection also allows an institution to request a waiver of certain non-Federal cost-share requirements under Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant, Student Support Services Program and the Undergraduate International Studies and Foreign Language Program.

The collection is paired with a computational exercise that results in the simultaneous publication of an Eligibility Matrix, a listing of postsecondary institutions potentially eligible to apply for grants in the Institutional Service grant programs. Criteria derived from applicable legislation and regulations are applied to enrollment and financial data from Department sources to determine the eligibility of each institution for each program. Only those institutions that either do not meet the financial criteria or do not appear in the eligibility matrix need to go through the application process.

The results of the application process are a determination of eligibility for grant application and waiver, and updated information on institutional eligibility which is added to the EM.

Dated: September 28, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23775 Filed 9–30–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates for Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program Prior to July 1, 2013

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

DATES: This notice is effective October 3, 2016.

SUMMARY: In accordance with section 455(b)(10) of the Higher Education Act of 1965, as amended, (HEA), (20 U.S.C. 1087e(b)(10)) the Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program prior to July 1, 2013. For loans that have a variable interest rate, the rates announced in this notice are in effect for the period July 1, 2016 through June 30, 2017. The Chief Operating Officer takes this action to give notice of Direct Loan interest rates to the public.

FOR FURTHER INFORMATION CONTACT: Rene Tiongquico, U.S. Department of Education, 830 First Street NE., 11th Floor, Washington, DC 20202. Telephone: (202) 377–4270 or by email: *Rene.Tiongquico@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), specifies the interest rates charged to borrowers for Federal Direct Subsidized Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans), collectively referred to as ''Direct Loans.'' The interest rates for Direct Loans may be variable or fixed.

Variable-Rate Direct Loans

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans that were first disbursed before July 1, 2006, and Direct Consolidation Loans for which the application was received before February 1, 1999, have variable interest rates that are determined each year in accordance with formulas specified in section 455(b) of the HEA. The variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan or, for some Direct Consolidation Loans, the date the application for the loan was received. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Except for Direct PLUS Loans that were first disbursed before July 1, 1998, the variable interest rates for most types of Direct Loans are based on formulas that use the bond equivalent rates of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 31, 2016, which is used to calculate the interest rates on these loans, is 0.345, rounded up to 0.35 percent.

The interest rate for Direct PLUS Loans that were first disbursed on or after July 1, 1994, and before July 1, 1998, is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 27, 2016, which is used to calculate the interest rate on these loans, is 0.55 percent.

CHARTS 1 THROUGH 4 IN THIS NOTICE SHOW THE INTEREST RATES FOR VARIABLE-RATE DIRECT LOANS THAT ARE IN EFFECT FOR THE PERIOD JULY 1, 2016 THROUGH JUNE 30, 2017

Cohort		Maximum rate (%)	Index rate	Margin		Total rate	
First disbursed on or after	First disbursed before		91-Day T-Bill rate (%)	In-school, grace, deferment	All other periods (%)	In-school, grace, deferment (%)	All other periods (%)
7/1/1994	7/1/1995	8.25	0.35	3.10	3.10	3.45	3.45
7/1/1995	7/1/1998	8.25	0.35	2.50	3.10	2.85	3.45
7/1/1998	7/1/2006	8.25	0.35	1.70	2.30	2.05	2.65

CHART 2—VARIABLE-RATE DIRECT PLUS LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Cohort		Maximum rate (%)	Index rate		Margin (%)	Total rate (%)
First disbursed on or after	First disbursed before		91-Day T-Bill rate (%)	1-Year constant treasury maturity (%)		
7/1/1994	7/1/1998	9.00		0.55	3.10	3.65
7/1/1998	7/1/2006	9.00	0.35		3.10	3.45

CHART 3—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED CONSOLIDATION LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Cohort		Maxmum rate (%)	Index rate	Margin		Total rate	
First disbursed on or after	First disbursed before		91-Day T-Bill rate (%)	In-school, grace, deferment (%)	All other periods (%)	In-school, grace, deferment (%)	All other periods (%)
7/1/1994	7/1/1995	8.25	0.35	3.10	3.10	3.45	3.45
7/1/1995	7/1/1998	8.25	0.35	2.50	3.10	2.85	3.45
7/1/1998	10/1/1998	8.25	0.35	1.70	2.30	2.05	2.65
First disbursed on or after	Application received before						
10/1/1998	10/1/1998	8.25	0.35	1.70	2.30	2.05	2.65%
Application received on or after	Application received before						
10/1/1998	2/1/1999	8.25	0.35	2.30	2.30	2.65	2.65

CHART 4—VARIABLE-RATE DIRECT PLUS CONSOLIDATION LOANS INTEREST RATES IN EFFECT FOR THE PERIOD 7/1/2016 THROUGH 6/30/2017

Cohort		Maximum rate (%)	Index rate		Margin		Total rate	
First disbursed on or after	First disbursed before		91-Day T-Bill rate (%)	1-Year constant treasury maturity (%)	In-school, grace, deferment (%)	All other periods (%)	In-school, race, deferment (%)	All other periods (%)
7/1/1994	7/1/1998	9.00	.....	0.55	3.10	3.10	3.65	3.65
7/1/1998	10/1/1998	9.00	0.35	.....	3.10	3.10	3.45	3.45
First disbursed on or after	Application received before							
10/1/1998	10/1/1998	9.00	0.35	.....	3.10	3.10	3.45	3.45
Application received on or after	Application received before							
10/1/1998	2/1/1999	8.25	0.35	.....	2.30	2.30	2.65	2.65

Fixed-Rate Direct Loans

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006 and before July 1, 2013, and Direct Consolidation Loans for which the application was received on or after February 1, 1999, have fixed interest rates.

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006 and before July 1, 2013 have various fixed interest rates that are specified in section 455(b)(7) of the HEA. These fixed rates are shown in Chart 5.

Direct Consolidation Loans for which the application was received on or after February 1, 1999 and before July 1, 2013 have a fixed interest rate that is determined in accordance with sections 455(b)(6)(D) and 455(b)(7)(C) of the HEA. The fixed interest rate for these Direct Consolidation Loans is equal to the weighted average of the loans that are consolidated, rounded up to the nearest higher ⅛ of one percent, but the rate may not exceed 8.25 percent.

Chart 5 shows the fixed interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed before July 1, 2013, and for Direct Consolidation Loans for which the application was received on or after February 1, 1999 and before July 1, 2013.

CHART 5—FIXED-RATE DIRECT SUBSIDIZED, DIRECT UNSUBSIDIZED, DIRECT PLUS LOANS, AND DIRECT CONSOLIDATION LOANS FIRST DISBURSED ON OR AFTER 7/1/2006 AND BEFORE 7/1/2013

Loan type	Student grade level	First disbursed on or after	First disbursed before	Rate (%)
Subsidized	Undergraduates	7/1/2006	7/1/2008	6.80
Subsidized	Undergraduates	7/1/2008	7/1/2009	6.00
Subsidized	Undergraduates	7/1/2009	7/1/2010	5.60
Subsidized	Undergraduates	7/1/2010	7/1/2011	4.50
Subsidized	Undergraduates	7/1/2011	7/1/2013	3.40
Subsidized	Graduate/Professional Students.	7/1/2006	7/1/2012	6.80
Unsubsidized	All	7/1/2006	7/1/2013	6.80

CHART 5—FIXED-RATE DIRECT SUBSIDIZED, DIRECT UNSUBSIDIZED, DIRECT PLUS LOANS, AND DIRECT CONSOLIDATION LOANS FIRST DISBURSED ON OR AFTER 7/1/2006 AND BEFORE 7/1/2013—Continued

Loan type	Student grade level	First disbursed on or after	First disbursed before	Rate (%)
PLUS	Parents and Graduate/Professionals.	7/1/2006	7/1/2013	7.90
		Application received on or after	Application received before	
Consolidation	N/A	2/1/1999	7/1/2013	Weighted average of rates on the loans being consolidated, rounded to nearest higher ⅛ of 1 percent, not to exceed 8.25%
		7/1/2013		Weighted average of rates on the loans being consolidated, rounded to nearest higher ⅛ of 1 percent

Note: Interest rates for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2013 and before July 1, 2016 are published in earlier **Federal Register** notices, as follows:

- For loans first disbursed on or after July 1, 2013, and prior to July 1, 2014, see 78 FR 59011.
- For loans first disbursed on or after July 1, 2014, and prior to July 1, 2015, see 79 FR 37301.
- For loans first disbursed on or after July 1, 2015, and prior to July 1, 2016, see 80 FR 42488.
- For loans first disbursed on or after July 1, 2016, and prior to July 1, 2017, see 81 FR 38159.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: September 27, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–23767 Filed 9–30–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–116–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date

Talen Energy Marketing, LLC, Montour, LLC, Bayonne Plant Holding, L.L.C., Camden Plant Holdings, L.L.C., Elmwood Park Power, LLC, Newark Bay Cogeneration Partnership, L.P., Lower Mount Bethel Energy, LLC, York Generation Company LLC, Pedricktown Cogeneration Company LP, H.A. Wagner LLC, Brandon Shores LLC, Chief Conemaugh Power, LLC, Chief Keystone Power, LLC

On September 27, 2016, the Commission issued an order in Docket No. EL16–116–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of the Talen Entities',[1] Chief Keystone Power, LLC's, and Chief Conemaugh Power, LLC's Reactive Service revenue requirements. *Talen Energy Marketing, LLC et al.,* 156 FERC ¶ 61,231 (2016).

[1] Talen Energy Marketing, LLC, Montour, LLC (Montour), Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C., Elmwood Park Power, LLC, Newark Bay Cogeneration Partnership, L.P., Lower Mount Bethel Energy, LLC, York Generation Company LLC, Pedricktown Cogeneration Company LP, H.A. Wagner LLC, Brandon Shores LLC (collectively, Talen Entities).

The refund effective date in Docket No. EL16–116–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL16–116–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2016), within 21 days of the date of issuance of the order.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23816 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2654–000]

City Point Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of City Point Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23848 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2653–000]

Cimarron Bend Wind Project I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cimarron Bend Wind Project I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23847 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13642–003]

GB Energy Park, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for an original license for the proposed 400-megawatt Gordon Butte Pumped Storage Project, which would be located approximately 3 miles west of the town of Martinsdale in Meagher County, Montana, and has prepared an Environmental Assessment (EA) for the project. The project would not occupy any federal lands.

The EA contains staff's analysis of the potential environmental impacts of construction and operation of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment. Based on a review of the comments received in response to the issuance of this EA, the Commission may issue a final EA.

A copy of the EA is available for 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 documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments 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. 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–13642–003.

For further information, contact Mike Tust at (202) 502–6522.

Dated: September 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23817 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2501–000]

Nicolis, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Nicolis, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23845 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2502–000]

Tropico, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tropico, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23846 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–115–000; QF16–362–002; QF16–363–002; QF16–364–002; QF16–365–002; QF16–366–002; QF16–367–002; QF16–368–002; QF16–369–002; QF16–370–002; QF16–371–002; QF16–372–002; QF16–373–002; QF16–374–002; QF16–375–002; QF16–376–002; QF16–377–002; QF16–378–002; QF16–379–002; QF16–380–002; QF16–381–002; QF16–382–002; QF16–383–002; QF16–384–002; QF16–385–002; QF16–386–002; QF16–387–002]

Windham Solar LLC; Allco Finance Limited; Windham Solar LLC; Notice of Amendment of Petition for Enforcement

Take notice that on September 26, 2016, Windham Solar LLC filed an amendment to the September 12, 2016 filed petition for enforcement pursuant to section 210 of Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 17, 2016.

Dated: September 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23815 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–493–000]

Columbia Gas Transmission, LLC.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Central Virginia Connector Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Central Virginia Connector Project involving construction and operation of facilities by Columbia Gas Transmission, L.L.C. (Columbia) in Louisa and Goochland Counties, Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 27, 2016.

If you sent comments on this project to the Commission before the opening of this docket on August 12, 2016, you will need to file those comments in Docket No. CP16–493–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Columbia provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–493–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Columbia proposes to replace three Solar Saturn units with one Solar Centaur 50 unit at the existing Louisa Compressor Station, convert the replaced units to standby, increase the certificated horsepower (HP) at the Louisa Compressor Station from 4,050 HP to 6,130 HP, install pipe and valve modifications to make the existing point of delivery between Columbia's Mainline VM–108 and VM–109 at Boswell's Tavern Compressor Station bi-directional, install a new point of delivery meter station adjacent to Columbia's Goochland Compressor Station, and install other appurtenant facilities.

The Central Virginia Connector Project is in Louisa and Goochland Counties, Virginia and would provide 45,000 cubic feet per day of natural gas on its system and modernize compression at the Louisa Compressor Station.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would temporarily disturb about 13.3 acres of land. Following construction, Columbia Gas would maintain about 0.9 acre for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site.

[1] The appendices referenced in this notice would not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–493). Be sure you have selected an appropriate date range. 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. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits would be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23818 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–192–000.
Applicants: Boulder Solar II, LLC, Avangrid Renewables, LLC.
Description: Joint Application of Boulder Solar II, LLC, *et. al.* for Authorization of Transaction Under Section 203 of the FPA, and Requests for Shortened Comment Period, Expedited Action, Waivers of Filing Requirements and Confidential Treatment.
Filed Date: 9/26/16.
Accession Number: 20160926–5285.
Comments Due: 5 p.m. ET 10/17/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2302–006.
Applicants: Public Service Company of New Mexico.
Description: Supplement to December 29, 2015 Public Service Company of New Mexico submits Triennial Market Power Update. [CD being filed under separate cover].
Filed Date: 9/27/16.
Accession Number: 20160927–5084.
Comments Due: 5 p.m. ET 10/18/16.

Docket Numbers: ER10–2633–027; ER10–2570–027; ER10–2717–027; ER10–3140–027; ER13–55–017.
Applicants: Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.
Description: Notice of Non-Material Change in Status of the GE Companies.
Filed Date: 9/26/16.
Accession Number: 20160926–5219.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2669–000.
Applicants: Consumers Energy Company.
Description: Initial rate filing: Blackstart Service to be effective 10/1/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5214.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2670–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Tariff Cancellation: Cancellation of Tariff Identifier ER16–896 to be effective 12/31/9998.
Filed Date: 9/26/16.
Accession Number: 20160926–5216.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2671–000.
Applicants: FirstEnergy Solutions Corp.
Description: § 205(d) Rate Filing: Normal filing 2016 to be effective 11/26/2015.
Filed Date: 9/27/16.
Accession Number: 20160927–5072.
Comments Due: 5 p.m. ET 10/18/16.

Docket Numbers: ER16–2672–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: Amendment of Georgia Power Company Rate Schedule No. 850 to be effective 11/1/2016.
Filed Date: 9/27/16.
Accession Number: 20160927–5098.
Comments Due: 5 p.m. ET 10/18/16.

Docket Numbers: ER16–2673–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20160927_SAP Production Clean Up to be effective 1/1/2016.
Filed Date: 9/27/16.
Accession Number: 20160927–5112.
Comments Due: 5 p.m. ET 10/18/16.

Docket Numbers: ER16–2674–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20160927_SAP Production Formula Rate to be effective 4/16/2016.
Filed Date: 9/27/16.
Accession Number: 20160927–5113.
Comments Due: 5 p.m. ET 10/18/16.

Docket Numbers: ER16–2675–000.
Applicants: AltaGas Pomona Energy Storage Inc.
Description: Baseline eTariff Filing: AltaGas Pomona Energy Storage Inc. MBR Tariff to be effective 10/1/2016.
Filed Date: 9/27/16.
Accession Number: 20160927–5137.
Comments Due: 5 p.m. ET 10/18/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23844 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2659–000]

Grant Plains Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Grant Plains Wind, LLC's application for market-based rate authority, with an

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23849 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–189–000.
Applicants: American Transmission Company LLC.
Description: Application of American Transmission Company LLC for Authority to Acquire Certain Facilities Under Section 203 of the FPA.
Filed Date: 9/23/16.
Accession Number: 20160923–5371.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: EC16–190–000.
Applicants: James River Genco, LLC, City Point Energy Center, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of James River Genco, LLC, et al.
Filed Date: 9/23/16.
Accession Number: 20160923–5372.
Comments Due: 5 p.m. ET 10/14/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1335–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing to 8/26/2016 order in Docket No. ER16–1335–000, –001 to be effective 8/26/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5212.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2659–000.
Applicants: Grant Plains Wind, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing of Grant Plains to be effective 11/1/2016.
Filed Date: 9/23/16.
Accession Number: 20160923–5319.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: ER16–2659–001.
Applicants: Grant Plains Wind, LLC.
Description: Tariff Amendment: Amendment of Application and Initial Tariff Baseline Filing of Grant Plains Wind to be effective 11/1/2016.
Filed Date: 9/23/16.
Accession Number: 20160923–5333.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: ER16–2660–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Schedule 1–A Tariff Administration Charge to be effective 1/1/2017.
Filed Date: 9/23/16.
Accession Number: 20160923–5320.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: ER16–2661–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Bay Area Rapid Transit District Interconnection Agreement (SA 323) to be effective 1/1/2017.
Filed Date: 9/23/16.
Accession Number: 20160923–5321.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: ER16–2662–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Annual Calculation of the Cost of New Entry value (''CONE'') for each Local Resource Zone (''LRZ'') in the MISO Region of Midcontinent Independent System Operator, Inc.
Filed Date: 9/23/16.
Accession Number: 20160923–5380.
Comments Due: 5 p.m. ET 10/14/16.

Docket Numbers: ER16–2663–000.
Applicants: Alterna Springerville LLC.
Description: Tariff Cancellation: cancellation filing to be effective 9/26/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5138.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2664–000.
Applicants: LDVF1 TEP LLC.
Description: Tariff Cancellation: cancellation filing to be effective 9/26/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5139.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2665–000.
Applicants: NRG Power Midwest LP.
Description: § 205(d) Rate Filing: Revised Rate Schedule and Request for Consolidation to be effective 11/1/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5143.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2667–000.
Applicants: Deerfield Wind Energy, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 10/7/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5150.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2667–001.
Applicants: Deerfield Wind Energy, LLC.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 10/7/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5213.
Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: ER16–2668–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B's to be effective 11/26/2016.
Filed Date: 9/26/16.
Accession Number: 20160926–5184.
Comments Due: 5 p.m. ET 10/17/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–14–000.
Applicants: UGI Corporation.
Description: UGI Corporation submits FERC 65–B Waiver Notification, et al.
Filed Date: 9/23/16.
Accession Number: 20160923–5379.
Comments Due: 5 p.m. ET 10/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–23843 Filed 9–30–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0021; FRL–9952–20]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before November 2, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the file symbol of interest as shown in the body of this document, by one of the following methods:

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

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. EPA Registration Number: 100–RANA. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredients: Pydiflumetofen and fludioxonil. Product type: Fungicide. Proposed use: New terrestrial non-food use on ornamental plants. Contact: RD.

2. EPA Registration Number: 100–RANE. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen and difenoconazole. Product type: Fungicide. Proposed use: New food uses on cucurbit vegetables (Crop Group 9), dried shelled peas and beans (Crop Subgroup 6C), fruiting vegetables (Crop Group 8–10), grapes, potato, rapeseed (Crop Subgroup 20A), soybean, tomato, and tuberous and corm vegetables (Crop Subgroup 1C). Contact: RD.

3. EPA Registration Number: 100–RANI. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen. Product type: Fungicide. Proposed use: New terrestrial

non-food use on ornamental plants. Contact: RD.

4. EPA Registration Number: 100–RANG. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen and fludioxonil. Product type: Fungicide. Proposed use: New food uses on cucurbit vegetables (Crop Group 9), dried shelled beans (except cowpeas), fruiting vegetables (Crop Group 8–10), grape and small fruit vine climbing subgroup (Crop Subgroup 13–07F, except fuzzy kiwifruit), leaf petiole vegetables (Crop Subgroup 22B), leafy green vegetables (Crop Subgroup 4–16A), potato, tuberous and corm vegetables (Crop Subgroup 1C). Contact: RD.

5. EPA Registration Number: 100–RANL. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen, azoxystrobin, and propiconzaole. Product type: Fungicide. Proposed use: New food uses on cereals (rye, triticale, barley, wheat, and oats), corn (field, popcorn, sweet, and seed corn), dried shelled beans, peanuts, quinoa, rapeseed (Crop Subgroup 20A), and soybean. Contact: RD.

6. EPA Registration Number: 100–RANN. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen. Product type: Fungicide. Proposed use: New terrestrial non-food use on golf course turf. Contact: RD.

7. EPA Registration Number: 100–RANO. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen. Product type: Fungicide. Proposed use: New food uses on cereals (rye and triticale; barley, wheat, and oats—forage, hay, seed, and straw), corn (field, popcorn, sweet, and seed corn), cucurbit vegetables (Crop Group 9), dried shelled peas and beans (Crop Subgroup 6C), fruiting vegetables (Crop Group 8–10), grape and small fruit vine climbing subgroup (Crop Subgroup 13–07F, except fuzzy kiwifruit), leaf petiole vegetables (Crop Subgroup 22B), leafy green vegetables (Crop Subgroup 4–16A), pea hay and vine, peanuts (peanut hay), potato, quinoa, rapeseed (Crop Subgroup 20A), soybean (forage, hay, hulls, and seed), tuberous and corm vegetables (Crop Subgroup 1C). New terrestrial non-food uses on golf course turf and ornamental plants. Contact: RD.

8. EPA Registration Number: 100–RANR. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen. Product type: fungicide. Proposed use: New food uses on cereals (rye, triticale, barley, wheat, and oats), corn (field, popcorn, sweet, and seed corn), cucurbit vegetables (Crop Group 9), dried shelled peas and beans (Crop Subgroup 6C), fruiting vegetables (Crop Group 8–10), grape and small fruit vine climbing subgroup (Crop Subgroup 13–07F, except fuzzy kiwifruit), leaf petiole vegetables (Crop Subgroup 22B), leafy green vegetables (Crop Subgroup 4–16A), peanuts, potato, quinoa, rapeseed (Crop Subgroup 20A), soybean, tuberous and corm vegetables (Crop Subgroup 1C). Contact: RD.

9. EPA Registration Number: 100–RANT. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen, azoxystrobin, and propiconzaole. Product type: Fungicide. Proposed use: New terrestrial non-food use on ornamental plants. Contact: RD.

10. EPA Registration Number: 100–RANU. Docket ID number: EPA–HQ–OPP- 2015–0775. Applicant: Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. Active ingredient: Pydiflumetofen, azoxystrobin, and propiconzaole. Product type: Fungicide. Proposed use: New terrestrial non-food use on golf course turf. Contact: RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 22, 2016.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–23841 Filed 9–30–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0548; FRL–9952–54]

Cancellation of Pesticides for Non-Payment of Year 2016 Registration Maintenance Fees; Summary of Orders Issued

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the payment of an annual maintenance fee is required to keep pesticide registrations in effect. The fee due last January 15, 2016, has gone unpaid for 314 registrations. If the fee is not paid, the EPA Administrator may cancel these registrations by order and without a hearing; orders to cancel these registrations have been issued.

FOR FURTHER INFORMATION CONTACT: Mick Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

Product-specific status inquiries may be made by calling toll-free, 1–800–444–7255.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0548, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Complete lists of registrations canceled for non-payment of the maintenance fee are also available for reference in the OPP Docket.

II. Background

Section 4(i)(5) of FIFRA (7 U.S.C. 136a–1(i)(5)) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in

effect. This requirement applies to all registrations granted under FIFRA section 3 (7 U.S.C. 136a) as well as those granted under FIFRA section 24(c) (7 U.S.C. 136v(c)) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

Under FIFRA, the EPA Administrator may reduce or waive maintenance fees for minor agricultural use pesticides when it is determined that the fee would be likely to cause significant impact on the availability of the pesticide for the use.

In fiscal year 2016, maintenance fees were collected in one billing cycle. In late October of 2015, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in April of 2016 to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

In fiscal year 2016, the Agency has waived the fee for 304 minor agricultural use registrations at the request of the registrants. Maintenance fees have been paid for about 15,921 FIFRA section 3 registrations, or about 96% of the registrations on file in October 2015. Fees have been paid for about 1,901 FIFRA section 24(c) registrations, or about 87% of the total on file in October 2015. Cancellations for non-payment of the maintenance fee affect about 307 FIFRA section 3 registrations and about 7 FIFRA section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2017, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-Payment

Table 1 of this unit lists all of the FIFRA section 24(c) registrations, and Table 2 of this unit lists all of the FIFRA section 3 registrations which were canceled for non-payment of the 2016 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1—FIFRA SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE

SLN No.	Product name
CA–15–0004	Hasachlor.
CA–77–0058	Pic-Brom 50.
CA–97–0016	Methyl Bromide 98%.
FL–06–0009	MBC Soil Fumigant.
HI–03–0008	PPG Calcium Hypochlorite Tablets.
MN–14–0003	Earthtec.
PR–03–0002	BVA Spray 15.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE

Registration No.	Product name
000099–00130	Great Outdoors Insect Repellent Lotion.
000192–00188	Dexol Dormant & Summer Oil Spray II.
000192–00193	Dexol Predator Roach Powder with Boric Acid.
000192–00205	Dexol Gopher Killer Pellets 2.
000192–00219	Dexol Lawn Insect Bifen 0.1%.
000192–00220	Bifen Nursery Insecticide Granules.
000211–00040	Q4.5–5.0 PB–4.5.
000211–00050	Q5.5–5.5 NPB–2.5HW.
000266–20002	Sodium Hypochlorite Solutions—10%.
000278–00050	Sanygen Granular Chlorinating Compound.
000397–00006	Steri-Dri Fumigant.
000572–00005	Rockland Penn-O-Pine Pine Disinfectant.
000572–00350	Rockland Indoor/Outdoor Insect Spray.
000769–00574	Suregard Brand Sevin 80S Carbaryl Insecticide.
000769–00586	R & M Floral & Vegetable Spray #2.
000769–00587	R & M Floral & Vegetable Spray Concentrate.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE—Continued

Registration No.	Product name
000769–00589	R & M Lawn Spray Concentrate #2.
000769–00856	Pratt Wettable Sulfur Dust or Spray.
000769–00945	Liquid Edger & Spot Weed.
000769–00972	Security Brand 50% Sevin Wettable.
000769–00980	Allpro Bifen LP.
000773–00088	Safecide Brand IC.
000829–00202	SA–50 Brand Thuricide HPC.
000875–00194	Divosan Quat-Klenz.
001022–00592	Secure.
001043–00019	Staphene Disinfectant Spray and Deodorizer.
001043–00077	Powder Keg.
001157–00052	IGR 1% Liquid Methoprene.
001475–00165	IMS Moth Balls.
001475–00166	IMS Moth Blocks.
001475–00167	IMS Moth Cake.
001475–00168	IMS Moth Crystals.
001769–00283	Flash.
001769–00370	P–O–W Plus.
003095–00024	Pic Ant Control Systems.
003095–00027	Pic X–100% Deet.
003377–00029	Sanibrom 45 Biocide.
003377–00063	SBS 1021 Biocide.
003377–00071	Xtrabrom 111T Biocide.
003573–00091	Homer.
004313–00041	Pine II Pine Odor Disinfectant.
004313–00093	Ocide Plus.
004972–00030	Super Hi-Kil Formula One.
005736–00061	HDC V2 1:64.
005736–00104	Hospital Disinfectant Cleaner.
005736–00105	Liquid Disinfectant Cleaner.
005736–00106	Foaming Aerosol Disinfectant Cleaner.
005785–00057	Bromicide.
005785–00063	IWT BCDMH Tablets.
005785–00065	IWT BCDMH Granules.
005785–00100	501 BT.
005785–00105	Dihalo.
005785–00106	Dihalo Granular.
005785–00107	Dihalo Granular.
005785–00108	Dihalo Tablets.
005887–00161	Black Leaf Sulfur Dust.
005887–00179	Black Leaf Mole & Gopher Killer Pelleted Bait.
006198–00011	Q–IV.
006383–00001	Ferret Rodenticide.
006458–00005	Rotenone Resin for Manufacturing Use Only.
006458–00006	Cube Powder.
007405–00039	Chemi-Cap Germicidal Multi-Purpose Cleaner.
007546–00026	Liquid Disinfectant Cleaner.
007546–00027	Hospital Disinfectant Cleaner.
007546–00028	Foaming Aerosol Disinfectant Cleaner.
007698–00007	Hubbard One To One Rol Mineral.
007726–00024	Klor 300 Chlorine Base Sanitizer.
008155–00012	Sanitizer Virucidal Husky 803 S/V Disinfectant.
008155–00017	Carpet Sanitizer Husky C/S Carpet Extraction Concentrate.
008155–00019	New Power Husky 315 N/P Bowl Cleaner.
008155–00022	Husky 805 C/D.
008155–00023	Husky 806 H/D/N.
008155–00024	Husky 800 N/D.
008848–00063	Black Jack Jet Action Crawling Insect Spray.
008848–00071	Black Jack D–200 Insect Killer.
008848–00076	Landlord's Multipurpose 0.5% Liquid Formula.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE—Continued

Registration No.	Product name
008848–00080	Landlord's Oil Base Crawling Insect Killer.
009198–00065	The Anderson's Crabgrass Preventer with 4.7% Tupersan.
009198–00149	The Anderson's Easy Weed 'n Green.
009198–00183	The Anderson's Golf Products FF II 14–3–3 with PCNB Fungicide.
009198–00205	The Anderson's Golf Products Turf Enhancer 2SC.
009198–00209	The Anderson's Fertilizer Plus Preemergent Weed Control.
009198–00215	The Anderson's Fertilizer with 0.25% Paclobutrazol.
009198–00217	The Anderson's Fertilizer with 0.039% Bifenthrin Insecticide.
009198–00233	The Anderson's GC Bicarb Insecticide + Fertilizer.
009198–00239	The Anderson's 0.077% Bifenthrin + 0.155% Imidacloprid Granular Insect.
009743–00007	Skasol Microbiocide No. H.
009886–00002	Unipine 85.
009886–00004	Unipine 80.
009886–00010	Unipine 60.
009886–00012	Uniclean 30/60.
009886–00016	Uniclean 19.9/60.
009886–00017	Uniclean 19.9/85.
010707–00037	BPC 68955.
010897–00033	One Inch Chlorinating Tablets Repack.
010897–00034	3 Inch Chlorinating Tablets.
011668–00010	T & R Brand Pine Disinfectant.
011668–00013	EL Pinol 60.
011694–00088	Do It All Germicidal Foaming Cleaner.
011694–00113	Scrubs.
012017–00003	Aquaphenate.
013283–00032	Rainbow ETOC(R) 0.135% Wasp & Hornet Spray.
013283–00033	Rainbow ETOC(R) 0.15% Wasp & Hornet Spray.
013283–00035	Rainbow ETOC(R) 0.186% Wasp & Hornet Spray.
013808–00007	Compound 1080 Livestock Protection Collar.
015136–00010	Med-Chem Germicidal Solution.
015300–00008	Chemtreat CL–200.
017545–00009	Treflan E.C. Weed and Grass Preventer.
024061–00001	Technical Piperonyl Butoxide.
036739–20001	Sinco Super Shok.
037256–00001	Protect 'n Shield Antimicrobial.
041550–00001	R.P.S. Humidifier Bacteria-Algae Treatment.
044891–00018	Bio-Boostactivator.
046622–00001	Micro-Biocide; SF–54.
047033–00012	AQB–004 Microbiocide.
047362–00003	Seabright Roach Bait.
048482–00007	Cal Hypo Giant Tabs.
049620–00012	Peroxy-Blend PB33 S/D.
049827–00002	Pine Glo.
051219–00001	Refresh.
051219–00003	Actabs.
051219–00004	Actabs XX.
052134–00001	Chlorine Liquified Gas Under Pressure.
053735–00015	King Brom.
054998–00002	Granular Stabilized Concentrated Dry Granular Chlorinating Product.
054998–00005	Algaecide.
055070–00002	Carpet—Guard.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE—Continued

Registration No.	Product name
056336–00013	Checkmate CM 180/1–P Dispenser.
056336–00054	Checkmate SPM Dispenser.
056336–00061	Checkmate CM Primo.
057538–00021	N-Large 20 SP.
057538–00022	N-Large 40 SP.
057538–00023	N-Large 10 SP.
058044–00003	Consan Triple Action 20.
058639–00005	Car-Mac Insecticidal Die-No-Mite Strip.
059638–00002	MB–IS01.5.
060061–00089	Woodlife Milltreat Type F VM & P.
061468–00010	Creosote Coal Tar Solution.
061468–00011	Creosote Oil.
064962–00004	ET–20.
065864–00001	SM–9.
066243–00003	Quik Control.
067517–00009	I–O Concentrate.
067517–00033	Residual Livestock and Poultry Insecticide.
067517–00044	Hard Hitter Cattle Pour-On Insecticide.
067517–00048	Canine Shampoo.
067517–00052	5.7% Insecticide.
067517–00055	Permethrin Water-Base Spray.
067517–00058	Insecticide Shampoo for Animals.
067517–00059	IGR Flea and Insect Spray.
067517–00078	Tick and Mosquito Permethrin Repellent.
067517–00082	Rabon Dust for Dogs and Cats.
070627–00010	Johnson's Forward Cleaner.
070627–00021	Virex II/128.
070627–00055	Closure Central 25.
070791–00002	Envirotru.
070791–00003	Geotru.
070791–00004	Eco Tru Revised.
070852–00006	AGC 0.05 AG.
071407–00002	Chlorine Grape Guard.
071838–00001	AT–5.
072083–00002	Halosource Bleach.
072112–00005	Mainsail WDG.
072112–00006	Mainsail 6.0 F.
072159–00003	Chlorosel Pro DF Fungicide.
072642–00009	Assurity Cat.
072804–00002	Doktor Doom House & Garden Insect Killer.
073314–00009	Chromo Bio-Insecticide TGAI.
073314–00010	Chromo Bio-Insecticide EP.
073314–00012	Quelzor WP.
073479–00001	Paramount Aerosol PTB.
073637–00005	Cycloate 6–E Selective Herbicide.
073667–00007	MB 2001 XG.
073754–00001	2,4-D Acid Technical.
073754–00002	Growell 2,4-D 2-Ethylhexyl Ester Technical.
074075–00002	Intace Fungicide B–350.
074395–00001	Materia PTB Technical Pheromone.
074681–00006	Copper Shield SCX.
075341–00004	Patox-Lite.
080967–00012	Revolution G N Go Herbicide.
081002–00002	Chlorine Free Splashes Sanitizer.
081002–00003	Splashes Too Swimming Pool Sanitizer.
081882–00001	Triangle Brand Copper Sulfate Powder.
081882–00002	Triangle Brand Copper Sulfate Crystal.
081882–00003	Triangle Brand Copper Sulfate Pentahydrate Mup.
082074–00003	Mycotrol O.
082571–00001	Csc Wettable or Dusting Sulfur.
083525–00006	Absolute Chlor 65 (Calcium Hypochlorite).

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE—Continued

Registration No.	Product name
083991–00002	Fungaflor Seed.
084398–00001	CZL Oxidize 7.5.
084542–00002	Cupron Cupric Oxide.
084542–00006	Cupron 2% Anti-Dustmite Fibers and Fabrics.
084542–00014	Cupron Water System.
084699–00002	Bavicbrom Tablet for Manufacturing Use Only.
084699–00004	Bavicbrom Powder for Manufacturing Use Only.
084886–00003	AAT Consumer Weed & Feed 01.
084930–00001	ARC-Camba 4 DMA.
084930–00002	ARC-Imida 4#.
084930–00003	ARC-Mepiquat Chloride 4.2%.
084930–00004	ARC-Bifenicide 25EC.
084930–00005	ARC-Imida 600 ST.
084930–00006	ARC-Clethodim #2.
084930–00007	ARC-Chlor 4# AG.
084930–00009	AGC-Camba + 2,4-D DMA.
084930–00010	ARC-Gly Plus.
084930–00011	ARC-Imida 2#.
084930–00013	ARC-Teb 3.6 Flowable Fungicide.
084930–00014	ARC-Met 60.
084930–00015	ARC-Lamcy 2.
084930–00016	ARC-Gly 53.8% Herbicide.
084930–00017	ARC Chlormet Herbicide.
084930–00018	ARC SU 50/25 Herbicide.
084930–00019	ARC–SU 25/25 Herbicide.
084930–00020	ARC SU 40/10 Herbicide.
084930–00021	ARC SU TBN 75 Herbicide.
084930–00022	ARC SU TFS 75 Herbicide.
084930–00024	ARC–ATZ 4L Herbicide.
084930–00025	ARC-Metolachlor.
084930–00026	ARC–2,4-D Amine 4.
084930–00027	ARC–DGCA Herbicide.
084930–00028	ARC–LV–4.
084930–00029	ARC–TDZ SC Cotton Defoliant.
084930–00030	ARC Abamectin 0.15 EC Insecticide.
084930–00031	ARC-Ethephon 6 Plant Growth Regulator.
084930–00032	ARC-Lamcy 13 EC Insecticide.
084930–00033	ARC-Fomesafen.
084930–00034	ARC–TFAN 4.5FL Fungicide.
084930–00035	ARC-Trazine 4L Herbicide.
085583–00001	DBNPA Technical.
085678–00012	Captan 50 WP.
085678–00016	Acephate Technical.
085678–00025	Diuron 80 WDG.
085678–00026	Acephate 97DF.
085678–00029	Acephate 90WDG.
086089–00001	The Pool Clor.
086089–00002	The Pool Clor Plus.
086110–00001	Superclear T100.
086130–00003	FCB–13.
086130–00005	FCB–15.
086130–00006	Flowchem FCB–16.
086145–00002	Magnolia Algaecide 60% Concentrated.
086145–00003	Magnolia Brominating Tablets.
086244–00001	BA-Kil.
086363–00002	Dicamba 4 DMA.
086363–00003	KT Chlorpyrifos 4E.
086363–00004	Glyphosate 41.
086363–00005	Tebucon 3.6 Flowable Fungicide.
086363–00006	Dicamba 2,4-D DMA.
086363–00008	Imidacloprid 2FL.
086363–00009	Lambda-Cyhalothrin 13% EC Insecticide.
086363–00010	Thiofan8 4.0.
086363–00013	KT Fomesafen 2SL.
086363–00015	KT Ethofumesate 4SC.
086363–00017	KT Oxyflo 4SC.
086363–00018	KT Oxyflo 2EC.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2016 MAINTENANCE FEE—Continued

Registration No.	Product name
086363–00019	KT Propanil 80DF.
086363–00020	KT Propanil 4SC.
086363–00021	KT CTL 720 Fungicide.
086794–00001	Newagco Glyphosate Technical.
086794–00002	Newagco Glyphosate Fully Loaded 41 Plus.
086794–00003	Newagco Glyphosate 62% MUP.
086794–00004	Mpower Clodinafop-Propargyl Technical.
086794–00006	Mpower Clodinafop Herbicide.
087273–00002	Pro Chlor Tabs.
087687–00001	Eco-Clad Part A.
087722–00003	Bactiblock 101 RP1.47.
087722–00004	Bactiblock 101 S1.19.
087722–00005	Bactiblock 920 B4.
087800–00001	Teking 101M.
087800–00002	Teking 101E.
087800–00003	Teking 102.
088089–00003	Peridox with the Electrostatic Decontamination System.
088402–00001	Splash Chlor Bleach.
088407–00001	Hydro Stick AOS 7017.
088622–00001	T.O.P.S. System.
088665–00001	Bugz-No-More Insecticide.
088691–00001	Clear Bath Algae Inhibitor.
089016–00001	LAG 1.
089016–00006	LAG 6.
089094–00001	Multi-Purpose Cleaner Spray.
089094–00005	Floor Liquid.
089897–00002	Ultrazapxtendapak Grapes.
090334–00001	Xensation Cover AM1.
090960–00001	Fly Away IGR Pro.
090963–00001	Nipacide MX.
091097–00001	Mpower Metolachlor II.
091097–00002	Mpower 2,4-D 4 Amine.
091097–00003	Mpower 2,4-D 6 Ester.
091097–00004	Mpower Lambda.
091097–00005	Mpower Clethodim.
091097–00006	Mpower Bentazon.
091097–00007	Mpower Dicamba DMA.
091097–00008	Mpower Tebuconazole.
091097–00009	Mpower Propiconazole.
091097–00010	Mpower Azoxystrobin.
091145–00001	Vex-Trol 30–30 ULV Mosquito Adulticide.
091145–00002	Vex-Trol 31–67 ULV Mosquito Adulticide.
091145–00003	Vex-Trol 4–4 ULV Mosquito Adulticide.
091145–00006	Vex-Trol UL 4–8.
091145–00007	Aqua Vex-Trol 30–30 ULV Mosquito Adulticide.
091234–00001	Synag T-Methyl 4.5F.
091234–00005	S105.1 Bifenthrin FC.
091795–00003	Blue Shield BQ Algaecide.
091795–00006	Blue Shield Jumbo Slo-Pokes.
091795–00007	Blue Shield Slo-Tabs.
091795–00008	Blue Shield P.D.Q. Tabs.
091795–00009	Blue Shield Econo Shock.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until January 15, 2017, 1 year after the date on which the fee was due.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 19, 2016.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2016–23850 Filed 9–30–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 2, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Receiving Written Consent for Communication with Base Stations in Canada; Issuing Written Consent to Licensees from Canada for Communication with Base Stations in the U.S.; Description of Interoperable Communications with Licensees from Canada.

Form Number: N/A.

Type of Review: New collection.

Respondents: State, local, or tribal governments.

Number of Respondents and Responses: 3,224 respondents; 3,224 responses.

Estimated Time per Response: 0.5 hours–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Written consent from the licensee of a base station repeater is required before first responders from the other country can begin communicating with that base stations repeater. Applicants are advised to include a description of how they intend to interoperate with licensees from Canada when filing applications to operate under any of the scenarios described in Public Notice DA 16–739 in order to ensure that the application is not inadvertently rejected by Canada. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

Total Annual Burden: 5,642 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Applicants who include a description of how they intend to interoperate with licensees from Canada need not include any confidential information with their description. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring an agency to issue written consent before allowing first responders from the other country to communicate with its base station repeater ensures to that the licensee of that base stations repeater (host licensee) maintains control and is responsible for its operation at all times. The host licensee can use the written consent to ensure that first responders from the other country understand the proper procedures and protocols before they begin communicating with its base station repeater. Furthermore, when reviewing applications filed by border area licensees, Commission staff will use any description of how an applicant intends to interoperate with licensees from Canada, including copies of any written agreements, in order to coordinate the application with Innovation, Science and Economic Development Canada (ISED) and reduce the risk of an inadvertent rejection by ISED.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2016–23746 Filed 9–30–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Currie Bancorporation, Inc., Currie, Minnesota; to acquire 100 percent of First State Bank of Okabena, Okabena, Minnesota.

Board of Governors of the Federal Reserve System, September 28, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–23824 Filed 9–30–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John R. Rice, Brookings, South Dakota, and Mary D. Rice, Boston, Massachusetts; individually and as a group acting concert, to retain shares of Citizens State Bank of Arlington, Arlington, South Dakota.

B. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org*:

1. Lawrence B. Seidman, Wayne, New Jersey; Seidman and Associates, LLC; Seidman Investment Partnership, LP; Seidman Investment Partnership II, LP; Seidman Investment Partnership III, LP, all of Parsippany, New Jersey; LSBK06–08, LLC, Palm Beach, Florida; Broad Park Investors, LLC; Chewy Gooey Cookies, LP, both of West Orange, New Jersey; CBPS, LLC, New York, New York; and 2514 Multi-Strategy Fund LP, Tampa, Florida; to increase their ownership of the shares of MSB Financial Corp, Millington, New Jersey, and thereby acquire shares of Millington Bank, Millington, New Jersey.

Board of Governors of the Federal Reserve System, September 28, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–23825 Filed 9–30–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice for comment regarding the Federal Reserve proposal to extend without revision, the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on proposals to extend without revision, the Intermittent Survey of Businesses (FR 1374), and the Domestic Finance Company Report of Consolidated Assets and Liabilities (FR 2248).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before December 2, 2016.

ADDRESSES: You may submit comments, identified by *FR 1374 or FR 2248,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. Report title: Intermittent Survey of Business.

Agency form number: FR 1374.

OMB control number: 7100–0302.

Frequency: On occasion.

Respondents: Businesses and state and local governments.

Estimated number of respondents: 2,410.

Estimated average hours per response: 15 minutes.

Estimated annual burden hours: 1,825 hours.

General Description of Report: The survey data are used by the Federal Reserve to gather information specifically tailored to the Federal Reserve's policy and operational responsibilities. There are two parts to this event-generated survey. First, under the guidance of Federal Reserve economists, the Federal Reserve Banks survey business contacts as economic developments warrant. Currently, there are approximately 2,400 business respondents for each survey (about 200 per Reserve Bank); occasionally state and local government officials are called, in which case there are far fewer respondents. It is necessary to conduct these surveys to provide timely information to the members of the Board and to the presidents of the Reserve Banks. Usually, these surveys are conducted by Reserve Bank economists telephoning or emailing purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. Reserve Bank staff may also use online survey tools to collect responses to the survey. The frequency and content of the questions, as well as the entities contacted, vary depending on developments in the economy. Second, economists at the Board survey business contacts by telephone, inquiring about current business conditions. Board economists conduct these surveys as economic conditions require, with approximately ten respondents for each survey.

Legal authorization and confidentiality: The Board's Legal Division has determined that the Board is authorized to collect this information under sections 2A and 12A of the Federal Reserve Act (12 U.S.C. 225a and 263) and that respondent participation

in the survey is voluntary. Although the names of the participating entities might be disclosed in the summary memo and the memo might contain information provided to the Board for internal use only, exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) may exempt this information from disclosure to the public. However, if the information collected on the FR 1374 does not meet these standards for confidentiality (for example if the information collected is already public), it would not be granted confidential treatment.

2. Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities.

Agency form number: FR 2248.

OMB control number: 7100–0005.

Frequency: Monthly, quarterly, and semi-annually.

Respondents: Domestic finance companies and mortgage companies.

Estimated number of respondents: 450.

Estimated average hours per response: Monthly, 20 minutes; Quarterly, 30 minutes; Addendum, 10 minutes.

Estimated annual burden hours: 750 hours.

General Description of Report: The FR 2248 is collected monthly as of the last calendar day of the month from a stratified sample of finance companies. Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. A supplemental section collects data on securitized assets. The data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release Flow of Funds Accounts of the United States (Z.1), and in the *Federal Reserve Bulletin* (Tables 1.51, 1.52, and 1.55).

Legal authorization and confidentiality: The Board's Legal Division has determined that the FR 2248 is authorized by law pursuant to Section 2A of the Federal Reserve Act, 12 U.S.C. 225a). The obligation to respond is voluntary. Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, September 28, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–23781 Filed 9–30–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2015–0034, Docket Number NIOSH 233–A]

NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2016

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of final guidance publication.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces the availability of the following publication: *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2016* [2016–161].

ADDRESSES: This document may be obtained at the following link: *http://www.cdc.gov/niosh/docs/2016-161/.*

FOR FURTHER INFORMATION CONTACT: Barbara A. MacKenzie, NIOSH Division of Applied Research and Technology, 1090 Tusculum Avenue, MS C–26, Cincinnati, OH 45226. 513–533–8132 (not a toll free number), *bmackenzie@cdc.gov.*

Dated: September 27, 2016.

Frank Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–23719 Filed 9–30–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions—PQ2.

Date: October 20, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 6W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Regional Centers of Research, Excellence in Non-Communicable Diseases in Low and Middle Income Countries.

Date: October 25, 2016.

Time: 8:00 a.m. to 5:00 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: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review and Program Coordination, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20892–9750, 240–276–5856, *ss537t@nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular Analysis Technologies (IMAT).

Date: October 27–28, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research and Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room

7W264, Rockville, MD 20892–9750, 240–276–6384, *gravesr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions—PQ4.

Date: November 3, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W032/034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Fundamental Mechanisms of Affective and Decisional Process in Cancer Control.

Date: November 4, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2W910, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions—PQ6.

Date: November 4, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 6W034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions—PQ8.

Date: November 10, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W032/034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Yisong Wang, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20892–9750, 240–276–7157, *yisong.wang@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions in Cancer with an Underlying HIV Infection.

Date: November 16, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 4E030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23734 Filed 9–30–16; 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; Multi–Omics in Osteoporosis.

Date: October 25, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nijaguna Prasad, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Aging, National Institutes of Health, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23735 Filed 9–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Correction for Announcement of Requirements and Registration for ''Antimicrobial Resistance Rapid, Point-of-Need Diagnostic Test'' Challenge

The National Institutes of Health (NIH) is correcting a notice previously published in the **Federal Register** on September 8, 2016 (81 FR 62150), titled ''Announcement of Requirements and Registration for 'Antimicrobial Resistance Rapid, Point-of-Need Diagnostic Test' Challenge.'' The notice announced the Antimicrobial Resistance Rapid, Point-of-Need challenge competition that may result in the awarding of $20 million dollars for the successful development of new, innovative, accurate, and cost-effective in vitro diagnostic tests that would rapidly inform clinical treatment decisions and be of significant clinical and public health utility to combat the development and spread of antibiotic resistant bacteria and improve antibiotic stewardship.

The NIH is correcting and clarifying several components of the Challenge competition including:

(1) The letter of intent must be submitted by December 23, 2016, for all ''Solvers'' planning to submit for the Step 1 (Theoretical) stage of the competition. The September 8, 2016 announcement incorrectly stated that the letter of intent prior to Step 1 was

required but a specific due date was not stated.

(2) Any Appendix submitted for Step 1 of the Challenge competition must be limited to 5 pages or less in length. If a longer Appendix is submitted, only the first 5 pages will be considered by the Technical Evaluation Panel and the Judging Panel. The September 8, 2016, announcement incorrectly stated that there was no page length for the Appendix material.

(3) Submissions for Step 1 of the Challenge competition received after the deadline of January 9, 2017, at 11:59 p.m. ET will be disqualified and not evaluated by the Technical Evaluation Panel or Judging Panel.

(4) Solvers may submit corrections or additional materials in support of their Step 1 submissions so long as the NIH receives the materials by the deadline of January 9, 2017, at 11:59 p.m. ET. Corrections or additional materials for Step 1 will not be accepted or evaluated by the Technical Evaluation Panel or Judging Panel if they are received after January 9, 2017 at 11:59 p.m. ET.

(5) The NIH will perform an initial review of all submissions to ensure they are complete and within the scope of the Challenge competition. Submissions that are incomplete will be administratively disqualified and will not be evaluated by the Technical Evaluation Panel or the Judging Panel.

(6) The NIH and Assistant Secretary for Preparedness and Response/ Biomedical Advanced Research and Development Authority may determine that based on the number of submissions received for Step 1 that less competitive submissions will not be discussed by the Technical Evaluation Panel during the Panel's meeting.

(7) The ''Solver'' needs to address the NIH Human Subjects Protections and Inclusion of Women, Children, and Minorities policies in their submissions for Step 1 of this competition.

(8) Members of the Technical Evaluation Panel are not eligible to participate in or contribute to any proposal for Step 2 and Step 3 of the Challenge competition.

(9) Any Solver is eligible for Step 2 of this Challenge competition. For example, if a Step 1 ''Solver'' is not identified as a semifinalist, he/she may still submit for Step 2 of this competition and those who did not submit a Step 1 proposal may still submit a proposal for Step 2.

(10) All submissions for Step 1, 2, and 3 must be in English.

For further information about the Antimicrobial Resistance Diagnostic Challenge competition, please contact Robert W. Eisinger, Ph.D., NIH, 301–496–2229 or by email *Robert.eisinger@nih.gov.*

Dated: September 27, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–23854 Filed 9–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34) and NIAID Investigator Initiated Program Project Applications (P01).

Date: October 28, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC9823 Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–23736 Filed 9–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/ workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and

specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR

22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles LoDico,

Chemist.

[FR Doc. 2016–23796 Filed 9–30–16; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Delay of Effective Date for the Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Delay of effective date.

SUMMARY: On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings. The changes announced in that notice were to have been effective on October 1, 2016. This notice announces that the effective date for the transition to ACE as the sole CBP-authorized EDI system for electronic drawback and duty deferral entry and entry summary filings is delayed until further notice.

DATES: *The effective date is delayed until further notice:* CBP will publish a subsequent notice announcing the effective date when ACE will be the sole CBP-authorized EDI system for processing electronic drawback and duty deferral entry and entry summary filings, and ACS will no longer be a CBP-authorized EDI system for purposes of processing these filings.

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to *ASKACE@cbp.dhs.gov* with the subject line identifier reading ''ACS to ACE Drawback and Duty Deferral Entry and Entry Summary Filings transition''.

SUPPLEMENTARY INFORMATION: On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** (81 FR 59644) announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings, effective on October 1, 2016. The document also announced that, on October 1, 2016, the Automated Commercial System (ACS) would no longer be a CBP-authorized EDI system for purposes of processing these electronic filings. Finally, the notice announced a name change for the ACE filing code for duty deferral and the creation of a new ACE filing code for all electronic drawback filings, replacing the six distinct drawback codes previously filed in ACS.

CBP has been assessing stakeholder readiness for the mandatory transition of post-release capabilities in ACE, including the transition of electronic drawback and duty deferral entry and entry summary filings from ACS to ACE. CBP has determined that industry partners need additional time to prepare for the transition to electronic post-release capabilities in ACE. Accordingly, the effective date for all that was announced in the August 30, 2016 **Federal Register** notice, including the transition to ACE as the sole CBP-authorized EDI system for electronic drawback and duty deferral entry and entry summary filings, is delayed until further notice. CBP will publish a subsequent notice announcing the effective date.

Dated: September 28, 2016.

Kevin K. McAleenan,

Deputy Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016–23833 Filed 9–30–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0017; OMB No. 1660–0022]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Community Rating System (CRS) Program—Application Worksheets and Commentary

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 2, 2016.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Bill Lesser, Program Specialist, Federal Insurance and Mitigation Administration, (202) 646–2807. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on July 14, 2016, at 81 FR 45517, with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0022.

FEMA Forms: FEMA Form 086–0–35, Community Rating System Application Letter and Quick Check; FEMA Form 086–0–35A, Community Annual Recertifications, and FEMA Form 086–0–35B, Environmental and Historic Preservation Certifications.

Abstract: The CRS Application Letter & Quick Check, the CRS certification forms, and accompanying guidance are used by communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS). The CRS is a voluntary program where flood insurance costs are reduced in communities that implement practices, such as building codes and public awareness activities, which are considered to reduce the risks of flooding and promote the purchase of flood insurance.

Affected Public: State, local, or Tribal government.

Number of Respondents: 1,579.

Number of Responses: 1,579.

Estimated Total Annual Burden Hours: 41,936 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $2,442,795.30. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $5,425,600.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: September 22, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–23820 Filed 9–30–16; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Request To Submit Invoices for Over-Age Firm-Fixed-Price Contracts

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) currently has contracts that are considered over-age, as the period of performance or final delivery date of these actions has expired and the time allowed for contract file closeout has elapsed. To clear the backlog of over-age contracts, DHS developed procedures that would enable the Agency to closeout these elapsed actions in an efficient and cost effective manner. These procedures required the Agency to identify those expired contracts that could more easily be closed-out based on certain criteria that would deem them low-risk, such as firm-fixed-price contracts containing no outstanding issues and no invoice or payment activity within the past year. These contracts are listed at *https://dhs.gov/publication/low-risk-closeout.* To facilitate the closeout of these actions, DHS requests that contractors with contracts identified on this list submit any outstanding invoices to the cognizant DHS Component contracting activities within 60 days after the publication of this notice.

DATES: For the contract actions listed at *https://dhs.gov/publication/low-risk-closeout,* submit all outstanding invoices to the cognizant DHS Component contracting activities on or before December 2, 2016.

ADDRESSES: Go to *https://dhs.gov/publication/low-risk-closeout* for guidance on where to submit invoices.

FOR FURTHER INFORMATION CONTACT: Eric Cho, Office of the Chief Procurement Officer, Department of Homeland Security, 245 Murray Lane SW., Building 410, Washington, DC 20528, telephone: 202–447–0271; email: *Eric.Cho@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: DHS's contract closeout backlog not only poses a significant burden to various acquisition and financial systems, but it also impedes DHS's on-going efforts to strengthen and modernize its financial management practices. The procedures DHS developed to significantly reduce the number of expired contracts with unliquidated funds will enable DHS to expeditiously close these actions. DHS developed the procedures using risk-based management principles by first identifying and classifying open, expired contracts as low-risk based on the following criteria: (i) The contract is firm-fixed-price; (ii) the contract expired and the additional time allowed for contract file closeout under Federal Acquisition Regulation (FAR) 4.804–1(a) has elapsed; and (iii) the contract had no invoice or payment activity within the past 12 months.

Notwithstanding DHS's intention to expeditiously closeout the actions identified at the aforementioned list, contractors' rights are protected under 41 U.S.C. chapter 71 Contract Disputes (commonly known as the Contract Disputes Act of 1978), which establishes procedures for filing claims against Federal Government contracts. Normal contract file retention requirements will apply after closeouts (*See* FAR 4.805, Storage, handling, and disposal of contract files.) This notice will also be published to FedBizOpps.

Dated: September 8, 2016.

Soraya Correa,

Chief Procurement Officer.

Chip Fulghum,

Deputy Under Secretary for Management and Chief Financial Officer.

[FR Doc. 2016–22118 Filed 9–30–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–28]

60-Day Notice of Proposed Information Collection: Utility Allowance Adjustments for Rental Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 2, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Program Analyst, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *harry.messner@hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Utility Allowance Adjustments for Rental Assistance.

OMB Approval Number: 2502–0352.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the Need for the Information and Proposed Use: Multifamily project owners are required to advise the Secretary of the need for and request approval of a new utility allowance for tenants.

Respondents: (projects with tenant paid utilities):

Estimated Number of Respondents: 5,644.

Estimated Number of Responses: 1,524.

Frequency of Response: Various.

Average Hours per Response: 0.5 hours.

Total Estimated Burden: 762.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 8, 2016.

Genger Charles,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 2016–23852 Filed 9–30–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5970–D–01]

Order of Succession for the Office of Policy Development and Research

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Policy Development and Research designates the Order of Succession for the Office of Assistant Secretary for Policy Development and Research. This Order of Succession supersedes all prior Orders of Succession for the Office of Policy and Development, including the Order of Succession published on May 18, 2012.

DATES: *Effective Date:* September 28, 2016.

FOR FURTHER INFORMATION CONTACT: Matthew Ammon, General Deputy Assistant Secretary, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8228, Washington, DC 20410–6000, telephone (202) 402–4337. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Policy Development and Research is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior Orders of Succession for the Office of Policy Development and Research, including the Order of Succession published on May 18, 2012 (77 FR 29848).

Accordingly, the Assistant Secretary for Policy Development and Research designates the following Order of Succession:

Section A. Order of Succession

Subject to the provision of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Policy Development and Research is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Policy Development and Research, the following officials within the Office of Policy Development and Research are hereby designated to exercise the powers and perform the duties of the Office, including the authority to waive regulations:

(1) Deputy Assistant Secretary for Policy Development;

(2) General Deputy Assistant Secretary;

(3) Deputy Assistant Secretary for Research, Evaluation, and Monitoring;

(4) Deputy Assistant Secretary for Economic Affairs.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office. No individual who is serving in an office listed below in an acting capacity may act as Assistant Secretary for Policy Development and Research pursuant to this Order of Succession.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for the Office of Policy Development and Research, including the Order of

Succession published on May 18, 2012 (77 FR 29848).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 28, 2016.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–23855 Filed 9–30–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5921–N–16]

Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA): Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of Administration, HUD.

ACTION: Notice of a computer matching program between HUD and SSA.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute (5 U.S.C. 552a, as amended), HUD is notifying the public of its intent to execute a new computer matching program with SSA, for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing. The most recent renewal of the current matching agreement expires on November 7, 2016. HUD will obtain SSA data and make the results available to (1) program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and (2) contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As.

DATES: *Effective Date:* The effective date of this agreement, and the date the match may begin is the later of the following dates: 40 days after HUD files a report of the subject matching program with the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget's (OMB), Office of Information and Regulatory Affairs; or 30 days after HUD publishes notice of the computer matching program in the **Federal Register**, unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective comment due date.

Comments Due Date: November 2, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments sent by facsimile are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act inquires: Office of Administration, Office of the Executive Secretariat, contact Helen Goff Foster, Executive Secretary/Senior Agency Official for Privacy, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6100, Washington, DC 20410, telephone number (202) 402–6836. For program information: Office of Public and Indian Housing: Real Estate Assessment Center, contact Victoria Alston, Department of Housing and Urban Development, 451 Seventh Street SW., Room PCFL1, Washington, DC 20410, telephone number (202) 475–7993; Office of Housing, contact Danielle Garcia, Director of the Housing Oversight Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410, telephone number (202) 402–2768. (These are not toll free telephone numbers). A telecommunications device for hearing-and speech-impaired individuals (TTY) is available at (800) 877–8339. (Federal Relay Service).

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** (FR) on September 14, 2011, at 76 FR 56781. Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of, rental assistance. The computer matching program may provide indicators of potential tenant unreported or under-reported income, which will require additional verification to identify inappropriate or inaccurate rental assistance, and may provide indicators for potential administrative or legal actions. The matching program will be carried out to detect inappropriate or inaccurate rental assistance under sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, section 202 of the Housing Act of 1959, section 811 of the Cranston-Gonzalez National Affordable Housing Act, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act (QHWRA) of 1998. On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance program (DHAP) as a covered HUD rental assistance program in HUD computer matching activities. The computer matching program will also provide for the verification of social security numbers (SSNs) of tenants participating in covered rental assistance programs. This notice provides an overview of computer matching for HUD's rental assistance programs. Specifically, the notice describes HUD's program for computer matching of its tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130 (November 28, 2000), ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee of Homeland Security and Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to the Privacy Act of 1974 (5 U.S.C 552a); 542(b) of the

1998 Appropriations Act (Pub. L. 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the QHWRA Act of 1998 (42 U.S.C. 1437a(f)). The Housing and Community Development Act of 1987 authorizes HUD to require participants of HUD rental housing assistance programs to disclose their social security numbers (SSNs) to HUD as a condition of continuing (or initial) eligibility for participation in the programs. The QHWRA of 1998, section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the PHA of income information received by the tenant from HUD as part of the income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participant's eligibility or level of benefits.

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final Rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant income information during mandatory reexaminations or recertifications of family composition and income; and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (24 CFR 5.233).

This computer matching program also assists HUD in complying with the following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204);
2. Presidential Memorandum on Enhancing Payment Accuracy Through a ''Do Not Pay List'' (June 18, 2010);
3. Office of Management and Budget M–10–13, Issuance of Part III to OMB Circular A–123, Appendix C;
4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);
5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);
6. Improper Payments Information Act of 2002 (Pub. L. 107–300); and
7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002 Implementation Guide.

II. Covered Programs

This notice of computer matching program applies to the following rental assistance programs:

A. Disaster Housing Assistance Program (DHAP)
B. Public Housing
C. Section 8 Housing Choice Voucher (HCV)
D. Project-Based Voucher
E. Section 8 Moderate Rehabilitation
F. Project-based Section 8
  1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Section 202/8
  5. Rural Housing Services Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)
G. Section 101 Rent Supplement
H. Section 202/162 Project Assistance Contract (PAC)
I. Section 202 Project Rental Assistance Contract (PRAC)
J. Section 811 Project Rental Assistance Contract (PRAC)
K. Section 236 Rental Assistance Program
L. Section 221(d)(3) Below Market Interest Rate (BMIR)

Note: This notice does not apply to the Low Income Housing Tax Credit (LIHTC) or the Rural Housing Services Section 515 without Section 8 programs.

III. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to verify the income of individuals participating in the rental assistance programs identified in Section II above, to determine the appropriate level of rental assistance, and to detect, deter, reduce and correct fraud and abuse in rental housing assistance programs. In meeting this objective, HUD also is carrying out its responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate. HUD's various assisted housing programs, administered through POAs, require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs must offer public housing tenants the option to pay a flat rent, or an income-based rent annually. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (March 29, 2000; 65 FR 16692) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Other objectives of this computer matching program include: (1) Increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of the Social Security death data and benefit information, and income reporting of program participants; and (3) measure improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants.

III. Program Description

HUD will disclose to SSA only tenant personal identifiers, *i.e.,* full name, Social Security number, and date of birth. SSA will match the HUD-provided personal identifiers to personal identifiers included in their various systems of records identified in Section IV of this notice. SSA will validate HUD-provided personal identifiers and provide income data to HUD only for individuals with matched personal identifiers. SSA will also provide the date of death or indication of death for any program participant whose HUD-supplied personal identifiers are successfully matched against SSA databases. For any individual whose personal identifiers do not match the personal identifiers in the SSA database, SSA will provide HUD with an error message, which will describe the reason(s) for no match (*i.e.* incorrect date of birth or surname, or invalid Social Security number). The SSA-provided data will be made available to POAs in HUD's EIV system.

A. Income Verification

Any match (*i.e.,* a ''hit'') will be further reviewed by HUD, the POAs, or the HUD Office of Inspector General (OIG) to determine whether the income

reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior SS and SSI benefit information and other data will be sought directly from tenants. For public housing and Section 8 tenant-based HCV programs, tenants will be required to provide PHAs with original SSA benefit verification letters dated within the last 60 days for comparison to computer matching results for accuracy. For multifamily housing programs, tenants must provide O/As with SSA benefit verification letters dated within the last 120 days. For SS and SSI benefit information for prior years, the tenant may be required to provide POAs with an original benefit history document from SSA if there is a dispute regarding historical income information obtained through the computer matching program.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and SSA-reported data; and (2) Use correct income amounts in determining rental assistance.

POAs must compute the rent in full compliance with all applicable statutes, regulations and administrator policies. POAs must ensure that they use the correct income and correctly compute the rent. In order to protect any individual whose records are used in this matching program, POAs may not suspend, terminate, reduce, or make a final denial of any rental assistance to any tenant, or take other adverse action against the tenant as a result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and has been informed of the opportunity to contest such findings; (b) The POA has independently verified the information; and (c) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. ''Independently verified'' in item (b) means the specific information relating to the tenant that is used as a basis for an adverse action has been investigated and confirmed by the POA. (5 U.S.C. 552a). As such, POAs must resolve income discrepancies in consultation with tenants. Additionally, serious violations, which POAs, HUD Program staff, or the HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

With respect to SSA-provided error messages regarding HUD-provided tenant, and matched personal identifiers, the POAs' administrator/agent will confirm its file and system documentation to confirm accuracy of data elements, and make any necessary corrections. If there is no error in the documentation, the POAs' administrators/agents will notify the individual of the error and request that the individual contact the SSA to correct any SSA data errors. POAs administrators/agents cannot correct such errors.

IV. Records To Be Matched

SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and dates of birth) to tenant data that HUD supplies from its systems of records known as the *Tenant Rental Assistance Certification System* (TRACS), a component of HUD's Tenant Housing Assistance and Contract Verification Data System (HUD/H–11), and the *Inventory Management System (IMS),* formerly known as the *Public and Indian Housing Information Center* (PIC) (HUD/PIH.01). The notice for these systems was published at 62 FR 11909 on March 13, 1997, and 77 FR 22337 on April 13, 2012, respectively. Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

SSA will match the tenant records included in HUD/H–11 and HUD/PIH–4 to their systems of records known as SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058), published at 75 FR 82121 on December 29, 2010; *Master Beneficiary Record* (60–0090), published at 71 FR 1826 on January 11, 2006; and *Supplemental Security Income Record* and Special Veterans Benefits (60–0103), published at 71 FR 1830 on January 11, 2006. HUD will place the resulting matched data into its *Enterprise Income Verification (EIV) system* (HUD/PIH–5). The notice for this system was initially published at 70 FR 41780 on July 20, 2005, and last amended on September 1, 2009 (74 FR 45235). The tenant records (one record for each family member) include these data elements: full name, SSN, and date of birth.

HUD data will also be matched to the SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058) for the purpose of validating SSNs of participants of HUD rental assistance programs to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate rental assistance.

V. Period of the Match

The computer matching program will become effective and the matching may commence after the respective Data Integrity Boards (DIBs) of both agencies approve and sign the computer matching agreement, and after, the later of the following: (1) 40 days after report of the matching program is sent to Congress and OMB; (2) at least 30 days after publication of this notice in the **Federal Register**, unless comments are received, which would result in a contrary determination. The computer matching program will be conducted according to the computer matching agreement between HUD and SSA. The computer matching agreement for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the effective date of the computer matching agreement. The agreement may be renewed for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met: (1) Within three months of the expiration date, all DIBs review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the computer matching agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the effective date of the computer matching agreement (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: September 27, 2016.

Helen Goff Foster,

Executive Secretary/Senior Agency Official for Privacy.

[FR Doc. 2016–23856 Filed 9–30–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2016–N169; FF09E00000 167 FXES11130900000]

Proposed Information Collection; Federal Fish and Wildlife Permits, Applications, and Reports—Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2017. We 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: To ensure that we are able to consider your comments on this IC, we must receive them by December 2, 2016.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *tina_campbell@fws.gov* (email). Please include ''1018–0094'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Tina Campbell at *tina_campbell@fws.gov* (email) or 703–358–2676 (telephone). You may review the currently approved IC requirements at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

We use the information we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with various Federal wildlife conservation laws, including:

- Endangered Species Act (16 U.S.C. 1531 *et seq.*).
- Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).
- Lacey Act (16 U.S.C. 3371 *et seq.*).
- Bald and Golden Eagle Protection Act (16 U.S.C. 668).
- Marine Mammal Protection Act (16 U.S.C. 1374).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations. These regulations stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited. This IC includes the following permit application forms and the reporting requirements:

Applications

- FWS Form 3–200–54 (Enhancement of Survival Permits Associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances).
- FWS Form 3–200–55 (Scientific Purposes, Enhancement of Propagation or Survival Permits (*i.e.,* Recovery Permits), and Interstate Commerce Permits).
- FWS Form 3–200–56 (Incidental Take Permits Associated with a Habitat Conservation Plan).

Agreement Plans

We are seeking OMB approval for reporting associated with the following agreements/plans:

- Habitat Conservation Plan (application form 3–200–56). A habitat conservation plan (HCP) is a planning document that is required as part of an application for an incidental take permit. It describes the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the HCP is to be funded. Section 10 of the Endangered Species Act (ESA) and its implementing regulations define the contents of HCPs. During development of an HCP, the Service may request that the applicant provide information such as the following: Contact information, project description, site maps, GIS data, photographs, species and habitat survey results, training requirements, analysis of the potential project impacts to listed species, and annual reporting requirements outlined in the permit or HCP.
- Safe Harbor Agreement (application form 3–200–54). A safe harbor agreement (SHA) is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as threatened or endangered under the ESA. The agreement is between cooperating non-Federal property owners and the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration, which is responsible for most listed marine and anadromous fish species. In exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the SHA, the Service will not require any additional or different management activities by the participants without their consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA. If an SHA is feasible, the landowner and the Service will:

(1) Work together to compile information about the land, including a map, the current management, and the management needs of the species and/or habitat.

(2) Determine the baseline condition of the property for the species—the number and location of individuals, a habitat assessment, or a combination of the two.

(3) Identify voluntary actions that would provide a net conservation benefit for the species. They also determine the duration of the SHA, allowing enough time to achieve the desired benefit.

(4) Develop a draft SHA that specifies management actions that will provide a net conservation benefit to the species. The draft plan should describe the current and anticipated management of the property (farming, ranching, timber management, etc.). It should also address the monitoring needed to determine if the prescribed management actually benefits the species and/or its habitat.

- Candidate Conservation Agreement with Assurances (application form 3–200–54). A candidate conservation agreement with assurances (CCAA) encourages conservation actions for species that are candidates for listing as threatened or endangered, or are likely to become candidates. The CCAA standard is to provide a net conservation benefit to the covered species and the enrolled property. Non-Federal property owners receive assurances that if they fulfill the conditions of the CCAA, the Service will not require any additional or different land management activities by the participants without their consent.

Permit Conditions

When reviewing materials for the renewal of OMB Control No. 1018–0094, we discovered that some of our permit conditions contain information collection requirements that need OMB approval. We will request that OMB approve the following additional requirements such as:

• *Notification of injury or mortality.* If an incidental injury or mortality occurs to a listed species not authorized under permits issued in accordance with section 10 of the ESA, the permittee must immediately cease authorized activities in the project area where the species/activities are occurring and notify the appropriate project leader.

• *Field Data Forms.* If applicable, permittees must provide the appropriate project leader with copies of all field data forms with positive or negative survey results, including, if applicable, copies of quadrangle maps and copies of any aerial photos used in surveying or reconnaissance. Photos and maps must clearly delineate all areas covered during each survey.

• *Approval for Activities.* Permittees may be required to request approval from the appropriate Service Field Supervisor for the State in which an activity is proposed prior to conducting any activities. The request must be in writing and include full descriptions of proposed project, survey sites, purpose and need of proposed project, and a copy of any contract that the work will fulfill. When performing surveys, a copy of the concurrence letter must be carried while conducting authorized activities. The permit is not valid without applicable concurrence letter(s) for activities along with any required State permits.

• *Report of Incidental Take.* If actions result in incidental take of ESA-listed species or other species (*e.g.,* bald eagles, migratory birds) not covered by the permit, the permittee must report this take to the Service.

As described in section 10 of the ESA, permits issued under this section ''shall contain such terms and conditions as the Secretary [of the Department of the Interior] deems necessary or appropriate including but not limited to reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.'' In order to simplify reporting and review of reporting, the Service has developed new standardized report forms.

New Report Forms

We are seeking OMB approval for reporting associated with the following report forms:

Use of these new forms is not mandatory, but the same information must be submitted either electronically or by a paper copy. We will use the information collected via reports to track activities conducted that affect endangered or threatened species. These reports provide data to support recovery and to help revise recovery priorities of listed species.

• FWS Form 3–202–5b (ESA Recovery Permits: Region 3 Bat Reporting Spreadsheet).

• FWS Form 3–202–55c (ESA Recovery Permits: Region 4 Bat Reporting Spreadsheet).

• FWS Form 3–202–55d (ESA Recovery Permits: Region 5 Bat Reporting Spreadsheet).

• FWS Form 3–202–55e (ESA Recovery Permits: Region 6 Bat Reporting Spreadsheet).

• FWS Form 3–202–55f (Non-Releasable Sea Turtle Annual Report).

• FWS Form 3–202–55g (Sea Turtle Rehabilitation Quarterly Report Form).

The Service may request that the permittee provide information such as:

• Permittee contact information.

• Species data (species; where and when activity occurred; critical habitat unit name, if applicable; life stage; sex; age; activity; whether take is intentional or incidental; project/report reference number; and recovery action number).

• *Narrative responses:* (1) Explaining reasons and objectives for taking the species; (2) addressing data collection methods and analysis procedures; (3) summarizing results of the data collected; and (4) specifically providing, at a minimum, application of the results to the recovery of the species.

• For sea turtles, the quarterly reports are to inform the Service's Sea Turtle Coordinator of the releasable status of the sea turtle(s) currently undergoing rehabilitation at that facility. The non-release form is primarily to inform the Service's Sea Turtle Coordinator of the disposition (alive and healthy or dead and necropsied) of the non-releasable sea turtle(s) being held at that facility.

• For bats, information collected also includes habitat condition and equipment used.

II. Data

OMB Control Number: 1018–0094.

Title: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species, 50 CFR 13 and 17.

Service Form Numbers: 3–200–54, 3–200–55, 3–200–56, 3–202–55b, 3–202–55c, 3–202–55d, 3–202–55e, 3–202–55f, and 3–202–55g.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals/households, businesses, State and local agencies, private organizations, and scientific and research institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Estimated Number of Respondents: 2,913.

Frequency of Collection: On occasion for application forms and notifications; annually or quarterly for reports.

Requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
SHA/CCAA			
Application (3–200–54)	37	3	111
Safe Harbor Agreement	17	30	510
Candidate Conservation Agreement with Assurances	20	30	600
Amendments	2	2	4
Annual report	64	8	512
Notifications (incidental take, change in landowner, and dead, sick, or injured member of covered species)	2	1	2
RECOVERY/INTERSTATE COMMERCE			
Application (3–200–55)	400	2	800
Amendments	170	1	170
Request to Revise List of Authorized Individuals	30	.5	15
Annual Report	1,300	2	2,600
Annual Report—FWS Form 3–202–55b (Region 3 Bat Reporting Spreadsheet)	100	2	200
Annual Report—FWS Form 3–202–55c (Region 4 Bat Reporting Spreadsheet)	10	2	20

Requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
Annual Report—FWS Form 3–202–55d (Region 5 Bat Reporting Spreadsheet)	10	2	20
Annual Report—FWS Form 3–202–55e (Region 6 Bat Reporting Spreadsheet)	10	2	20
Annual Report—FWS Form 3–202–55f—Non-Releasable Sea Turtle Annual Report	20	.5	10
Quarterly Report—FWS Form 3–202–55g—Sea Turtle Rehabilitation Quarterly Report Form	20	.5	10
Notifications (Escape of wildlife, injury or mortality of covered species)	1	1	1
HCP			
Application (3–200–56)	50	8	400
Annual report	600	10	6,000
Habitat Conservation Plan	50	2,080	104,000
Total	2913		116,005

Estimated Annual Nonhour Burden Cost: $45,250 for fees associated with permit applications and amendments.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–23769 Filed 9–30–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22017; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Washtenaw County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian

Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of Indians, New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

In 1900, human remains representing, at minimum, 1 individual were removed from a mound three miles east of Ann Arbor, on a bluff north of the Huron River in Washtenaw County, MI, by W. B. Hinsdale. The Peabody Museum likely purchased these human remains in 1908, presumably from Hinsdale. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological contexts, museum records, and osteological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; Wyandotte Nation, Oklahoma (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23812 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21946;PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology at Indiana University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Indiana University NAGPRA Office. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Indiana University NAGPRA Office at the address in this notice by November 2, 2016.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Department of Anthropology at Indiana University, Bloomington, Indiana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Indiana University professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Tesuque, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico. The following tribes were contacted but did not participate in consultations: Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; and Pueblo of Zia, New Mexico.

History and Description of the Remains

In 1963, human remains representing, at minimum, two individuals were removed from Cottonwood Gulch in McKinley County, NM. The human remains were uncovered between the towns of Thoreau and Gallup during the 1963 Prairie Trek sponsored by the Indianapolis Children's Museum. The human remains were transferred to Indiana University in 1985. No known individuals were identified. The 23 associated funerary objects are 20 pottery sherds and 3 dog bones. Notes indicate that Cottonwood Gulch is affiliated with Puebloan culture and that it is assigned to the Anasazi III cultural phase. The more recently utilized term for Anasazi is Ancestral Puebloan. Ancestral Puebloan culture spread from the Four Corners region to areas of northwestern New Mexico, northern Arizona, southwestern Colorado and southeastern Utah. Major Puebloan cultural periods are marked by territorial expansions and the development of multi-room structures along the edges of canyons or on mesa tops.

In 1947, human remains representing, at minimum, two individuals were removed from Mimbres River in an unknown county, NM. The human remains were gifted to Indiana University by CP Hogeboom as part of a larger donated collection. Notes infer that the human remains are from a location within the Mimbres Valley in southwestern New Mexico. Within the Mimbres Valley, the primary cultural group was the Mogollon, which emerged from a Desert Archaic tradition. Contemporary Puebloan groups claim affiliation with the Mogollon culture, which is characterized by the use of sophisticated pottery types, the use of kivas for religious and social purposes, and the construction of cliff dwellings. No known individuals were identified. There are no associated funerary objects.

On an unknown date, human remains representing, at minimum, two individuals were removed from the New Mexico Pueblo site in an unknown county, NM. The human remains were part of a collection donated to the Department of Anthropology at Indiana University on an unknown date by Mrs. George Ball of Cleveland, Ohio. No known individuals were identified. There are no associated funerary objects.

Evidence demonstrating cultural continuity between Ancestral Puebloan and modern day Puebloan tribes includes geographical, archaeological, historical, architectural, and oral traditions. These descendants are members of the present day tribes of the Hopi Tribe of Arizona ; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico.

Determinations Made by the {Museum or Federal Agency}

Officials of Indiana University have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 23 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu,* by November 2, 2016.

After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico.

Indiana University is responsible for notifying the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico.

Dated: September 13, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23804 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21980; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of cultural item under 25 U.S.C. 3001. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Phoebe A. Hearst Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Phoebe A. Hearst Museum of Anthropology at the address in this notice by November 2, 2016.

ADDRESSES: Jordan Jacobs, Phoebe A. Hearst Museum of Anthropology, 103 Kroeber Hall, University of California, Berkeley, Berkeley, CA 94720–3712, telephone (510) 643–8230, email *PAHMA-Repatriation@berkeley.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, that meet the definition of cultural item under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1913, three cultural items were removed from a location near Korbel, Humboldt County, CA. The 3 cultural items are 2 sharpened hazel wood sticks (31 and 20 centimeters in length respectively) and 1 sharpened, forked sprig of redwood (29 centimeters in length). These cultural items were removed from a redwood tree by L.L. Loud while conducting ethnological research for the University of California. Evidence presented by the consulting Indian tribes and ethnographic sources support the use of the tree and the cultural items to mark the boundary between Wiyot and Chilula territories.

The cultural affiliation of the three cultural items is to the Wiyot, Whilkut, and Chilula as indicated by museum records, ethnographic sources, and consultation with tribal representatives.

Determinations Made by the University of California

Officials of the University of California have determined that:

- Pursuant to 25 U.S.C. 3001, the 3 cultural items described above meet the definition of cultural item and are subject to repatriation under NAGPRA.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the 3 cultural items and the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Hoopa Valley Tribe, California; and Wiyot Tribe, California (previously listed as the Table Bluff Reservation-Wiyot Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jordan Jacobs, Phoebe A. Hearst Museum of Anthropology, 103 Kroeber Hall, University of California, Berkeley, Berkeley, CA 94720–3712, telephone (510) 643–8230, email *PAHMA-Repatriation@berkeley.edu* by November 2, 2016. After that date, if no additional claimants have come forward, transfer of control of the cultural items to the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Hoopa Valley Tribe, California; and Wiyot Tribe, California (previously listed as the Table Bluff Reservation-Wiyot Tribe), may proceed.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Hoopa Valley Tribe, California; and Wiyot Tribe, California (previously listed as the Table Bluff Reservation-Wiyot Tribe), that this notice has been published.

Dated: September 14, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23805 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22016; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from an unknown location in Michigan.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously

listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of Indians, New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

At an unknown time, human remains representing, at minimum, 1 individual were removed an unknown location in Michigan. The circumstances of acquisition are unknown. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on museum context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of The Invited and Consulted Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Invited and Consulted Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Invited and Consulted Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23811 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21981: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Alpena County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River

Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of Indians, New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

In 1882, human remains representing, at minimum, 32 individuals were removed from the Devil River Mound Group (Michigan State Site #20AL1) in Alpena County, MI, by Henry Gilman. They were donated by Stephen Salisbury in the same year. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological examination, museum records, and/or archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 32 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23806 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22015; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written

request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from St. Clair County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

In 1872, human remains representing, at minimum, 14 individual were removed from the St. Claire Mound Group, in St. Claire County, MI, by Henry Gilman as part of a Peabody Museum expedition. No known individuals were identified.

At an unknown time, human remains representing, at minimum, 5 individuals were removed from the St. Claire Mound Group, in St. Claire County, MI, by Henry Gilman. They were donated by Mr. Gilman in 1873. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological contexts, museum records, and/or osteological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior

Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Aboriginal Land Tribes'').

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23810 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22006; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by November 2, 2016.

ADDRESSES: Dr. Julian Siggers, Director, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA 19104, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from unknown locations in Michigan.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Prairie Band of Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and with the Michigan Anishinabek Cultural Preservation & Repatriation Alliance, a non-federally recognized entity, representing the following federally recognized tribes: Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan.

History and Description of the Remains

At an unknown date prior to 1839, human remains representing, at minimum, one individuals (UPM#: 97–606–657) were obtained by Dr. Joseph Walker, of the United States Army, from an unknown location in Michigan while he was stationed there (Morton 1839: 186). Dr. Walker subsequently sent the remains to Dr. Samuel G. Morton for inclusion in his collection of human crania from around the world. The human remains are represented by a cranium and mandible) of a single male individual 30–40 years of age. The condition of the remains suggests they were not buried. No known individuals were identified. No associated funerary objects are present.

At an unknown date prior to 1840, human remains representing, at minimum, one individual (UPM#: 97–606–737) was obtained from an unknown site in Michigan by Col. John James Abert. The remains were subsequently transferred to Dr. Samuel

Morton in Philadelphia for inclusion in his collection of human crania from around the world. The human remains are those of a single male individual estimated to be 60+ years old and are represented by a cranium. The condition of the remains suggests they were not buried. No known individuals were identified. No associated funerary objects are present.

At this time, the Academy of Natural Sciences of Philadelphia provided storage space for much of Dr. Morton's collections, including these human remains, until his death in 1851. In 1853, Dr. Morton's collection, including all of the remains described above, were purchased from Dr. Morton's Estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum of Archaeology and Anthropology.

Museum documentation, collector records and anthropological literature indicate that the two sets of human remains date to the Historic Period. The human remains have been identified as Native American based on the specific cultural and geographic attributions in the museum records. Collector's records, museum documentation and published historical sources identify the human remains above as Potawatomi. Scholarly ethno-historic and anthropological publications and land cession records indicate that the geographic location is consistent with the known historical territory of the Potawatomi.

Determinations made by the {Museum or Federal Agency}

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Prairie Band of Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains {and associated funerary objects} should submit a written request with information in support of the request to Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050, by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Prairie Band of Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas; Pokagon Band of Potawatomi Indians, Michigan and Indiana may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Prairie Band of Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Michigan Anishinabek Cultural Preservation & Repatriation Alliance, a non-federally recognized entity, representing the following federally recognized tribes: Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23803 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22013; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Kent County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

In 1885, human remains representing, at minimum, 2 individuals were removed from the Court Street Mound in Kent County, MI, by employees of Shiver, Weatherly & Company while digging for a waterline under Court Street. The remains were collected by W.L. Coffinberry who donated them to the Peabody Museum in the same year. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological examination and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 2 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23808 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22014: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Newaygo County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

Between 1888 and 1916, human remains representing, at minimum, 1 individual were removed from Fremont in Newaygo County, MI, by Theodore

Jewett Eastman. They were donated to the Peabody Museum by Mrs. Henry H. Richardson in 1938. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological contexts, museum records, and osteological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 1 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23809 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22012; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Berrien County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the

Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

In 1941, human remains representing, at minimum, 15 individuals were removed from the Moccasin Bluff site in Berrien County, MI, by John Birdsell. They were donated by Mr. Birdsell in the same year. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological examination, museum records, and/or archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23807 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22018; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by November 2, 2016.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Wayne County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of Indians, New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereinafter referred to as ''The Invited and Consulted Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, 6 individuals were removed from the River Rouge Mound Group in Wayne County, MI by Henry Gilman. They were donated to the Peabody Museum by Mr. Gilman in 1869. No known individuals were identified.

At an unknown date, human remains representing, at minimum, 1 individual were removed from the River Rouge Mound Group in Wayne County, MI by a Mr. Arbogast. They were donated to the Peabody Museum by Henry Gilman in 1869. No known individuals were identified.

At an unknown date, human remains representing, at minimum, 11 individuals were removed from the River Rouge Mound Group in Wayne County, MI by Henry Gilman. They were purchased from an unknown individual in 1872. No known individuals were identified.

At an unknown date, human remains representing, at minimum, 8 individuals were removed from the River Rouge Mound Group in Wayne County, MI by a Henry Gilman. They were donated to the Peabody Museum by Mr. Gilman in 1873. No known individuals were identified.

At an unknown date, human remains representing, at minimum, 1 individual were removed from the River Rouge Mound Group in Wayne County, MI by an unknown individual. They were donated to the Peabody Museum by

Bela Hubbard in 1885. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological examination, museum records, and/or archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 27 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians; Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and Wyandotte Nation, Oklahoma (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu* by November 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying The Invited and Consulted Tribes that this notice has been published.

Dated: September 19, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–23813 Filed 9–30–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Fourth Review)]

Pure Magnesium From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Effective October 3, 2016. To be assured of consideration, the deadline for responses is November 2, 2016. Comments on the adequacy of responses may be filed with the Commission December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 12, 1995, the Department of Commerce issued an antidumping duty order on imports of pure magnesium from China (60 FR 25691). Following first five-year reviews by Commerce and the Commission, effective October 27, 2000, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (65 FR 64422). Following second five-year reviews by Commerce and the Commission, effective July 10, 2006, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (71 FR 38860). Following the third five-year reviews by Commerce and the Commission, effective November 22, 2011, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (76 FR 72172). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of

Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In the original determinations underlying this review, the Commission found pure and alloy magnesium to be separate *Domestic Like Products.* In the first five-year review of this order, the Commission continued to define the *Domestic Like Product* as pure magnesium. In the second five-year review of this order, the Commission was evenly divided on the question of whether pure and alloy magnesium were one or two *Domestic Like Products.* The three Commissioners that found a single *Domestic Like Product* also found that primary and secondary magnesium, and cast and granular magnesium, were part of a single domestic like product, *i.e.,* they expanded the domestic like product to encompass secondary magnesium and granular magnesium. For the other three Commissioners that found two *Domestic Like Products,* the question of whether to include secondary magnesium in the like product affected only the alloy magnesium like product, and they expanded that *Domestic Like Product* to include secondary magnesium but declined to expand the *Domestic Like Product* to encompass granular magnesium. In the third five-year review of this order, the Commission defined the *Domestic Like Product* as consisting of pure and alloy magnesium, including primary and secondary magnesium and cast and granular magnesium. For purposes of responding to the items in this notice, please provide the requested information separately for the following two *Domestic Like Product* definitions: (1) All pure magnesium ingot, including off-spec pure magnesium [1] and (2) pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In the original determination and the first five-year review determination, the Commission defined the *Domestic Industry* as consisting of all domestic producers of pure magnesium. In the second five-year review, those Commissioners who defined the *Domestic Like Product* as including pure and alloy magnesium defined the *Domestic Industry* as consisting of the domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form, including grinders. Those Commissioners who found pure and alloy magnesium to be separate *Domestic Like Products* defined the *Domestic Industry* producing pure magnesium as consisting of the sole domestic producer of pure magnesium at that time, U.S. Magnesium. In the third five-year review of this order, the Commission defined the *Domestic Industry* as consisting of all domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.[2] For purposes of responding to the items in this notice, please provide the requested information separately for the following two *Domestic Industry* definitions: (1) All producers of pure magnesium ingot, including off-spec pure magnesium and (2) all producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A

[1] Off-spec pure magnesium is magnesium containing between 50 percent and 99.8 percent primary magnesium, by weight, that does not conform to ASTM specifications for alloy magnesium. Off-spec pure magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.

[2] At that time, 10 producers of the *Domestic Like Product* were identified: U.S. Magnesium, MagPro, AMACOR, MagReTech, Rossborough, ESM Group, Hart Metals, Reade Advanced Materials, Meridian Technologies, and Spartan.

separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117 0016/USITC No. 16–5–368, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each of the following *Domestic Like Product,* definitions: (1) All pure magnesium ingot, including off-spec pure magnesium and (2) pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have

expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 27, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–23717 Filed 9–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Second Review)]

Artists' Canvas From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on artists' canvas from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Effective October 3, 2016. To be assured of consideration, the deadline for responses is November 2, 2016. Comments on the adequacy of responses may be filed with the Commission December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 1, 2006, the Department of Commerce issued an antidumping duty order on imports of artists' canvas from China (71 FR 31154). Following the first five-year reviews by Commerce and the Commission, effective November 9,

2011, Commerce issued a continuation of the antidumping duty order on imports of artists' canvas from China (76 FR 69704). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission found a single *Domestic Like Product,* all artists' canvas, co-extensive with Commerce's scope definition.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all U.S. producers of artists' canvas, that is, the producers of bulk canvas and non-print converters. Certain Commissioners defined the *Domestic Industry* differently in the original determination and the first five-year review determination.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget

(OMB) number is not displayed; the OMB number is 3117 0016/USITC No. 16–5–367, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s)

could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 27, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–23718 Filed 9–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of the Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as Members of Performance Review Board.

DATES: *Effective Date:* September 22, 2016.

SUMMARY: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chair of the PRB: Vice Chairman David S. Johanson
Vice-Chair of the PRB: Commissioner Dean A. Pinkert
Member—Kirit Amin
Member—John Ascienzo
Member—Michael Anderson
Member—Dominic Bianchi
Member—Jonathan Coleman
Member—Catherine DeFilippo
Member—James Holbein
Member—Margaret Macdonald
Member—Stephen A. McLaughlin
Member—William Powers
Member—Lyn M. Schlitt

FOR FURTHER INFORMATION CONTACT: Eric Mozie, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

AUTHORITY: This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: September 27, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–23716 Filed 9–30–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2016 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Tammy Shelton, Acting Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

Name	Position title
Office of the Attorney General—OAG	
WERNER, SHARON	CHIEF OF STAFF AND COUNSELOR TO THE ATTORNEY GENERAL.
POKORNY, CAROLYN	DEPUTY CHIEF OF STAFF AND COUNSELOR TO THE ATTORNEY GENERAL.
FRANKLIN, SHIRLETHIA	DEPUTY CHIEF OF STAFF AND COUNSELOR TO THE ATTORNEY GENERAL.
HERWIG, PAIGE	COUNSELOR TO THE ATTORNEY GENERAL.
CADOGAN, JAMES	COUNSELOR TO THE ATTORNEY GENERAL.
Office of the Deputy Attorney General—ODAG	
AXELROD, MATTHEW	PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL.
CHILDS, HEATHER	COUNSELOR TO THE DEPUTY ATTORNEY GENERAL.
CONLEY, DANIELLE	ASSOCIATE DEPUTY ATTORNEY GENERAL.
JAIN, SAMIR	ASSOCIATE DEPUTY ATTORNEY GENERAL.

2016 FEDERAL REGISTER—Continued

Name	Position title
GAUHAR, TASHINA	ASSOCIATE DEPUTY ATTORNEY GENERAL.
URIARTE, CARLOS	ASSOCIATE DEPUTY ATTORNEY GENERAL.
BROWN, CRYSTAL	ASSOCIATE DEPUTY ATTORNEY GENERAL.
PROBER, RAPHAEL	ASSOCIATE DEPUTY ATTORNEY GENERAL.
BROWN LEE, ERIKA	CHIEF PRIVACY AND CIVIL LIBERTIES OFFICER.
WINN, PETER	DIRECTOR, OFFICE OF PRIVACY AND CIVIL LIBERTIES.
GEISE, JOHN	CHIEF, PROFESSIONAL MISCONDUCT REVIEW UNIT.
GOLDSMITH, ANDREW	NATIONAL CRIMINAL DISCOVERY COORDINATOR.
STEINBERG, JILL	ASSOCIATE DEPUTY ATTORNEY GENERAL AND NATIONAL COORDINATOR FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION AND SENIOR COUNSEL.
STEELE, BRETTE	DEPUTY DIRECTOR, COUNTERING VIOLENT EXTREMISM TASK FORCE (CVETF).
Office of the Associate Attorney General—OASG	
BAER, WILLIAM	PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL.
COX, JAMES	DEPUTY ASSOCIATE ATTORNEY GENERAL.
SCARLETT, PHILIPPA	DEPUTY ASSOCIATE ATTORNEY GENERAL.
CASEY, CHRISTOPHER	DEPUTY ASSOCIATE ATTORNEY GENERAL.
GUZMAN, JAVIER	DEPUTY ASSOCIATE ATTORNEY GENERAL.
AGUILAR, RITA	DEPUTY ASSOCIATE ATTORNEY GENERAL.
FOSTER, LISA	DIRECTOR, ACCESS TO JUSTICE.
Office of the Solicitor General—OSG	
GERSHENGORN, IAN	PRINCIPAL DEPUTY SOLICITOR GENERAL.
GORNSTEIN, IRVING	COUNSELOR TO THE SOLICITOR GENERAL.
DREEBEN, MICHAEL R	DEPUTY SOLICITOR GENERAL.
KNEEDLER, EDWIN S	DEPUTY SOLICITOR GENERAL.
STEWART, MALCOLM L	DEPUTY SOLICITOR GENERAL.
Antitrust Division—ATR	
HESSE, RENATA	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
ROSE, NANCY	DEPUTY ASSISTANT ATTORNEY GENERAL.
ARTEAGA, JUAN	DEPUTY ASSISTANT ATTORNEY GENERAL.
PFAFFENROTH, SONIA	DEPUTY ASSISTANT ATTORNEY GENERAL.
SALLET, JONATHAN	DEPUTY ASSISTANT ATTORNEY GENERAL.
SNYDER, BRENT C	DEPUTY ASSISTANT ATTORNEY GENERAL.
ARMINGTON, ELIZABETH J	CHIEF, ECONOMIC REGULATORY SECTION.
BRINK, PATRICIA A	DIRECTOR OF CIVIL ENFORCEMENT.
COHEN, SCOTT	EXECUTIVE OFFICER.
DRENNAN, RONALD	CHIEF, COMPETITION POLICY SECTION.
FAMILANT, NORMAN	CHIEF, ECONOMIC LITIGATION SECTION.
FOUNTAIN, DOROTHY	SENIOR COUNSEL AND DIRECTOR OF RISK MANAGEMENT.
GREER, TRACY	ATTORNEY ADVISOR.
HAND, EDWARD T	CHIEF, FOREIGN COMMERCE SECTION.
HOLLAND, CAROLINE	CHIEF COUNSEL FOR COMPETITION POLICY AND INTERGOVERNMENTAL RELATIONS.
LIMARZI, KRISTEN	CHIEF, APPELLATE SECTION.
MUCCHETTI, PETER J	CHIEF, LITIGATION I SECTION.
MAJURE, WILLIAM ROBERT	DIRECTOR OF ECONOMICS.
MARTINO, JEFFREY	CHIEF, NEW YORK FIELD OFFICE.
PETRIZZI, MARIBETH	CHIEF, LITIGATION II SECTION.
PHELAN, LISA M	CHIEF, NATIONAL CRIMINAL ENFORCEMENT SECTION.
POTTER, ROBERT A	CHIEF, LEGAL POLICY SECTION.
PRICE JR., MARVIN N	DIRECTOR OF CRIMINAL ENFORCEMENT.
SCHEELE, SCOTT A	CHIEF, TELECOMMUNICATIONS AND MEDIA ENFORCEMENT SECTION.
SIEGEL, MARC	CHIEF COUNSEL, SAN FRANCISCO FIELD OFFICE.
STRIMEL, MARY	CHIEF, WASHINGTON CRIMINAL II SECTION.
VONDRAK, FRANK	CHIEF, CHICAGO FIELD OFFICE.
WERDEN, GREGORY J	ECONOMIST ADVISOR.
Bureau of Alcohol, Tobacco, Firearms, and Explosives—ATF	
BRANDON, THOMAS E	DEPUTY DIRECTOR.
TURK, RONALD B	SPECIAL ASSISTANT TO THE DIRECTOR.
SMITH, CHARLES B	EXECUTIVE ASSISTANT TO THE DIRECTOR.
GLEYSTEEN, MICHAEL P	ASSISTANT DIRECTOR, FIELD OPERATIONS (PROGRAMS).
KUMOR, DANIEL	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS.
DIXIE, WAYNE	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—EAST.
LOMBARDO, REGINA	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—CENTRAL.
MCMULLEN, WILLIAM	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—WEST.
SWEETOW, SCOTT	DEPUTY DIRECTOR, TEDAC.

2016 FEDERAL REGISTER—Continued

Name	Position title
RICHARDSON, MARVIN	ASSISTANT DIRECTOR, ENFORCEMENT PROGRAM SERVICES.
CZARNOPYS, GREGORY P	DEPUTY ASSISTANT DIRECTOR, FORENSIC SERVICES.
BEASLEY, ROGER	ASSISTANT DIRECTOR, SCIENCE AND TECHNOLOGY/CIO.
MCDERMOND, JAMES E	ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
KING, MELVIN	ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
REID, DELANO	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
MICHALIC, VIVIAN B	ASSISTANT DIRECTOR, MANAGEMENT.
RIEHL, JOSEPH	DEPUTY ASSISTANT DIRECTOR, MANAGEMENT.
GRAHAM, ANDREW R	DEPUTY ASSISTANT DIRECTOR, INDUSTRY OPERATIONS.
GROSS, CHARLES R	CHIEF COUNSEL.
ROESSNER, JOEL	DEPUTY CHIEF COUNSEL.
EPSTEIN, ERIC	ATTORNEY ADVISOR.
MCDANIEL, MASON	CHIEF TECHNOLOGY OFFICER.
GILBERT, CURTIS	DEPUTY ASSISTANT DIRECTOR, ENFORCEMENT PROGRAM AND SERVICES.
CHITTUM, THOMAS	CHIEF, SPECIAL OPERATIONS DIVISION.
DURASTANTI, JOHN	DEPUTY ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
SHAEFER, CHRISTOPHER	ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
MILANOWSKI, JAMES	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
BOYKIN, LISA	DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT (HUMAN RESOURCES).
LOWREY, STUART	DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
VIDOLI, MARINO	ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
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ROBINSON, DONALD	SPECIAL AGENT IN CHARGE, NATIONAL CENTER FOR EXPLOSIVES TRAINING AND RESEARCH (NCETR).
WALKER, CARL	SPECIAL AGENT IN CHARGE, ATLANTA.
HYMAN, CHRISTOPHER	SPECIAL AGENT IN CHARGE, CHARLOTTE.
MAGEE, JEFFREY	SPECIAL AGENT IN CHARGE, CHICAGO.
TEMPLE, WILLIAM	SPECIAL AGENT IN CHARGE, DALLAS.
CROKE, KENNETH	SPECIAL AGENT IN CHARGE, DENVER.
SHOEMAKER, STEPHANIE	SPECIAL AGENT IN CHARGE, DETROIT.
ELDER, ROBERT L	SPECIAL AGENT IN CHARGE, HOUSTON.
FULTON, JEFFREY	SPECIAL AGENT IN CHARGE, KANSAS CITY.
HARDEN, ERIC	SPECIAL AGENT IN CHARGE, LOS ANGELES.
COOPER, JOHN	SPECIAL AGENT IN CHARGE, LOUISVILLE.
CANINO, CARLOS	SPECIAL AGENT IN CHARGE, MIAMI.
GERIDO, STEVE	SPECIAL AGENT IN CHARGE, NASHVILLE.
HESTER-DAVIS, CONSTANCE D	SPECIAL AGENT IN CHARGE, NEW ORLEANS.
BELSKY, GEORGE	SPECIAL AGENT IN CHARGE, NEWARK.
REBADI, ESSAM	SPECIAL AGENT IN CHARGE, PHILADELPHIA.
ATTEBERRY, THOMAS	SPECIAL AGENT IN CHARGE, PHOENIX.
SNYDER, JILL A	SPECIAL AGENT IN CHARGE, SAN FRANCISCO.
DAWSON, DOUGLAS	SPECIAL AGENT IN CHARGE, SEATTLE.
MODZELEWSKI, JAMES	SPECIAL AGENT IN CHARGE, ST PAUL.
MCCRARY, DARYL	SPECIAL AGENT IN CHARGE, TAMPA.
BOXLER, MICHAEL B	SPECIAL AGENT IN CHARGE, WASHINGTON, DC.
Bureau of Prisons—BOP	
KANE, THOMAS R	DEPUTY DIRECTOR.
JOSLIN, DANIEL M	ASSISTANT DIRECTOR, HUMAN RESOURCES MANAGEMENT DIVISION.
GRIFFITH, CRISTINA L	SENIOR DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES MANAGEMENT DIVISION.
SIMPSON, GARY M	CHIEF EXECUTIVE OFFICER, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
SIBAL, PHILIP	SENIOR DEPUTY ASSISTANT DIRECTOR, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
YEICH, KENNETH	SENIOR DEPUTY ASSISTANT DIRECTOR, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
GROSS, BRADLEY T	ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.
BURNS, LONERYL C	SENIOR DEPUTY ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.
AYERS, NANCY	CHIEF, OFFICE OF PUBLIC AFFAIRS.
GARRETT, JUDITH	ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
HURWITZ, HUGH J	SENIOR DEPUTY ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
THOMPSON, SONYA	SENIOR DEPUTY ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
SCHULT, DEBORAH	ASSISTANT DIRECTOR, HEALTH SERVICES DIVISION.
HYLE, KENNETH	SENIOR DEPUTY GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL.
KENNEY, KATHLEEN M	ASSISTANT DIRECTOR, OFFICE OF GENERAL COUNSEL.
KENDALL, PAUL F	SENIOR COUNSEL, OFFICE OF GENERAL COUNSEL.
RODGERS, RONALD L	SENIOR COUNSEL, OFFICE OF GENERAL COUNSEL.
WILLS, JAMES C	SENIOR DEPUTY COUNSEL, OFFICE OF GENERAL COUNSEL.
COSBY, JIMMY L	DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.

2016 FEDERAL REGISTER—Continued

Name	Position title
BROWN JR., ROBERT M	SENIOR DEPUTY DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.
DUNBAR, ANGELA P	ASSISTANT DIRECTOR, CORRECTIONAL PROGRAMS DIVISION.
FEATHER, MARION M	ASSISTANT DIRECTOR, RE-ENTRY SERVICES DIVISION.
BUTTERFIELD, PATTI	SENIOR DEPUTY ASSISTANT DIRECTOR, RE-ENTRY SERVICES DIVISION.
CARAWAY, JOHN	REGIONAL DIRECTOR, MIDDLE ATLANTIC REGION.
QUINTANA, FRANCISCO J	WARDEN, FMC, LEXINGTON, KY.
BUTLER, SANDRA M	WARDEN FCI, MANCHESTER, KY.
ORMOND, JOHNATHAN R	WARDEN, USP, MCCREARY, KY.
STEWART, TIMOTHY S	WARDEN, FCI, CUMBERLAND, MD.
HOLLAND, JAMES C	COMPLEX WARDEN–FMC, FCC, BUTNER, NC.
MORA, STEVE B	ASSISTANT DIRECTOR, PROGRAM REVIEW DIVISION.
LAYER, PAUL M	SENIOR DEPUTY ASSISTANT DIRECTOR, PROGRAM REVIEW DIVISION.
BATTS, MYRON T	WARDEN FCI, MEMPHIS, TN.
RATLEDGE, CHARLES R	WARDEN, USP, LEE COUNTY, VA.
WILSON, ERIC D	COMPLEX WARDEN, FCC, PETERSBURG, VA.
SAAD, JENNIFER S	WARDEN, FCI, GILMER, WV.
YOUNG, DAVID L	WARDEN, FCI, BECKLEY, WV.
COAKLEY, JOSEPH D	WARDEN, USP, HAZELTON, WV.
REVELL, SARA M	REGIONAL DIRECTOR, NORTH CENTRAL REGION.
MOORHEAD, JOSEPH W	WARDEN, USP, FCC, FLORENCE, CO.
FOX, JACK W	COMPLEX WARDEN-ADX, FCC, FLORENCE, CO.
BAIRD, MAUREEN P	WARDEN, USP, MARION, IL.
KRUEGER, JEFFREY E	WARDEN, FCI, PEKIN, IL.
HUDSON JR., DONALD J	WARDEN, FCI, THOMSON, IL.
DANIELS, CHARLES A	COMPLEX WARDEN–USP, FCC, TERRE HAUTE, IN.
LARIVA, LEANN	WARDEN, FMC, ROCHESTER, MN.
SANDERS, LINDA L	WARDEN USMCFP, SPRINGFIELD, MO.
CARVAJAL, MICHAEL D	REGIONAL DIRECTOR, NORTHEAST REGION.
GRONDOLSKY, JEFF F	WARDEN, FMC, DEVENS, MA.
TATUM, ESKER L	WARDEN, MCC, NEW YORK, NY.
KIRBY, MARK A	WARDEN, FCI, FAIRTON, NJ.
ODDO, LEONARD	COMPLEX WARDEN–USP, FCC, ALLENWOOD, PA.
BALTAZAR JR., JUAN	WARDEN, USP, CANAAN, PA.
EBBERT, DAVID W	WARDEN USP, LEWISBURG, PA.
RECKTENWALD, MONICA L	WARDEN, FCI, MCKEAN, PA.
PERDUE, RUSSELL A	WARDEN, FCI, SCHUYLKILL, PA.
KELLER, JEFFREY A	REGIONAL DIRECTOR, SOUTH CENTRAL REGION.
RIVERA, CARLOS V	COMPLEX WARDEN, FCC, FOREST CITY, AR.
FOX, JOHN B	WARDEN, FTC, OKLAHOMA CITY, OK.
LARA, FRANCISCO J	COMPLEX WARDEN-USP, FCC, BEAUMONT, TX.
UPTON, JODY R	WARDEN, FMC, CARSWELL, TX.
HANSON, RALPH	WARDEN, FCI, THREE RIVERS, TX.
CHANDLER, RODNEY W	WARDEN, FCI, FORT WORTH, TX.
MARBERRY, HELEN J	REGIONAL DIRECTOR, SOUTHEAST REGION.
CLAY, BECKY	WARDEN, FCI, TALLADEGA, AL.
JARVIS, TAMYRA	COMPLEX WARDEN–USP2, FCC, COLEMAN, FL.
LOCKETT, CHARLES L	WARDEN–USP, COLEMAN 1, COLEMAN, FL.
ENGLISH, NICOLE	WARDEN, FCI MARIANNA, FL.
CHEATHAM, ROY C	WARDEN, FDC, MIAMI, FL.
DREW, DARLENE	WARDEN, USP, ATLANTA, GA.
FLOURNOY JR., JOHN V	WARDEN, FCI, JESUP, GA.
MARTIN, MARK S	COMPLEX WARDEN, FCC, YAZOO CITY, MS.
BRAGG, M. TRAVIS	WARDEN, FCI, BENNETTSVILLE, SC.
MOSLEY, BONITA S	WARDEN, FCI, EDGEFIELD, SC.
MEEKS, BOBBY L	WARDEN FCI, WILLIAMSBURG, SC.
VAZQUEZ, NORBAL	WARDEN MDC, GUAYNABO, PUERTO RICO.
MITCHELL, MARY M	REGIONAL DIRECTOR, WESTERN REGION.
TRACY, KATHRYN M	WARDEN, FCI, PHOENIX, AZ.
SHARTLE, JOHN T	COMPLEX WARDEN–USP, FCC, TUSCON, AZ.
LANGFORD, STEPHEN A	COMPLEX WARDEN FCC, LOMPOC, CA.
SHINN, DAVID C	COMPLEX WARDEN, FCC, VICTORVILLE, CA.
MATEVOUSIAN, ANDRE V	WARDEN, USP, ATWATER, CA.
ZUNIGA, RAFAEL	WARDEN, FCI, MENDOTA, CA.
IVES, RICHARD B	WARDEN FCI, SHERIDAN, OR.
Civil Division—CIV	
MIZER, BENJAMIN C	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
BRINKMANN, BETH S	DEPUTY ASSISTANT ATTORNEY GENERAL.
FRESCO, LEON	DEPUTY ASSISTANT ATTORNEY GENERAL.
BRACEY, KALI	DEPUTY ASSISTANT ATTORNEY GENERAL.
LEVINE, SARAH	DEPUTY ASSISTANT ATTORNEY GENERAL.

2016 FEDERAL REGISTER—Continued

Name	Position title
OLIN, JONATHAN F	DEPUTY ASSISTANT ATTORNEY GENERAL.
ANDERSON, DANIEL R	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
ZWICK, KENNETH L	SENIOR ADVISOR.
FLENTJE, AUGUST	SPECIAL COUNSEL.
GRIFFITHS, JOHN R	BRANCH DIRECTOR, FEDERAL PROGRAMS.
BRANDA, JOYCE R	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
COPPOLINO, ANTHONY J	DEPUTY BRANCH DIRECTOR.
DAVIDSON, JEANNE E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
FARGO, JOHN J	DIRECTOR, IP, COMMERCIAL LITIGATION BRANCH.
BENSON, BARRY F	DIRECTOR, AVIATION AND ADMIRALTY SECTION.
BHATTACHARYA, RUPA	DIRECTOR, CONSTITUTIONAL AND SPECIALIZED TORT LITIGATION SECTION.
GLYNN, JOHN PATRICK	DIRECTOR, ENVIRONMENTAL TORT LITIGATION SECTION.
EMERSON, CATHERINE V	DIRECTOR, OFFICE OF MANAGEMENT PROGRAMS.
PEREZ, LUIS E	DEPUTY DIRECTOR, (OPS), OFFICE OF IMMIGRATION LITIGATION, DISTRICT COURT.
PEACHEY, WILLIAM C	DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, DISTRICT COURT.
GRANSTON, MICHAEL D	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
MANHARDT, KIRK	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, CORPORATE AND FINANCIAL LITIGATION.
DINTZER, KENNETH	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, NATIONAL COURTS.
SNEE, BRYANT G	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, NATIONAL COURTS.
YAVELBERG, JAMIE ANN	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, FRAUD SECTION.
HAUSKEN, GARY L	SENIOR PATENT ATTORNEY.
HUNT, JOSEPH H	BRANCH DIRECTOR.
SHAPIRO, ELIZABETH J	DEPUTY BRANCH DIRECTOR.
COLLETTE, MATTHEW	DEPUTY DIRECTOR, APPELLATE STAFF.
KIRSCHMAN JR., ROBERT E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
LETTER, DOUGLAS	DIRECTOR, APPELLATE STAFF.
RAAB, MICHAEL	APPELLATE LITIGATION COUNSEL.
STERN, MARK B	APPELLATE LITIGATION COUNSEL.
TOUHEY, JR., JAMES	DIRECTOR, FEDERAL TORT CLAIMS ACT SECTION.
LIEBER, SHEILA M	DEPUTY BRANCH DIRECTOR.
MOLINA, JR., ERNESTO	DEPUTY DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
MARTIN, DANA	DEPUTY DIRECTOR, APPELLATE BRANCH.
MCCONNELL, DAVID M	DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
MCINTOSH, SCOTT R	SENIOR LEVEL APELLATE COUNSEL.
O'MALLEY, BARBARA B	SPECIAL LITIGATION COUNSEL, AVIATION AND ADMIRALTY SECTION.
RICKETTS, JENNIFER D	BRANCH DIRECTOR.
BLUME, MICHAEL	DIRECTOR, CONSUMER PROTECTION BRANCH.
FURMAN, JILL	DEPUTY DIRECTOR, CONSUMER PROTECTION BRANCH.
KISOR, COLIN	SENIOR TRIAL ATTORNEY, OFFICE OF IMMIGRATION LITIGATION.
FREEMAN, MARK	SENIOR LEVEL TRIAL ATTORNEY, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
KEENER, DONALD	SENIOR LEVEL TRIAL ATTORNEY, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
D'ALESSIO, JR., C.S	SENIOR LEVEL TRIAL ATTORNEY, CONSTITUTIONAL SECTION.
LINDEMANN, MICHAEL P	SENIOR TRIAL ATTORNEY (NATIONAL SECURITY).
QUINN, MICHAEL J	SENIOR TRIAL ATTORNEY.
GILLIGAN, JAMES J	SPECIAL LITIGATION COUNSEL.
HARVEY, RUTH A	DIRECTOR, COMMERCIAL LITIGATION BRANCH, CORPORATE AND FINANCIAL LITIGATION.
LATOUR, MICHELLE	DEPUTY DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
LANGSAM, STEFANIE	INTERIM ADMINISTRATOR FOR FUNDS, 9/11 VICTIM COMPENSATION FUND.
Civil Rights Division—CRT	
GUPTA, VANITA	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
MOOSSY, ROBERT J	DEPUTY ASSISTANT ATTORNEY GENERAL.
FRIEL, GREGORY	DEPUTY ASSISTANT ATTORNEY GENERAL.
HILL, EVE LYNNE	DEPUTY ASSISTANT ATTORNEY GENERAL.
LEVITT, JUSTIN	DEPUTY ASSISTANT ATTORNEY GENERAL.
HOWE, SUSAN E	EXECUTIVE OFFICER.
GINSBURG, JESSICA A	COUNSEL TO THE ASSISTANT ATTORNEY GENERAL.
KENNEBREW, DELORA	CHIEF, EMPLOYMENT LITIGATION SECTION.
MAJEED, SAMEENA S	CHIEF, HOUSING AND CIVIL ENFORCEMENT SECTION.
JANG, DEEANA L	CHIEF, FEDERAL COORDINATION AND COMPLIANCE SECTION.
HERREN JR., THOMAS C	CHIEF, VOTING SECTION.
WERTZ, REBECCA	PRINCIPAL DEPUTY CHIEF, VOTING SECTION.
FLYNN, DIANA KATHERINE	CHIEF, APPELLATE SECTION.
MCGOWAN, SHARON M	PRINCIPAL DEPUTY CHIEF, APPELLATE SECTION.
BOND, REBECCA B	CHIEF, DISABILITY RIGHTS SECTION.
EMBRY, DIANA	CHIEF, EMPLOYMENT COUNSEL.
FORAN, SHEILA	SPECIAL LEGAL COUNSEL.
BLUMBERG, MARK	SPECIAL LEGAL COUNSEL.
RUISANCHEZ, ALBERTO	DEPUTY SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.
PRESTON, JUDITH L	PRINCIPAL DEPUTY CHIEF, SPECIAL LITIGATION SECTION.

2016 FEDERAL REGISTER—Continued

Name	Position title
RAISH, ANNE	PRINCIPAL DEPUTY CHIEF, DISABILITY RIGHTS SECTION.
WOODARD, KAREN	PRINCIPAL DEPUTY CHIEF, EMPLOYMENT LITIGATION SECTION.
ROSENBAUM, STEVEN H	CHIEF, HOUSING AND CIVIL ENFORCEMENT SECTION.
Criminal Division—CRM	
BITKOWER, DAVID	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL. & CHIEF OF STAFF.
BLANCO, KENNETH A	DEPUTY ASSISTANT ATTORNEY GENERAL.
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SWARTZ, BRUCE CARLTON	DEPUTY ASSISTANT ATTORNEY GENERAL.
AINSWORTH, PETER J	SENIOR COUNSEL, OFFICE OF OVERSEAS PROSECUTORIAL DEVELOPMENT ASSISTANCE AND TRAINING.
CARROLL, OVIE	DIRECTOR, CYBERCRIME LABORATORY, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
ARY, VAUGHN	DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
CONNOR, DEBORAH L	DEPUTY CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
CARWILE, P. KEVIN	CHIEF, CAPITAL CASE UNIT.
DAY, M. KENDALL	CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
DOWNING, RICHARD W	DEPUTY CHIEF, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
EHRENSTAMM, FAYE	DIRECTOR, OPDAT.
GOODMAN, NINA	SENIOR COUNSEL FOR APPEALS.
GROCKI, STEVEN J	CHIEF, CHILD EXPLOITATION AND OBSCENITY SECTION.
HODGE, JENNIFER A.H	DEPUTY DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
HULSER, RAYMOND	CHIEF, PUBLIC INTEGRITY SECTION.
JAFFE, DAVID	DEPUTY CHIEF, ORGANIZED CRIME AND GANG SECTION.
JONES, JOSEPH M	SENIOR COUNSEL FOR INTERNATIONAL DEVELOPMENT AND TRAINING.
KING, DAMON A	DEPUTY CHIEF, CHILD EXPLOITATION AND OBSCENITY SECTION.
LYNCH JR., JOHN T	CHIEF, COMPUTER CRIME, AND INTELLECTUAL PROPERTY SECTION.
MCHENRY, TERESA L	CHIEF, HUMAN RIGHTS AND SPECIAL PROSECUTIONS SECTION
MELTON, TRACY	EXECUTIVE OFFICER.
O'BRIEN, PAUL M	DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
OLMSTED, MICHAEL	SENIOR JUSTICE FOR THE EUROPEAN UNION AND INTERNATIONAL CRIMINAL MATTERS.
PAINTER, CHRISTOPHER M	SENIOR COUNSEL FOR CYBERCRIME.
POPE, AMY	COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
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RODRIGUEZ, MARY D	DEPUTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
ROSENBAUM, ELI M	DIRECTOR, HUMAN RIGHTS ENFORCEMENT STRATEGY AND POLICY.
STEMLER, PATTY MERKAMP	CHIEF, APPELLATE SECTION.
TIROL, ANNALOU	DEPUTY CHIEF, PUBLIC INTEGRITY SECTION.
TRUSTY, JAMES	CHIEF, ORGANIZED CRIME AND GANG SECTION.
WEISSMANN, ANDREW	CHIEF, FRAUD SECTION.
WROBLEWSKI, JONATHAN J	DIRECTOR, OFFICE OF POLICY AND LEGISLATION.
WYATT, ARTHUR G	CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
WYDERKO, JOSEPH	DEPUTY CHIEF, APPELLATE SECTION.
Environmental and Natural Resources Division—ENRD	
HIRSCH, SAMUEL	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
JONES, LISA	DEPUTY ASSISTANT ATTORNEY GENERAL.
WILLIAMS, JEAN E	DEPUTY ASSISTANT ATTORNEY GENERAL.
GELBER, BRUCE S	DEPUTY ASSISTANT ATTORNEY GENERAL.
ALEXANDER, S. CRAIG	CHIEF, INDIAN RESOURCES SECTION.
BARSKY, SETH	CHIEF, WILDLIFE AND MARINE RESOURCES.
COLLIER, ANDREW	EXECUTIVE OFFICER.
DOUGLAS, NATHANIEL	DEPUTY SECTION CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
FERGUSON, CYNTHIA	SENIOR LITIGATOR, ENVIRONMENTAL JUSTICE.
GETTE, JAMES	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
GOLDFRANK, ANDREW M	CHIEF, LAND ACQUISITION SECTION.
GRISHAW, LETITIA J	CHIEF, ENVIRONMENTAL DEFENSE SECTION.
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HOANG, ANTHONY P	SENIOR LITIGATION COUNSEL, NATURAL RESOURCES.
KILBOURNE, JAMES C	CHIEF, APPELLATE SECTION.
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MARIANI, THOMAS	CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MERGEN, ANDREW	DEPUTY CHIEF, APPELLATE SECTION.
PASSARELLI, EDWARD	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
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RUSSELL, LISA L	CHIEF, NATURAL RESOURCES SECTION.
HIMMELCHOCH, SARAH	SENIOR ATTORNEY FOR E-DISCOVERY.
SHILTON, DAVID	SENIOR LITIGATION COUNSEL.
SINGER, FRANK	SENIOR LITIGATION COUNSEL.
STEWART, HOWARD P	SENIOR LITIGATION COUNSEL.

2016 FEDERAL REGISTER—Continued

Name	Position title
TENENBAUM, ALAN S	SENIOR LITIGATION COUNSEL.
VADEN, CHRISTOPHER S	DEPUTY CHIEF, ENVIRONMENTAL DEFENSE SECTION.
WARDZINSKI, KAREN M	CHIEF, LAW AND POLICY SECTION.
Executive Office for Immigration Review—EOIR	
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ADKINS-BLANCH, CHARLES K	VICE CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
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COLE, PATRICIA A	ATTORNEY EXAMINER.
CREPPY, MICHAEL	ATTORNEY EXAMINER.
MANN, ANA	ATTORNEY EXAMINER.
ESPENOZA, CECELIA MARIE	SENIOR ASSOCIATE GENERAL COUNSEL.
GRANT, EDWARD R	ATTORNEY EXAMINER.
GREER, ANNE J	ATTORNEY EXAMINER.
GUENDELSBERGER, JOHN W	ATTORNEY EXAMINER.
JORDAN, WYEVETRA	ASSISTANT DIRECTOR FOR ADMINISTRATION.
KING, JEAN	GENERAL COUNSEL.
LIEBOWITZ, ELLEN	ATTORNEY EXAMINER.
MALPHRUS, GARRY D	ATTORNEY EXAMINER.
MCGOINGS, MICHAEL	DEPUTY CHIEF, IMMIGRATION JUDGE.
MULLANE, HUGH G	ATTORNEY EXAMINER.
NEAL, DAVID	CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
O'CONNOR, BLAIR	ATTORNEY EXAMINER.
PAULEY, ROGER ANDREW	ATTORNEY EXAMINER.
SCHMIDT, PAUL W	SENIOR IMMIGRATION JUDGE.
STUTMAN, ROBIN M	CHIEF ADMINISTRATIVE HEARING OFFICER.
WENDTLAND, LINDA S	ATTORNEY EXAMINER.
Executive Office for Organized Crime Drug Enforcement Task Forces—OCDETF	
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FLESHMAN, JAMES MARK	CHIEF INFORMATION OFFICER.
CHANDLER, CAMERON G	ASSOCIATE DIRECTOR, OFFICE OF LEGAL EDUCATION.
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KLIMAVICZ, JOSEPH	DEPUTY ASSISTANT ATTORNEY GENERAL FOR INFORMATION RECOURCES MANAGEMENT AND CHIEF INFORMATION OFFICER.
GARY, ARTHUR	GENERAL COUNSEL.
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FRONE, JAMILA	DIRECTOR, OFFICE OF ATTORNEY RECRUITMENT AND MANAGEMENT.
DUNLAP, JAMES L	DIRECTOR, SECURITY AND EMERGENCY PLANNING STAFF.
SNELL, ROBERT	DIRECTOR, FACILITIES AND ADMINISTRATIVE SERVICES STAFF.
FELDT, DENNIS G	DIRECTOR, LIBRARY STAFF.
RAYMOND, JOHN	DIRECTOR, IT POLICY AND PLANNING STAFF.

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Name	Position title
SELWESKI, MARK L	DIRECTOR, PROCUREMENT SERVICES STAFF.
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ARNOLD, KENNETH	DIRECTOR, ASSET FORFEITURE MANAGEMENT STAFF.
FUNSTON, ROBIN S	DIRECTOR, BUDGET STAFF.
KLEPPINGER, ERIC D	DEPUTY DIRECTOR, BUDGET STAFF, OPERATIONS AND FUNDS CONTROL.
ROGERS, MELINDA	DIRECTOR, CYBERSECURITY SERVICES STAFF.
MCCRAE, DANIEL	DIRECTOR, SERVICE DELIVERY STAFF.
ZIMMER, DAWN	DEPUTY DIRECTOR, SERVICE DELIVERY STAFF.
BEWTRA, ANEET K	CHIEF TECHNOLOGY OFFICER.
RODGERS, JANICE M	DIRECTOR, DEPARTMENTAL ETHICS OFFICE.
TOSCANO JR., RICHARD A	DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY STAFF.
MCCONKEY, MILTON	SENIOR ADVISOR.
COOK, TERENCE L	SENIOR ADVISOR.
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National Security Division—NSD	
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TOSCAS, GEORGE Z	DEPUTY ASSISTANT ATTORNEY GENERAL (COUNTERESPIONAGE-COUNTERTERRORISM).
BRADLEY, MARK A	DIRECTOR, FOIA AND DECLASSIFICATION PROGRAM.
JAYARAM, SANCHITHA	CHIEF, FOREIGN INVESTMENT REVIEW STAFF.
DUNNE, STEVEN M	CHIEF, APPELLATE UNIT.
EVANS, STUART	DEPUTY CHIEF, OPERATIONS SECTION.
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KEEGAN, MICHAEL	DEPUTY CHIEF, COUNTERTERRORISM SECTION.
KENNEDY, J. LIONEL	SPECIAL COUNSEL FOR NATIONAL SECURITY.
MULLANEY, MICHAEL J	CHIEF, COUNTERTERRORISM SECTION.
O'CONNOR, KEVIN	CHIEF, OVERSIGHT SECTION.
SANZ-REXACH, GABRIEL	CHIEF, OPERATIONS SECTION.
HARDEE, CHRISTOPHER	CHIEF, POLICY-OFFICE OF LAW AND POLICY.
LAUFMAN, DAVID	CHIEF, COUNTERINTELLIGENCE, EXPORT CONTROL AND ECONOMIC ESPIONAGE.
Office of Community Oriented Policing Services—COPS	
DAVIS, RONALD L	DIRECTOR.
BROWN-CUTLAR, SHANETTA	SENIOR ADVISOR TO THE DIRECTOR.
WRAY, NOBLE	SENIOR ADVISOR.
Office of Information Policy—OIP	
PUSTAY, MELANIE ANN	DIRECTOR.
Office of the Inspector General—OIG	
STORCH, ROBERT	DEPUTY INSPECTOR GENERAL.
MALMSTROM, JASON R	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
BLIER, WILLIAM M	GENERAL COUNSEL.
BECKHARD, DANIEL C	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
O'NEILL, MICHAEL SEAN	DEPUTY ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
PELLETIER, NINA S	ASSISTANT INSPECTOR GENERAL FOR EVALUATION AND INSPECTIONS.
HAYES, MARK L	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT.
JOHNSON, ERIC A	ASSISTANT INSPECTOR GENERAL INVESTIGATIONS.
PETERS, GREGORY T	ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
LOWELL, CYNTHIA	DEPUTY ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
LERNER, JAY	SENIOR COUNSEL TO THE INSPECTOR GENERAL.
MITZELFELD, JAMES A	COUNSEL TO THE INSPECTOR GENERAL.
RATON, MITCH	CHIEF INNOVATION OFFICER.
SUMNER, PATRICIA	SENIOR COUNSEL TO THE ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
Office of Justice Programs—OJP	
MCGARRY, BETH	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
HENNEBERG, MAUREEN A	DEPUTY ASSISTANT ATTORNEY GENERAL OPERATIONS MANAGEMENT.
GARRY, EILEEN M	DEPUTY DIRECTOR FOR PLANNING, BUREAU OF JUSTICE ASSISTANCE.
TRAUTMAN, TRACEY	DEPUTY DIRECTOR FOR PROGRAMS, BUREAU OF JUSTICE ASSISTANCE.
FEUCHT, THOMAS E	EXECUTIVE SCIENCE ADVISOR, NATIONAL INSTITUTE OF JUSTICE.
SPIVAK, HOWARD	PRINCIPAL DEPUTY DIRECTOR, NATIONAL INSTITUTE OF JUSTICE.
MARTIN, RALPH	DIRECTOR, OFFICE OF AUDIT, ASSESSMENT, AND MANAGEMENT.
MERKLE, PHILIP	DIRECTOR, OFFICE OF ADMINISTRATION.
MADAN, RAFAEL A	GENERAL COUNSEL.
MAHONEY, KRISTEN	DEPUTY DIRECTOR, POLICY MANAGEMENT, BUREAU OF JUSTICE ASSISTANCE.

2016 FEDERAL REGISTER—Continued

Name	Position title
ROBERTS, MARILYN M	DEPUTY DIRECTOR, OFFICE FOR VICTIMS OF CRIME.
MULROW, JERI	DIRECTOR, BUREAU OF JUSTICE STATISTICS.
SOLOMON, AMY	DIRECTOR FOR POLICY.
MCGRATH, BRIAN	CHIEF INFORMATION OFFICER.
BENDA, BONNIE LEIGH	CHIEF FINANCIAL OFFICER.
ATSATT, MARILYNN B	DEPUTY CHIEF FINANCIAL OFFICER.
BECK, ALLEN J	SENIOR STATISTICIAN.
DE BACA, LOUIS	SMART COORDINATOR.
DARDEN, SILAS	DIRECTOR, OFFICE OF COMMUNICATIONS.
JONES, CHYRL	DEPUTY ADMINISTRATOR FOR PROGRAMS, OJJDP.
Office of Legal Counsel—OLC	
THOMPSON, KARL	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
KOFFSKY, DANIEL L	DEPUTY ASSISTANT ATTORNEY GENERAL.
BOYNTON, BRIAN	DEPUTY ASSISTANT ATTORNEY GENERAL.
BIES, JOHN	DEPUTY ASSISTANT ATTORNEY GENERAL.
MCKENZIE, TROY A	DEPUTY ASSISTANT ATTORNEY GENERAL.
COLBORN, PAUL P	SPECIAL COUNSEL.
HART, ROSEMARY A	SPECIAL COUNSEL.
SINGDAHLSEN, JEFFREY P	SENIOR COUNSEL.
Office of Legal Policy—OLP	
JONES, KEVIN ROBERT	DEPUTY ASSISTANT ATTORNEY GENERAL.
THIEMANN, ROBYN L	DEPUTY ASSISTANT ATTORNEY GENERAL.
ZUBRENSKY, MICHAEL	DEPUTY ASSISTANT ATTORNEY GENERAL.
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Office of Legislative Affairs—OLA	
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O'BRIEN, ALICIA	DEPUTY ASSISTANT ATTORNEY GENERAL.
WILLIAMS, ELLIOT	DEPUTY ASSISTANT ATTORNEY GENERAL.
BURTON, M. FAITH	SPECIAL COUNSEL.
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ASHTON, ROBIN	COUNSEL FOR PROFESSIONAL RESPONSIBILITY.
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HURLEY, RAYMOND	SENIOR ASSOCIATE COUNSEL.
Office of Public Affairs—PAO	
NEWMAN, MELANIE	DIRECTOR.
Office on Violence Against Women—OVW	
HANSON, BEATRICE	PRINCIPAL DEPUTY DIRECTOR.
Professional Responsibility Advisory Office—PRAO	
LUDWIG, STACY	DIRECTOR.
Tax Division—TAX	
CIRAOLO, CAROLINE	DEPUTY ASSISTANT ATTORNEY GENERAL.
ERBSEN, DIANA	DEPUTY ASSISTANT ATTORNEY GENERAL.
HUBBERT, DAVID A	DEPUTY ASSISTANT ATTORNEY GENERAL.
BRUFFY, ROBERT	EXECUTIVE OFFICER.
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WSZALEK, LARRY	CHIEF, CRIMINAL ENFORCEMENT SECTION, WESTERN REGION.
DALY, MARK	SENIOR TRIAL ATTORNEY.
DAVIS, NANETTE	SENIOR TRIAL ATTORNEY.
DONOHUE, DENNIS M	SENIOR LITIGATION COUNSEL.
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GOLDBERG, STUART	SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
HAGLEY, JUDITH	SENIOR TRIAL ATTORNEY.
HARTT III, GROVER	CHIEF, CIVIL TRIAL SECTION SOUTHWESTERN REGION.
IHLO, JENNIFER	SENIOR TRIAL ATTORNEY.

2016 FEDERAL REGISTER—Continued

Name	Position title
CLARKE, RUSSELL SCOTT	CHIEF, CIVIL TRIAL SECTION, CENTRAL REGION.
JOHNSON, CORY	SENIOR TRIAL ATTORNEY.
KEARNS, MICHAEL J	CHIEF, CIVIL TRIAL SECTION, SOUTHERN REGION.
LARSON, KARI	SENIOR TRIAL ATTORNEY.
LINDQUIST III, JOHN A	SENIOR TRIAL ATTORNEY.
MELAND, DEBORAH	CHIEF, CIVIL TRIAL SECTION EASTERN REGION.
REID, ANN C	CHIEF, OFFICE OF REVIEW.
MULLARKEY, DANIEL P	CHIEF, CIVIL TRIAL SECTION, NORTHERN REGION.
PAGUNI, ROSEMARY E	CHIEF, CRIMINAL ENFORCEMENT SECTION, NORTHERN REGION.
ROTHENBERG, GILBERT S	CHIEF, APPELLATE SECTION.
CLARK, THOMAS J	DEPUTY CHIEF, APPELLATE SECTION.
SALAD, BRUCE M	CHIEF, CRIMINAL ENFORCEMENT SECTION, SOUTHERN REGION.
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STEHLIK, NOREENE C	SENIOR TRIAL ATTORNEY.
SULLIVAN, JOHN	SENIOR TRIAL ATTORNEY.
WEAVER, JAMES E	SENIOR TRIAL ATTORNEY.
WARD, RICHARD	CHIEF, CIVIL TRIAL SECTION WESTERN REGION.
U.S. Marshals Service—USMS	
HARLOW, DAVID	DEPUTY DIRECTOR.
AUERBACH, GERALD	GENERAL COUNSEL.
BROWN, SHANNON B	ASSISTANT DIRECTOR, JPATS.
MOHAN, KATHERINE T	ASSISTANT DIRECTOR, HUMAN RESOURCES.
SGROI, THOMAS J	ASSISTANT DIRECTOR, MANAGEMENT SUPPORT.
DRISCOLL, DERRICK	ASSISTANT DIRECTOR, INVESTIGATIVE OPERATIONS.
MATHIAS, KARL	ASSISTANT DIRECTOR FOR INFORMATION TECHNOLOGY.
BOLEN, JOHN O'DONALD	SSISTANT DIRECTOR, JUDICIAL SECURITY.
EDWARDS, SOPHIA	DIRECTOR, BUSINESS STRATEGY AND NTEGRATION.
PROUT, MICHAEL	ASSISTANT DIRECTOR, WITNESS SECURITY.
MUSEL, DAVID F	ASSOCIATE DIRECTOR, ADMINISTRATION.
SNELSON, WILLIAM D	ASSOCIATE DIRECTOR, OPERATIONS.
VIRTUE, TIMOTHY	ASSISTANT DIRECTOR, ASSET FORFEITURE.
DESOUSA, NEIL K	ASSISTANT DIRECTOR, TACTICAL OPERATIONS.
O'BRIEN-ROGAN, CAROLE	PROCUREMENT EXECUTIVE, FINANCIAL SERVICES.
O'BRIEN, HOLLEY	CHIEF, FINANCIAL OFFICER, FINANCIAL SERVICES.

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BILLING CODE 4410–CH–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Water Act

On September 27, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States* v. *Kirby Inland Marine, L.P.,* Civil Action No. 3:16–cv–269.

The Complaint in this Clean Water Act case was filed against Kirby Inland Marine concurrently with the lodging of the proposed Consent Decree. The Complaint alleges that Kirby is civilly liable for violation of Section 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1321. The Complaint seeks civil penalties and injunctive relief for the discharge of harmful quantities of marine fuel oil into navigable waters of the United States from one of Kirby's oil barges operating in the Houston Ship Channel.

The Complaint alleges that the spill occurred on March 22, 2014, when a Kirby tow boat, the *Miss Susan,* was pushing two 300-foot oil barges in the ''Texas City Y'' area of the Houston Ship Channel in fog conditions. Despite detecting the nearby presence of a 585-foot bulk cargo ship, the *Summer Wind,* traveling up the Houston Ship Channel, Kirby's tow boat and barges tried to cross the Channel in front of the cargo ship. As a result, Kirby's lead oil barge was struck by the cargo ship and approximately 4,000 barrels of heavy marine fuel oil spilled out of the barge into the waterway. From there, oil flowed out of the channel and spread down the Texas coastline. A full assessment of the injuries caused by the spill to marine and terrestrial natural resources is ongoing and will be addressed separately.

Under the proposed Consent Decree, Kirby will pay a civil penalty of $4,900,000.00 for the alleged violation. In addition to payment of the penalty, the Consent Decree requires Kirby to perform corrective measures across its entire fleet of vessels, including providing new and enhanced navigational equipment and training and implementing improved operational practices. Kirby also agrees to waive any limits on its liability under the Oil Pollution Act related to the oil spill incident at issue in this case.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Kirby Inland Marine, L.P.,* D.J. Ref. No. 90–5–1–1–11096. 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 email	*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: *https://www.justice.gov/enrd/consent-decrees.* 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 $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–23738 Filed 9–30–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Final Determination Regarding the Proposed Revision of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs

ACTION: Notice of final determination.

SUMMARY: This notice announces a final determination that carpets from India will not be added to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (EO List) required by Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor''). The Departments of Labor, State, and Homeland Security (collectively, the Departments) proposed adding carpets from India to the EO List in a Notice of Initial Determination in the **Federal Register** on December 2, 2014. 79 FR 71448. After a thorough review of the information available and comments received, the Departments have determined that there is not sufficient evidence at this time establishing more than isolated incidents of forced or indentured child labor in the production of carpets in India. With this final determination, the current EO List remains in place. The list identifies products, by country of origin, which the Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. Under a final rule by the Federal Acquisition Regulatory Council, published January 18, 2001, which also implements Executive Order No. 13126, federal contractors who supply products on the EO List are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to produce those products and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 66 FR 5346, 5347; 48 CFR 22.1502(c).

SUPPLEMENTARY INFORMATION:

I. Initial Determination

On December 2, 2014, the Departments published a Notice of Initial Determination in the **Federal Register** proposing to add carpets from India to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (EO List). 79 FR 71448. The Departments issued the initial determination because they had a reasonable basis to believe that there was forced or indentured child labor in the production of carpets from India in more than isolated incidents. This initial determination can be accessed on the Internet at *https://federalregister.gov/a/2014-27624.*

II. Public Comment Period

When the initial determination was issued, the public was invited to submit comments until January 30, 2015 on whether carpets from India should be added to the EO List, as well as any other issues related to the fair and effective implementation of Executive Order No. 13126. During the public comment period, three comments were submitted. Those comments are available for public viewing at *http://www.regulations.gov* (reference Docket ID No. DOL–2014–0004).

During this comment period, the comments received called into question whether all the criteria required for adding a good to the EO List had been met. One of the three comments was from the Carpet Export Promotion Council (CEPC), which opposed the addition of carpets from India to the EO List. The CEPC's submission included a survey it had commissioned in 2104 on labor practices in the Indian carpet industry. Based on the findings of the survey, the CEPC stated that while there are cases of child labor, there is no evidence of forced child labor in the production or manufacture of this good. However, the CEPC survey methodology had sampling and questionnaire design limitations that affected its ability to capture forced labor or collect data on a representative sample of the carpet industry.

The two other comments received did not provide enough specificity on the conditions or prevalence of children's work in order to be able to make a final determination that forced or indentured child labor in India's carpet industry is occurring in more than isolated incidents. GoodWeave submitted a comment in support of including carpets produced in India on the EO List, along with two newspaper articles reporting two rescue operations during which children were removed from carpet production facilities where they were forced to work. However, GoodWeave's submission did not discuss the prevalence of forced child labor in carpet production; rather, it only discussed the prevalence of child labor within the industry. While the newspaper articles do discuss forced child labor, they do not demonstrate that forced child labor is prevalent in the industry.

Siddharth Kara, a Harvard University researcher and faculty member, also submitted a public comment in support of adding Indian carpets to the EO List. Kara cited the findings of his research study, which was one of the sources cited by the Departments in making their initial determination. Even though Kara's submission stated that his research found a significant prevalence of forced labor and child labor in India's carpet industry, neither the comment nor the study itself specifically addresses the prevalence of forced child labor in the industry. While Kara clarified in a separate correspondence that all children categorized as engaged in child labor were in fact engaged in forced labor as defined by international standards, the Departments were not able to determine whether child labor victims discussed in Kara's research study were exposed to specific indicators of forced labor, as defined by international standards.

III. Gathering, Receipt, and Analysis of Additional Information

In light of the inconsistency in the information received during the initial public comment period, the Departments gathered and received twenty additional comments on forced child labor in India's carpet industry.

The information gathered and received can be found at *http://www.regulations.gov* (reference Docket ID No. DOL–2014–0004).

This information received did not provide sufficient evidence that there are more than isolated incidents of forced child labor in India's carpet industry. Department of Labor (DOL) officials interviewed several international and Indian non-governmental organizations about forced child labor in the carpet industry following the initial determination, including during a visit to India in May 2015. While some of these entities stated that there is forced child labor in this industry, they were unable to provide specific information on the number of children involved. One stated that such practices occurred, but that the prevalence had decreased. However, this assessment was not based on a reliable data collection exercise and the commenter was not able to provide information about the prevalence of forced child labor that may remain in the sector.

DOL also collected several articles from local Indian newspapers reporting on the rescue of children from hidden carpet production facilities where they were making carpets and unable to leave. While these newspaper articles provide evidence that forced child labor occurs in the production of carpets, they do not demonstrate that forced child labor is occurring in more than isolated incidents. These types of incidents have been reported infrequently in local newspapers, have involved a small number of children, and have been limited to one administrative district within India.

Following the initial determination and during the May 2015 trip to India, the Government of India and the CEPC submitted additional comments and met with DOL officials explaining why carpets produced in India should not be added to the EO List. The CEPC also submitted an additional study it had commissioned in 2015 in which children working in the carpet industry were interviewed. The study concluded that there were no instances of forced child labor among the children interviewed because there was no restriction on ability to leave employment, nor any underpayment of minimum wage. Based on the findings of this study, the CEPC maintained that there is no evidence of forced child labor in the production or manufacture of this good. However, the survey methodology of this study also had sampling and questionnaire design limitations that affected its ability to capture forced labor or collect data on a representative sample of the carpet industry.

During the trip to India, DOL officials also traveled to carpet production facilities with non-governmental organizations and to others that participate in a CEPC monitoring program. During those visits, the DOL officials observed industry practices and did not uncover any specific evidence of forced child labor in India's carpet industry.

IV. Extended Public Comment Period

On June 17, 2016, DOL reopened and extended the period for public comments until July 15, 2016, to allow the public to view and comment on all information submitted or gathered since the initial determination, and to comment generally on whether carpets from India should be added to the EO List. 81 FR 39714. DOL received one comment during the extended public comment period. The comment was submitted by the CEPC and explained why carpets from India should not be added to the EO List. The comment is available for public viewing at *http://www.regulations.gov* (reference Docket ID No. DOL–2014–0004).

V. Final Determination

The Departments have carefully reviewed, analyzed, and considered the evidence available in determining whether to add carpets from India to the EO List. In so doing, the Departments considered and weighed the factors identified in the Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (available at *http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=18024*), including the nature of information presented, the source of information, the date of the information, the extent of corroboration of the information by appropriate sources, whether the information involved more than isolated incidents, and whether recent and credible efforts are being made to address forced or indentured child labor in the country and industry. 66 FR 5352. The Departments therefore conclude that the available evidence at this time does not meet the criteria required to add this product to the EO List. While there is evidence of forced child labor in the industry, there is not sufficient evidence at this time demonstrating that children are subject to forced labor in circumstances that represent more than isolated incidents. We will continue to monitor this situation and gather information through our ongoing research process.

The initial determination, the extension of request for public comments, and the public comments can also be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–4843; fax: (202) 693–4830.

VI. Background

The first EO List was published on January 18, 2001. 66 FR 5353. The EO List was subsequently revised on July 20, 2010, 75 FR 42164; on May 31, 2011, 76 FR 31365; on April 3, 2012, 77 FR 20051; and on July 23, 2013, 78 FR 44158.

Executive Order 13126, which was published in the **Federal Register** on June 16, 1999, 64 FR 32383, declared that it was ''the policy of the United States Government . . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to Executive Order 13126, and following public notice and comment, DOL published in the January 18, 2001, **Federal Register** a list of products, identified by their country of origin, that DOL, in consultation and cooperation with DOS and the Department of the Treasury (relevant responsibilities now within DHS), had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor. 66 FR 5353.

Pursuant to Section 3 of Executive Order 13126, the Federal Acquisition Regulatory Council published a final rule in the **Federal Register** on January 18, 2001, providing, amongst other requirements, that federal contractors who supply products that appear on the EO List must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. 48 CFR Subpart 22.15.

DOL also published on January 18, 2001, ''Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor'' (''Procedural Guidelines''),

which provide for maintaining, reviewing, and, as appropriate, revising the EO List. 66 FR 5351. The Procedural Guidelines provide that the EO List may be revised either through consideration of submissions by individuals or on the initiative of DOL, DOS and DHS. In either event, when proposing to revise the EO List, DOL must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the EO List. DOL, DOS and DHS consider all public comments prior to the publication of a final determination of a revised EO List.

III. Definitions

Under Section 6(c) of EO 13126:

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Signed at Washington, DC, this 22th day of September, 2016.

Carol Pier,

Deputy Undersecretary for International Affairs.

[FR Doc. 2016–23500 Filed 9–30–16; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0019]

Proposed Extension of Information Collection; Slope and Shaft Sinking Plans, 30 CFR 77.1900 (Pertains to Surface Work Areas of Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas of underground coal mines).

DATES: All comments must be received on or before December 2, 2016.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2016–0034.
- *Regular Mail: Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.*
- *Hand Delivery: USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.*

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 CFR 77.1900 requires underground coal mine operators to submit for approval a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended from the surface to the underground coal mine. Each slope or shaft sinking operation is unique in that each operator uses different methods and equipment and encounters different geological strata which make it impossible for a single set of regulations to ensure the safety of the miners under all circumstances. This makes an individual slope or shaft sinking plan necessary. The plan must be consistent with prudent engineering design. Plans include the name and location of the mine; name and address of the mine operator; a description of the construction work and methods to be used in construction of the slope or shaft, and whether all or part of the work will be performed by a contractor; the elevation, depth and dimensions of the slope or shaft; the location and elevation of the coalbed; the general characteristics of the strata through which the slope or shaft will be developed; the type of equipment which the operator proposes to use; the system of ventilation to be used; and safeguards for the prevention of caving during excavation.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas of underground coal mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 20 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas

of underground coal mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0019.

Affected Public: Business or other for-profit.

Number of Respondents: 27.

Frequency: On occasion.

Number of Responses: 80.

Annual Burden Hours: 1,600 hours.

Annual Respondent or Recordkeeper Cost: $60.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2016–23768 Filed 9–30–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202–693–4734.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, October 19, 2016 by contacting Mr. Gregory Green at 202–693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Wednesday, October 26, 2016 beginning at 9:00 a.m. and ending at approximately 3:00 p.m. (EST).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Conference Room N–4437 A & B. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend the Meeting: All meeting participants are being asked to submit a notice of intent to attend by Wednesday, October 19, 2016, via email to Mr. Gregory Green at *green.gregory.b@dol.gov,* subject line ''October 2016 ACVETEO Meeting.''

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Assistant Designated Federal Official for the ACVETEO, (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for VETS, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, Michael Michaud, Assistant Secretary for Veterans Employment and Training Service

9:15 a.m. Administrative Business, Mika Cross, Designated Federal Official

9:20 a.m. Transition and Training Subcommittee Briefing and Discussion on Fiscal Year 2016 recommendations

10:20 a.m. Barriers to Employment Subcommittee Briefing and Discussion on Fiscal Year 2016 recommendations

11:20 p.m. Break

11:30 p.m. Direct Services Subcommittee briefing and discussion on Fiscal Year 2016 recommendations

12:30 p.m. Lunch

1:30 p.m. Committee finalize recommendations for the Fiscal Year 2016 Annual Report to Congress

2:45 p.m. Break

2:45 p.m. Public Forum, Mika Cross, Designated Federal Official

3:00 p.m. Adjourn

Signed in Washington, DC, this 26th day of September, 2016.

Teresa W. Gerton,

Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service.

[FR Doc. 2016–23721 Filed 9–30–16; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–070)]

International Space Station Advisory Committee; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of charter of the International Space Station Advisory Committee.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that the renewal of the charter of the International Space Station Advisory Committee is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a one-year period ending September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Finley, Executive Secretary, International Space Station Advisory Committee, Office of International and Interagency Relations, NASA Headquarters, Washington, DC 20546; phone (202) 358–5684; email *patrick.t.finley@nasa.gov.*

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–23871 Filed 9–30–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 189th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting,

SUMMARY: Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held in Conference Rooms A & B at Constitution Center, 400 7th St. SW., Washington, DC 20506. Agenda times are approximate.

DATES: Friday, October 28, 2016 from 9:00 a.m. to 11:45 a.m.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting, on October 28th in Conference Rooms A & B, from 9:30 a.m. to 11:45 a.m., will be open to the public on a space available basis. The tentative agenda is as follows: The meeting will begin at 9:00 a.m. with opening remarks and voting on recommendations for funding and rejection and guidelines, followed by updates from the Chairman. There also will be the following presentations (times are approximate): from 9:30 a.m. to 10:00 a.m.—*Presentation on the New Museum innovation incubator programs* (Lisa Phillips, Director of the New Museum); from 10:00 a.m. to 10:30 a.m.—*Presentation on NEXUS of Engineering and the Arts at the University of Iowa* (Deanne Wortman, Director of NEXUS Engineering and Art); from 10:30 a.m.–11:00 a.m.—*Presentation on therapeutic music for the aging population* (Dan Cohen, Founder and Executive Director of Music & Memory); from 11:00 a.m.-11:30 a.m.—*Presentation on the Founding of Kickstarter* (Yancey Strickler, Co-Founder and CEO of Kickstarter). From 11:30–11:45 a.m. there will be concluding remarks from the Chairman and announcement of voting results. The meeting will adjourn at 11:45 a.m.

The meeting also will be webcast. To register to watch the webcasting of this open session, go to: *https://www.arts.gov/event/2016/national-council-arts-october-2016-public-meeting.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

Dated: September 28, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2016–23842 Filed 9–30–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Programs and Plans (CPP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, October 5, 2016 from 11 a.m. to 12:00 p.m. EDT.

SUBJECT MATTER: (1) Committee Chair's Opening Remarks; (2) Discussion of Facility Roles and Responsibilities; and (3) Future CPP Activities.

STATUS: Open.

This meeting will be held by teleconference at the National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public audio stream will be available for this meeting. Request the link by contacting *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. Please refer to the National Science Board Web site for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/.* The point of contact for this meeting is Elise Lipkowitz, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2016–23927 Filed 9–29–16; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: October 3, 10, 17, 24, 31, November 7, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 3, 2016

Wednesday, October 5, 2016

9:00 a.m. Hearing on Combined Licenses for William States Lee III Nuclear Station, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting);

(Contact: Brian Hughes: 301–415–6582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 6, 2016

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting); (Contact: Mark Banks: 301–415–3718)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 10, 2016—Tentative

There are no meetings scheduled for the week of October 10, 2016.

Week of October 17, 2016—Tentative

Tuesday, October 18, 2016

9:30 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public Meeting); (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 20, 2016

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting); (Contact: Donna Williams: 301–415–1322)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 24, 2016—Tentative

Thursday, October 27, 2016

10:00 a.m. Program Review of Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR part 37) for the Protection of Risk-Significant Quantities of Radioactive Material (Public Meeting); (Contact: George Smith: 301–415–7201)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 31, 2016—Tentative

Friday, November 4, 2016

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)

Week of November 7, 2016—Tentative

There are no meetings scheduled for the week of November 7, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated:September 28, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–23919 Filed 9–29–16; 11:15 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service®.

ACTION: Notice of establishment of new system of records; suspension of implementation date.

SUMMARY: The United States Postal Service® (Postal Service) is temporarily delaying the implementation date for establishing a new Customer Privacy Act System of Records (SOR) to support the Informed Delivery™ service. This delay will enable the Postal Service to review and evaluate public comments, and determine if substantive changes to the proposed system are advisable or necessary.

DATES: This system was previously scheduled to become effective on September 26, 2016. In view of comments received in advance of that date, the Postal Service has determined that it would be appropriate to delay the implementation of the SOR in its entirety while we consider what, if any, substantive changes may be required. If the Postal Service determines that certain portions of this SOR should be changed or eliminated, we will provide notice of that action, and publish a description of the revised SOR for further comment.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy Officer, Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 1P830, Washington, DC 20260–0004, telephone 202–268–3069, or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: On August 25, 2016, the Postal Service published notice of its intent to establish a new system of records to support an expansion of its Informed Delivery™ service (81 FR 58542). (Informed Delivery™ is a digital service that allows enrolled users to receive an email notification that contains grayscale images of the outside of their letter-sized mailpieces processed by USPS automation equipment prior to delivery. This service is offered at no cost to the consumer.) In response to this notice, we received comments that generally supported the concept of the new SOR, but expressed desire for more specific information regarding the types of data to be collected by the system, and the potential uses (or abuses) of that information.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–23756 Filed 9–30–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 33 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2016–210, CP2016–299.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–23757 Filed 9–30–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–208, CP2016–297.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–23744 Filed 9–30–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 36 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–207, CP2016–296.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–23745 Filed 9–30–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–209, CP2016–298.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–23742 Filed 9–30–16; 8:45 am]

BILLING CODE 7710–12–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:

Regulation S–AM; SEC File No. 270–548, OMB Control No. 3235–0609.

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 existing collection of information provided for in Regulation S–AM (17 CFR part 248, subpart B), under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) (''FCRA''), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation S–AM implements the requirements of Section 624 of the FCRA (15 U.S.C. 1681s–3) with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers and investment companies (collectively, ''Covered Persons''). Section 624 and Regulation S–AM limit a Covered Person's use of certain consumer financial information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S–AM potentially applies to all of the approximately 32,061 Covered Persons registered with the Commission, although only approximately 17,954 of them have one or more corporate affiliates, and the regulation requires only approximately 3,206 to provide consumers with an affiliate marketing notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 17,954 Covered Persons having one or more affiliates, and that they each spend an average of 0.20 hours per year to review affiliate marketing practices, for, collectively, an estimated annual time burden of 3,591 hours at an annual internal staff cost of approximately $1,798,991. The staff also estimates that approximately 3,206 Covered Persons provide notice and opt-out opportunities to consumers, and that they each spend an average of 7.6 hours per year creating notices, providing notices and opt-out opportunities, monitoring the opt-out notice process, making and updating records of opt-out elections, and addressing consumer questions and concerns about opt-out notices, for, collectively, an estimated annual time burden of 24,366 hours at an annual internal staff cost of approximately $4,489,806. Thus, the staff estimates that the collection of information requires a total of approximately 17,954 respondents to incur an estimated annual time burden of a total of 27,957 hours at a total annual internal cost of

compliance of approximately $6,288,897.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed 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, 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: September 27, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23762 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; 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: Form Custody
SEC File No. 270–643, OMB Control No. 3235–0691

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the extension of the previously approved collection of information provided for in Form Custody (17 CFR 249.639) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Section 17(a)(1) of the Exchange Act provides that broker-dealers registered with the Commission must make and keep records, furnish copies of the records, and make and disseminate reports as the Commission, by rule, prescribes. Pursuant to this authority, the Commission adopted Rule 17a–5 (17 CFR 240.17a–5), which is one of the primary financial and operational reporting rules for broker-dealers.[1] Paragraph (a)(5) of Rule 17a–5 requires every broker-dealer registered with the Commission to file Form Custody (17 CFR 249.639) with its designated examining authority (''DEA'') within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the broker-dealer's annual report if that date is not the end of a calendar quarter. Form Custody is designed to elicit information about whether a broker-dealer maintains custody of customer and non-customer assets, and, if so, how such assets are maintained.

There are approximately 4,113 broker-dealers registered with the Commission. Based on staff experience, the Commission estimates that, on average, it would take a broker-dealer approximately 12 hours to complete and file Form Custody, for an annual industry-wide reporting burden of approximately 197,424 hours.[2] Assuming an average cost per hour of approximately $291for a compliance manager, the total internal cost of compliance for the respondents is approximately $57,450,384 per year.[3]

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.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: September 27, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23758 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 17a–5 is subject to a separate PRA filing (OMB Control Number 3235–0123).

[2] 4,113 brokers-dealers × 4 times per year × 12 hours = 197,424 hours.

[3] 197,424 hours times $291 per hour = 57,450,384. $291 per hour for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff for an 1800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78946; File No. SR–BOX–2016–45]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Treatment of Quotes To Provide That All Quotes on BOX Are Liquidity Adding Only

September 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 8050 to amend the treatment of quotes to provide that all quotes on BOX are liquidity adding only. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the treatment of incoming quotes to BOX so that they are only accepted if they are liquidity adding.[3] Specifically, the Exchange is proposing that all quotes and quote updates after the opening that are submitted by Market Makers on the Exchange will only be accepted by the Trading Host [4] if they will add liquidity to the BOX Book.[5]

Currently, on the Exchange, an incoming quote from a Market Maker can take liquidity. Specifically, an incoming quote that is executable against an interest on the BOX Book, whether it is a resting order or quote, will execute against such interest. The Exchange is now proposing that if an incoming quote or quote update is marketable because it would execute against a resting order or quote on the BOX Book, it will be rejected. The Exchange will not reject incoming quotes during the opening of the market.[6] Therefore, all quotes accepted by the Trading Host after the opening will be liquidity adding only. As is the case today, rejected quotes will not be considered when determining a Market Maker's quoting obligations.[7]

The Exchange believes that this proposed change will strengthen the market at BOX and better align market making activity with its intended purpose, which is to provide liquidity to the market.[8] This proposal will benefit market participants as it has the potential to provide for more robust quoting on the Exchange. The Exchange notes that Market Makers will still be able to execute against resting orders and quotes on the BOX Book. Specifically, a Market Maker can still submit an order to execute against resting liquidity on the BOX Book.[9] Additionally, Market Makers will still be permitted to submit orders in and out of their appointed classes. This will provide Market Makers with the ability to take liquidity on BOX.

The proposed rule change also amends the treatment of incoming quotes after they interact with the Price Improvement Period (''PIP''). Currently, when an incoming quote is on the same side as a PIP Order,[10] it may cause the PIP to end early, if, at the time of submission, the price of the incoming quote satisfies certain criteria outlined in Rule 7150(i). Under the proposal, the incoming quote will continue to cause the PIP to end early if the conditions of Rule 7150(i) exist. However, after the PIP is concluded, if the incoming quote would execute against resting orders or quotes on the BOX Book, it will be rejected. Additionally, when an incoming quote on the opposite side of the PIP Order is received such that it would cause an execution to occur prior to the end of the PIP, the incoming quote shall be immediately executed pursuant to Rule 7150(j). In order for the incoming quote on the opposite side of the PIP Order to execute against the PIP Order, the conditions of Rule 7150(j) must be met. Under the proposal, any remaining balance of the incoming quote that did not execute against the PIP Order, and that would execute against a resting order or quote on the BOX Book, will be rejected. The Exchange is not proposing to change the interaction of an incoming quote with a PIP Order; the Exchange is simply clarifying how the proposal will affect quotes after they interact with the PIP Order.

The Exchange will provide Participants with notice, via Information Circular, about the implementation date of this proposed change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the proposed change will better align market making on BOX with its intended purpose of providing liquidity to the market. A Market Maker that is submitting quotes is doing so to create a market, not take a market. As such, the Exchange believes that the proposed change will add value to market making on BOX, which will benefit investors and the public, and therefore, the Exchange believes that the proposed change will remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that if a Market Maker's quote takes liquidity against the BOX Book, it was unintentional. If the Market Maker wanted to take the order or quote on the BOX Book, he would do so with an order, not a quote. As such, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that Market Makers will still be permitted to submit orders in and out of their appointed classes. This will provide Market Makers with the ability to take liquidity on BOX. Lastly, Market Makers will still be subject to the obligations detailed in BOX Rules 8040 and 8050. The Exchange believes that the proposed changes have no material impact on a Market Maker's obligations pursuant to BOX Rules 8040 and 8050.

The Exchange believes that the proposed change will protect investors and the public interest by providing a more robust market. The Exchange believes that the proposed rule change will lead to enhanced liquidity on the Exchange, which in turn will benefit and protect investors and the public interest through the potential for greater

[3] *See* proposed IM–8050–3 to Rule 8050.

[4] The term ''Trading Host'' means the automated trading system used by BOX for the trading of options contracts. *See* Rule 100(a)(66).

[5] The term ''Central Order Book'' or ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* Rule 100(a)(10).

[6] Transactions occurring on the opening are deemed to neither add nor remove liquidity and therefore are exempt from the liquidity fees and credits on the Exchange. *See* Section II.C. of the BOX Fee Schedule.

[7] On a daily basis, a Market Maker must, during regular market hours, make markets and enter into any resulting transactions consistent with the applicable quoting requirements, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. These obligations apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis. *See* Rule 8050(e). *See also* Rule 8040.

[8] The concept of having liquidity adding only mechanisms available for market participants is not a new one; other exchanges currently offer liquidity adding only order types. *See* International Securities Exchange, LLC (''ISE'') Rule 715(n) and NYSE Arca Options, Inc. (''NYSE Arca'') Rule 6.62(t).

[9] Market Makers will have one interface to submit quotes to BOX and another interface they can utilize for submitting orders.

[10] Options Participants, both Order Flow Providers and Market Makers, executing agency orders may designate Market Orders and marketable limit Customer Orders for price improvement and submission to the PIP. Customer Orders designated for the PIP (''PIP Orders'') shall be submitted to BOX with a matching contra order equal to the full size of the PIP Order. *See* Rule 7150.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

volume of orders and executions on BOX.

The Exchange notes that a Market Maker's obligation to provide continuous two-sided quotes on a daily basis is not diminished by the proposed change. A Market Maker will still be required to provide continuous two-sided quotes on a daily basis and quotes will still expire at the end of the day. Even though rejected quotes will not be considered when determining a Market Maker's quoting obligations, due to the fact that a Market Maker's quote very rarely ever takes liquidity on BOX,[13] the Exchange believes that the proposed rule change will not have a material effect on a Market Maker's quoting ability or a Market Maker's quoting requirements outlined in BOX Rule 8050. Lastly, the Exchange notes that Market Makers will still be able to send orders in and out of classes to which they are appointed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. BOX believes the proposal will add value to market making on BOX. The Exchange does not believe the proposal will impose a burden on competition among the options exchanges because of vigorous competition for order flow among the options exchanges. The Exchange competes with many other options exchanges. In this highly competitive market, market participants can easily and readily direct order flow to competing venues. The proposal does not impose an undue burden on intramarket competition because the proposed change will apply to all Market Makers on BOX. The Exchange does not believe that the proposed restriction on Market Maker quotes will impose an undue burden on Market Makers because they will continue to be permitted to submit orders which can take liquidity. The Exchange does not believe that the proposed rule change will provide Market Makers with any advantage over other Participants. The Exchange notes that although it does not have liquidity adding orders, Participants can easily add liquidity by submitting orders as they currently do today. The Exchange also notes that other exchanges already have liquidity adding only mechanisms for market participants;[14] therefore, the Exchange does not believe this proposal imposes an undue burden on inter-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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–BOX–2016–45 and should be submitted on or before October 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23749 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

[13] It is the Exchange's understanding that generally when a Market Maker's quote takes liquidity, it was done unintentionally. Specifically, it occurs when the price of the underlying security updates, but the Market Maker did not update the incoming quote to reflect the new price of the underlying security. When Market Makers wish to take liquidity they do so by sending an order to the Exchange, not a quote. When a Market Maker sends a quote to the Exchange it is done as part of a bulk quote message with numerous other quotes and quote updates; this is why it is more efficient for a Market Maker to use an order when it is looking to take liquidity.

[14] *See supra* note 8.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78954; File No. SR–CBOE–2016–069]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Nonstandard Expirations Pilot Program To Permit New Series To Be Added Up to and Including on the Expiration Date

September 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2016, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to align CBOE's listing ability under the Nonstandard Expirations Pilot Program with CBOE's listing ability under the Short Term Option Series (''STOs'') Program (which is an industry-wide program). Specifically, CBOE proposes to permit new series to be added up to and including on the expiration date for expirations listed under the Nonstandard Expirations Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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

CBOE proposes to permit new series to be added up to and including on the expiration date for expirations listed under the Nonstandard Expirations Pilot Program. The Exchange states that the ability to list new series up to and including on their last trading day or expiration date (as applicable) is currently permitted for expirations listed under the STOs Program, which is an industry-wide program.[5] This proposal seeks to align CBOE's listing ability under the two Programs.

In July 2005, the Commission approved a CBOE rule filing to establish the STOs Program on a pilot basis.[6] When it was adopted, the STOs Program permitted CBOE to list series in an approved class (*i.e.,* stock, ETP or index) on any Friday to expire at the close of business on the next Friday that is a business day (excluding third Fridays).[7] Importantly, under the Program then and now, STOs are settled in the same manner as monthly (standard) expiration series in the same class. For example, if the monthly option contract for a particular class is A.M.-settled, as most index options are, STOs for that class are also A.M.-settled. This means that the last trading day for A.M.-settled index STOs is on the business day prior to their expiration day (Thursday) and the exercise settlement value is based on the reported level of the index calculated using opening prices of the index components on the expiration day.[8] A.M.-settled index STOs and P.M.-settled index STOs expire at the close of business on their expiration dates.

The STOs Program was made permanent [9] and has been expanded several times so that currently, among other things, STOs expirations may be listed to expire on the next five Fridays that are business days (excluding third Fridays and days on which Quarterly Option Series expire) and new series of STOs may be added up to and including on their last trading day or expiration date (as applicable).[10]

Due to the same expiration style restriction for STOs on broad-based indexes, CBOE submitted a proposal in 2009 to establish a pilot program under which CBOE is permitted to list P.M.-settled options on broad-based indexes that expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.[11] This pilot program is currently named the ''Nonstandard Expirations Pilot Program'' and expirations listed under this Program compete with expirations listed under the industry wide STOs Program.[12]

Unlike new series listed under the STOs Program, the listing of new series under the Nonstandard Expirations Pilot Program is treated the same as standard options on the same underlying index (other than being P.M.-settled).[13] Specifically, Rule 24.9.01(c) governs the listing of new series under the Nonstandard Expirations Pilot Program and that Rule provides, in relevant part, that new series of index options may be added up to the fifth business day prior to expiration. As a result, classes traded under the Nonstandard Expirations Pilot Program are competitively disadvantaged to classes traded under the STOs Program. This is because new series of STOs may be added past the time that they may be added for Nonstandard Expirations. Additionally, Rule 24.9.01 permits new series to be added up to and including on the last trading day for other index options that expire on a weekly basis (*i.e.,* VIX options and VXST options, which are both classes that have weekly expirations).[14]

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The STOs Program is set forth in Rule 5.5(d) (which governs the STOs Program for stock and exchange-traded product (''ETP'') option classes) and Rule 24.9(a)(2)(A) (which governs the STOs Program for index option classes). The last trading day and expiration date for an options class are generally determined by its exercise-settlement style. For P.M.-settled contracts, the last trading day and expiration date occur on the same business day. For A.M.-settled contracts, the last trading is on the business day before the expiration date. Because the expirations listed under the Nonstandard Expirations Pilot Program are P.M.-settled, the last trading and expiration date for these expirations occur on the same business day.

[6] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (order approving SR–CBOE–2004–63).

[7] Similar versions of the STOs Program have been adopted by the majority, if not all, of the other options exchanges, *see e.g.,* BOX IM–5050–6 to Rule 5050 (Short Term Option Series Program) and ISE Rule 504.02 (Short Term Option Series Program), MIAX Rule 404.02 (Short Term Option Series Program).

[8] The last trading day and expiration date are the same day (Friday) for P.M.-settled index STOs and the exercise settlement value is based on the reported level of the index calculated using the last reported prices of the index components on the expiration date. CBOE currently lists P.M.-settled index STOs on the S&P 100 Index (OEX which has American-style exercise and XEO which has European-style exercise). These index STOs are P.M.-settled because monthly (standard) expiration series in OEX and XEO are P.M.-settled.

[9] *See* Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (order approving SR–CBOE–2009–018).

[10] *See* Securities Exchange Act Release No. 71005 (December 6, 2013), 78 FR 75395 (December 11, 2013) (order approving SR–CBOE–2013–096).

[11] *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075).

[12] *See* Securities Exchange Act Release Nos. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR–CBOE–2015–106) and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR–CBOE–2016–046).

[13] For standard stock and ETP options, new series may generally be added until the beginning of the month in which the option contract will expire Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until the close of trading on the second business day prior to expirations. *See* Rule 5.5.04.

[14] VIX and VXST are A.M.-settled index options and do not trade on their expiration date. Because series listed under the Nonstandard Expirations Pilot Program are P.M.-settled and trade throughout

Accordingly, the Exchange seeks to align CBOE's listing ability under the Nonstandard Expirations Pilot Program with CBOE's listing ability under the STOs Program and with other index options that expire on a weekly basis. Specifically, the Exchange proposes to amend Rule 24.9(e)(1) and Rule 24.9(e)(2) to expressly permit the addition of new series up to and including on the expiration date for series listed under the Nonstandard Expirations Pilot Program. As with intraday series added under the STOs Program, The Options Clearing Corporation (''OCC'') has the ability to accommodate same day series adds under the Nonstandard Expirations Pilot Program.

The Exchange is proposing to correct two typographical errors in Rule 24.9(e)(1). This proposed change is a cleanup change and is non-substantive.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

In particular, because expirations listed under the Nonstandard Expirations Pilot Program compete with expirations listed under the STOs Program (both intra and inter-market), the Exchange believes that is necessary for competitive reasons (both intra and inter-market) to have the same series listing abilities under each Program. Market participants would also benefit from this proposal because they would be able to request and receive strikes in competing products up to and including on the expiration date for these competing products. The Exchange notes that the ability to list series up to and including on expiration for P.M.-settled STOs (and their last trading day for A.M.-settled STOs and weekly VIX and VXST options) already exists. As a result, permitting new series listed under the Nonstandard Expirations Pilot Program to be added up to and including on their expiration date is not a new or novel proposal.

Finally, the Exchange is proposing to make two technical changes to the text of Rule 5.5(d). One proposed change is grammatical and the other deletes a repetitive word. These changes would benefit investors because CBOE's Rulebook would read correctly.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that new series are permitted to be added up to and including on their last trading day or expiration date (as applicable) for series listed under the STOs Program and on their last trading day for certain weekly expiring index options. As a result, permitting new series to be added up to and including on the expiration date for Nonstandard Expirations is not a new or novel proposal. Additionally, the current rule change is being proposed to allow Nonstandard Expirations to compete (both intra and inter-market) with series listed under the STOs program. CBOE believes this proposed rule change is necessary to ensure fair competition among the options exchanges. Also, the Exchange does not believe the proposal would impose any burden on intramarket competition, as all market participants would be treated in the same manner and would have more tools for trading if CBOE has the same listing ability in both programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–CBOE–2016–069 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–CBOE–2016–069. 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

the day on their expiration date, the Exchange is seeking to permit new series in Nonstandard Expirations to be added up to and including on their expiration date (which is their last trading day, too). This proposed change tracks the Exchange's listing ability for P.M.-settled series listed under the industry-wide STOs Program.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

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–CBOE–2016–069 and should be submitted on or before October 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23755 Filed 9–30–16; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78941; File No. 600–36]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Application for Registration as a Clearing Agency and Request for Exemptive Relief

September 27, 2016.

I. Introduction

On July 5, 2016, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA'') filed with the Securities and Exchange Commission (''Commission'') a Form CA–1 seeking registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934 [1] (''Act'') and Rule 17Ab2–1 thereunder.[2] Specifically, LCH SA is seeking to provide central counterparty (''CCP'') services for U.S. persons for security-based swaps, in particular single-name credit default swaps (''CDS''), through its CDSClear business unit. LCH SA also is seeking exemptive relief (i) from Sections 5 and 6 of the Act [3] with respect to its end-of-day pricing process; (ii) from Section 19(b) of the Act [4] and Rule 19b–4 thereunder [5] with respect to filing certain proposed rule changes relating to its non-U.S. business; (iii) from Rules 17Ad–22(c)(2) and 17Ad–22(c)(2)(iii) [6] with respect to its annual audited financial statements; and (iv) Rule 17a–22 [7] with respect to requirements to provide the Commission with physical copies of certain materials.[8] The Commission is publishing this notice to solicit comments from interested persons regarding LCH SA's Form CA–1 and Request for Exemptive Relief.[9] The Commission will consider any comments it receives in making its determination of whether to grant LCH SA's application for registration as a clearing agency and Request for Exemptive Relief.

II. LCH SA Form CA–1 Application

LCH SA's Form CA–1 application and accompanying exhibits contain information regarding LCH SA and its CDSClear operations.[10] Set forth below is a summary of certain aspects of LCH SA's Form CA–1 application.

A. Overview of LCH SA

LCH SA maintains its principal office in Paris, France and is a wholly-owned subsidiary of LCH.Clearnet Group Limited (''LCH Group''), a limited company incorporated under the laws of England and Wales.[11] LCH Group is majority owned by the London Stock Exchange Group plc (''LSEG''). In its home jurisdiction, LCH SA is the only CCP in France and is regulated as a bank and a CCP under French law by the Autorité des Marchés Financiers, Autorité de Contrôle Prudentiel et de Résolution, and Banque de France.[12] In addition, LCH SA is a CCP authorized to offer clearing services in the European Union pursuant to the European Market Infrastructure Regulation (''EMIR'') and also is registered with the CFTC as a derivatives clearing organization (''DCO'') to provide clearing services for broad-based index CDS to U.S. members and their customers.[13]

LCH SA offers clearing services for derivatives, exchange-traded futures and options, cash equities and fixed income and energy instruments through three lines of CCP services: EquityClear, CommodityClear, and RepoClear.[14] These services constitute LCH SA's ''non-U.S. business'' in that they operate entirely outside the United States and do not have any U.S. clearing members. LCH SA's CDS clearing services are located in the CDSClear business unit. While all clearing services are provided from within the same legal entity, CDSClear is ''ring-fenced'' as it has its own rulebook, policies and procedures, risk management framework, risk management personnel, default fund, waterfall, default management process, operations department, and certain information technology resources.[15] Registration with the Commission as a clearing agency would permit LCH SA to offer single-name CDS clearing services to U.S. persons through its CDSClear business unit. LCH SA currently offers index CDS and single-name CDS clearing services to non-U.S. persons in Europe and is authorized to offer index CDS clearing services to U.S. clearing members and their customers under its DCO registration.

B. LCH SA Membership Standards and Enforcement of Rules

1. Membership Standards

LCH SA has established requirements concerning membership. These requirements are used to accept, deny, or condition any person's participation in LCH SA's clearing services as a member and include standards for financial responsibility, operational capacity, business experience, and creditworthiness.[16] Members must comply with these requirements on an ongoing basis.[17]

With respect to financial responsibility, LCH SA's rulebook contains net capital requirements that, among other things, establish minimum net capital requirements for members that may be scalable based on the risk

[1] 15 U.S.C. 78q–1.

[2] 17 CFR 240.17Ab2–1(a).

[3] 15 U.S.C. 78e and 78f.

[4] 15 U.S.C. 78s(b).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 240.17Ad–22(c)(2) and 17 CFR 240.17Ad–22(c)(2)(iii).

[7] 17 CFR 240.17a–22.

[8] *See* Letter from Christophe Hémon, CEO, LCH SA, to Brent J. Fields, Secretary, Securities and Exchange Commission (August 9, 2016) (hereinafter ''Request for Exemptive Relief'').

[9] The descriptions set forth in this notice regarding the structure and operations of LCH SA have been derived from information contained in LCH SA's Form CA–1 application. The application and exhibits thereto for which LCH SA has not requested confidential treatment are available on the Commission's Web site at *www.sec.gov/rules/other.shtml.*

[10] Schedule A to LCH SA's Form CA–1 includes a description of the risk management procedures utilized by LCH SA. Exhibit A contains information about the ownership and governance structure of LCH SA. Exhibit B contains a list of LCH SA's officers and senior managers of LCH SA and the CDSClear business unit. Exhibit C includes a narrative and graphic descriptions of LCH SA's organizational structure. Exhibit E includes copies of the CDS Clearing rulebook, procedures and articles of association. Exhibit J provides a description of CDSClear's services and functions.

[11] *See* LCH SA Form CA–1, Exhibit A at 1.

[12] *See generally,* LCH SA Form CA–1, Exhibit J–3 (LCH SA CDSClear Service Description) Section 2.3.

[13] *Id.*

[14] *See generally,* LCH SA Form CA–1, Exhibit C.

[15] *See generally,* LCH SA Form CA–1, Exhibit C.

[16] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Rule Book) Section 2.2.1.

[17] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Rule Book) Section 2.2.2.

the members introduce to LCH SA. Regarding operational capacity and business experience requirements, a member must be able to demonstrate that it has sufficient expertise in clearing activities, that its systems and operations are sufficiently reliable and capable of supporting the performance of the member in meeting its obligations (including having sufficient facilities, equipment, personnel, hardware and software systems), and that it has appropriate banking arrangements.[18] To assess a member's creditworthiness, LCH SA uses an internal credit scoring framework to determine the member's credit risk based on financial and qualitative factors.[19]

LCH SA imposes several monitoring and reporting obligations on its members to ensure ongoing compliance with its membership obligations. LCH SA monitors on an ongoing basis certain indicators of its members, including CDS spreads, long-term credit ratings, and equity returns. Each member is required to notify LCH SA in writing of material changes to itself or its operations, such as changes in the direct or indirect controlling ownership, reduction in capital of more than 10%, the occurrence of insolvency proceedings, the default of any of the member's clients, and any change to the member's systems or operations that materially impact the member's ability to meet its obligations as a member. Furthermore, members are required to provide to LCH SA audited financial statements on an annual basis, as well as interim financial statements during the course of the year.[20]

2. Capacity To Enforce Rules and Discipline Members

LCH SA has established rules to monitor for members' breaches of its rules, enforce its rules, and discipline members. Additionally, as noted above, CDSClear members are required to notify LCH SA of certain breaches relating to financial or operational capacity, and are required to submit to inspections and audits by LCH SA.[21] In the event that a member breaches its obligations, LCH SA may impose certain risk-reducing measures, including restricting a member's ability to submit additional transactions for clearing, or impose disciplinary sanctions, such as fines or public censure.[22] LCH SA also may suspend or terminate the membership in certain circumstances such as upon a member's material breaches of its obligations, upon suspension or termination of a member's membership in another clearing house, or upon the occurrence of an event that materially impacts the member's ability to meet its obligations under relevant membership agreements.[23]

LCH SA also has established pre-defined procedures for the disciplining of members and for affording a member or a person with respect to the CDSClear services the opportunity to dispute a decision by LCH SA to discipline the member or to deny, prohibit, or limit the person's access to the CDSClear services. These disciplinary proceedings set forth procedures regarding investigations of a member by LCH SA, which require LCH SA to send a written notice to the member regarding the details of the investigation and an opportunity for the member to object. Following an investigation, LCH SA must provide a written report of its findings to the member and, where LCH SA has determined to impose disciplinary proceedings, form a disciplinary committee and provide the member the opportunity to respond to the report. The disciplinary committee is required to provide the member with notice of its decision and any sanctions imposed. Members are permitted to dispute the decision and imposition of sanctions, and to submit such dispute to arbitration or litigation, as applicable.[24]

C. Governance

LCH SA is governed by its board of directors, which determines LCH SA's business strategies and oversees implementation of those strategies. The Terms of Reference of LCH SA's Board of Directors require the board to be composed of between 3 and 18 members, and must include a non-executive chair; executive directors; independent non-executive members; at least one director representing LSEG; and a director nominated by a user of LCH SA.[25]

LCH SA has an audit committee tasked with determining whether LCH SA management has put in place adequate internal control systems and assisting the board in reviewing LCH SA's audited financial statements, regulatory compliance, risk governance framework, internal control environment and information security and business continuity plans.[26] LCH SA also has established a risk committee to consider LCH SA's risk appetite, tolerance and strategy. The risk committee reviews on an annual basis LCH SA's operational risk policy and regularly reviews reports prepared by LCH SA's risk management department.[27] Representatives of members and customers are directly represented on the Risk Committee.[28]

In addition to these internal governance structures, LCH SA also has a process for considering external views regarding certain aspects of its CDSClear service. Specifically, when considering a material change to the CDSClear service, LCH SA engages certain banks (some of which are members), which also bear part of the cost of developing and operating CDSClear, in a consultative process where such banks may provide recommendations to LCH SA. Ultimately, LCH SA maintains authority for operating CDSClear, and may choose to not implement any recommendations.[29]

D. Safeguarding of Securities and Funds

1. Margin

LCH SA employs a risk-based margin methodology specific to its CDSClear service to calculate its exposures to CDSClear members and to set initial margin requirements.[30] Specifically, LCH SA uses a Value at Risk (''VaR'') model to calculate member margin requirements sufficient to cover losses under normal market conditions with a 99.7% confidence interval. The margin model takes into account a variety of risks, including changes to credit spreads, recovery rates, and interest rates. In addition to its initial margin requirements, to manage the risk of price fluctuations occurring in a member's open position, LCH SA and members are required to make cash payments to meet a variation margin

[18] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Rule Book) Section 2.2.1.

[19] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Rule Book) Section 2.2.4.1.

[20] *See generally,* LCH SA Form CA–1, Schedule A at 9; *See also* Exhibit E–4 (LCH SA CDS Rule Book) Sections 2.3.1 and 2.3.2.

[21] *See generally* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Section 2.3.3.

[22] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA Rulebook) Section 2.4.1; and Exhibit E–6.8 (LCH SA CDS Clearing Proceedings, Section 8: Disciplinary Proceedings) Section 8.4.

[23] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA Rulebook) Section 2.4.1.1.

[24] *See generally,* LCH SA Form CA–1, Exhibit E–6.8 (LCH SA CDS Clearing Procedures, Section 8: Disciplinary Proceedings).

[25] *See generally,* LCH SA Form CA–1, Exhibit A; and Exhibit A.2 (LCH SA Terms of Reference of the Board of Directors) Section 1.

[26] *See generally,* LCH SA Form CA–1, Exhibit A–5 (LCH SA Terms of Reference of the Audit Committee of the Board of Directors) Section 1.

[27] *See generally,* LCH SA Form CA–1, Exhibit A–4 (LCH SA Terms of Reference of the Risk Committee of the Board of Directors).

[28] *See generally,* Exhibit A–2 (LCH SA Terms of Reference of the Risk Committee of the Board of Director) Section 1.1.

[29] *See generally,* LCH SA Form CA–1, Exhibit A

[30] *See generally,* LCH SA Form CA–1, Exhibit H–1 (LCH SA Audited Financial Statements for the Year Ended 31 December 2015) at 18.

requirement.[31] LCH SA performs an independent model validation annually. In addition to margin requirements derived from its model, LCH SA imposes margin requirements on members to address position concentrations, wrong way risk, and illiquid positions. LCH SA also requires additional margin from members with lower credit standing.[32]

LCH SA requires each member to post collateral to satisfy its margin requirement to allow LCH SA to manage its risk exposure. LCH SA limits the collateral that is eligible to cash and securities with low credit, liquidity, and market risk, and applies haircuts to collateral posted in the form of securities.[33]

2. Default Fund

Apart from its initial and variation margin requirements, LCH SA has established a mutualized default fund exclusively for the CDSClear service and keeps it separate from the default funds for LCH SA's other services.[34] The default fund is only available for use to cover losses as a result of, and following, an event of default with respect to a member. LCH SA sizes the default fund to cover the theoretical losses associated with the default of the largest two members in extreme but plausible market conditions plus an additional buffer.[35] Each clearing member is required to contribute to the default fund in an amount that is the greater of the clearing member's proportionate share of the total default fund based on the margin requirements related to positions held in the CDSClear service, or the minimum contribution of €10 million.[36] LCH SA calibrates its default fund, and member default fund requirements, on a monthly basis.[37] LCH SA's Risk Committee reviews results of stress testing related to the CDSClear default fund on at least a quarterly basis.[38]

3. Investment and Liquidity Risk Management

To appropriately manage cash collateral posted by members to satisfy margin and default fund requirements, LCH SA has an investment risk policy that is designed to ensure that collateral is invested securely. LCH SA's policies require investments be made with counterparties that meet certain minimum credit standards (based on LCH SA's internal credit assessment).[39]

LCH SA monitors and measures liquidity resources and requirements for the entity as a whole, and calculates its liquidity needs daily. In addition to the cash collateral it holds and its capital as immediate liquidity resources, during liquidity stress events, LCH SA also can access French central bank liquidity through the Banque de France and also maintains other secured financing facilities.[40]

4. Default Management Process

To manage losses incurred in the event of a member default, LCH SA's default management process sets forth the steps LCH SA would take in the event of such an occurrence.[41] Upon the declaration of an event of default, LCH SA's default management process begins to minimize losses and disruption by attempting to hedge against market risk and transfer client positions to non-defaulting members, and to dispose of the defaulting member's portfolio through a competitive auction process within the five-business-day default management process period.[42] Default losses resulting from a CDSClear member's default can be covered only by using the financial resources collected for CDSClear pursuant to the default waterfall.[43]

Under the default waterfall, the defaulting member's initial margin, variation margin and additional margins are first used to cover losses. If these resources are insufficient to cover the losses, the defaulting member's default fund contribution is applied. To the extent that losses are still not covered, LCH SA would use a portion of its own capital (in the amount established in the CDSClear default waterfall pursuant to the CDSClear rulebook) to cover remaining losses. If losses exceed the financial resources used up to this point, LCH SA may then access the default fund contributions of non-defaulting members and also may impose additional default fund contribution assessments against non-defaulting members. If pre-funded resources and assessments are insufficient to cover losses within a five business-day period, LCH SA may impose, on a pro rata basis, reductions in daily settlement payments owed to non-defaulting members (''variation margin haircutting''), subject to certain limits. The entire default management process, including the use of variation margin haircutting, is intended to be completed within five business days following the declaration of a default.[44] At any time during the default management process, if LCH SA determines that it would not have sufficient resources to meet obligations arising from the default auction or auctions in accordance with its default waterfall, LCH SA must early terminate all open contracts and proceed to wind down the CDSClear service pursuant to the terms set forth in its Rulebook.[45]

E. Business Continuity

LCH SA maintains a business continuity plan as a part of the LCH Group's business continuity model, which is designed to recover core clearing services within a two-hour period following a point of failure and to enable LCH SA to perform end-of-day settlement of transactions on the same business day. The business continuity plan includes policies and procedures regarding threat assessment and monitoring, and anticipated responses in the event that such threats materialize, including the switching over to alternative systems and secondary sites.[46]

[31] *See generally,* LCH SA Form CA–1, Exhibit H–1 (LCH SA Audited Financial Statements for the Year Ended 31 December 2015) at 18; See also, LCH SA Form CA–1, Exhibit E–4 (CDS Clearing Rule Book) Section 4.2.5; and Exhibit E–6 (LCH.Clearnet SA CDS Clearing Procedures, Section 2—Margin and Price Alignment Interest).

[32] *See generally,* LCH SA Form CA–1, Exhibit H–1 (LCH SA Audited Financial Statements for the Year Ended 31 December 2015) at 18; and Exhibit J–3 (CDSClear Service Description) Section 9.1.

[33] *See generally,* LCH SA Form CA–1, Exhibit E–4 (CDS Clearing Rule Book) Sections 4.2.6.3 and 4.2.6.4; *See also,* LCH SA Form CA–1, Exhibit E–6.3 (LCH SA CDS Clearing Procedures Section 3—Collateral and Cash Payment) Section 3.9.

[34] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Article 4.4.1.1.

[35] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Sections 4.4.1.1 and 4.4.1.2.

[36] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Article 4.4.1.3.

[37] *See generally,* LCH SA Form CA–1, Exhibit J–3 (LCH SA CDSClear Service Description) Section 11.1.

[38] *See generally,* Exhibit A–4 (LCH SA Terms of Reference of the Risk Committee of the Board of Directors) Section 9.1.

[39] *See generally,* LCA SA Form CA–1, Exhibit H–1 (LCH SA Audited Financial Statements for the Year Ended 31 December 2015) at 20.

[40] *See generally,* LCH SA Form CA–1, Exhibit H–1 (LCH SA Audited Financial Statements for the Year Ended 31 December 2015) at 23–24.

[41] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book, Appendix 1 ''CDS Default Management Process'').

[42] *See generally,* LCH SA Form CA–1, Schedule A at 10–11; *see also* Exhibit E–4 (LCH SA CDS Clearing Rule Book) Appendix 1, Section 2.1.

[43] *See generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Section 4.4.1.

[44] *See generally,* LCH SA Form CA–1, Exhibit J–3 (CDSClear Service Description) Section 11.2.

[45] *See Generally,* LCH SA Form CA–1, Exhibit E–4 (LCH SA CDS Clearing Rule Book) Appendix 1, Clause 2.1.4 and 8.1.

[46] *See generally,* LCH SA Form CA–1, Exhibit K–2 (Group Business Continuity Management Policy).

F. Fee Structure

LCH SA charges transaction fees linked to products and annual membership fees, which are generally usage-based and apply equally to all members using LCH SA's CDSClear service. LCH SA also imposes annual account structure fees for individually segregated accounts and omnibus segregated accounts.[47]

III. Requests for Exemptive Relief

A. Exemptive Relief From Sections 5 and 6 of the Act

LCH SA requests exemptive relief from the requirements of Sections 5 and 6 of the Act with respect to its ''forced trade'' mechanism that is used in the calculation of mark-to-market prices for open positions in cleared single-name CDS and exemptive relief for each of its CDSClear members from the requirements of Section 5 of the Act with respect to their participation in the ''forced trade'' mechanism.[48] LCH SA represents that, as part of its clearing and risk management processes for single-name CDS, it would compute the end-of-day settlement price for each contract in which any of its members has a cleared position, based on off-market prices submitted by its members and use those prices to establish a daily mark on which to base margin calculations. To promote the integrity of these price submissions, LCH SA would employ a ''forced trade'' mechanism pursuant to which its members would be required to execute CDS trades based on their price submissions.[49]

LCH SA states that, absent an exemption, this activity would cause LCH SA's ''forced trade'' mechanism to meet the criteria of Rule 3b–16 under the Act[50] and, as a result, would require it to either register with the Commission as a national securities exchange under Sections 5 and 6 of the Act or obtain an exemption from registration. Additionally, any member that is a broker or dealer would not be permitted to use any facility of an exchange or to effect any transaction in a security, or to report any such transaction, unless the exchange were registered as a national securities exchange or an exemption were available.[51]

B. Exemptive Relief From Section 19(b) of the Act and Rule 19b–4 Thereunder

LCH SA requests exemptive relief from the requirements of Section 19(b) of the Act and Rule 19b–4 thereunder with respect to filing certain proposed rule changes that (i) primarily affect its clearing operations with respect to the non-U.S. business and (ii) do not significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to the CDSClear services or persons using such services.[52] LCH SA states that the rule filing requirements under Section 19(b) of the Act and Rule 19b–4 thereunder do not adequately consider circumstances in which a foreign clearing agency that is registered with the CFTC for the purposes of clearing index CDS (which are swaps) and with the Commission for the purpose of clearing single-name CDS (which are security-based swaps). Specifically, such foreign clearing agencies may have completely offshore businesses that provide clearing services to non-U.S. persons outside of the United States that would not otherwise implicate the Commission's registration requirements under the Act (nor those of the CFTC under the Commodity Exchange Act).[53] As a condition of this requested relief, LCH SA has represented that it would provide notice of its non-U.S. business rule changes to Commission staff once duly approved by its national competent authorities in lieu of filing such changes under Section 19(b) and Rule 19b–4.

C. Exemptive Relief From Rules 17Ad–22(c)(2) and 17Ad–22(c)(2)(iii)

LCH SA requests exemptive relief from the requirements of Rule 17Ad–22(c)(2) and Rule 17Ad–22(c)(2)(iii) with respect to its financial statements for fiscal years 2014 and 2015.[54] LCH SA represents that pursuant to the listing rules to which its indirect parent company LSEG is subject LCH SA is not permitted to publish its own financial statements prior to the publication of LSEG's financial statements.[55] Given the scope of LSEG's business activities, LCH SA represents that it is unlikely that LSEG would be able to publish its financial statements within 60 days of the end of its fiscal year, nor would LCH SA have control over when such financial statements would ultimately be published.[56]

In addition, LCH SA represents that it currently prepares its financial statements in accordance with International Financial Reporting Standards (''IFRS'') and its financial statements are audited in accordance with International Standards on Auditing (''ISA''). Additionally, under French law, LCH SA states that it is required to maintain two statutory auditing firms that jointly sign the annual audited accounts.[57] LCH SA represents that, because it would be required upon being registered with the Commission as a clearing agency to have its 2014 and 2015 annual financial statements audited in accordance with Public Company Accounting Oversight Board standards, its 2014 and 2015 financial records would need to be re-analyzed (including reviewing past judgments regarding accounting figures), and that re-opening its audit files in such a manner would present practical, and potentially legal challenges as well as impose material burdens on LCH SA, its staff and auditors, to complete such work prior to the end of this calendar year.[58] LCH SA states that such challenges would be further exacerbated if the relief requested were to be granted only with respect to LCH SA's 2014 financial statements, as auditing its 2015 financial statements in isolation would cause auditors to use unaudited 2014 figures in their auditing report for the 2015 financial statements.[59]

D. Exemptive Relief From Rule 17a–22

LCH SA requests exemptive relief from the requirements of Rule 17a–22 to file with the Commission certain materials made available to its participants regarding LCH SA's non-U.S. business units where such materials (i) primarily affect LCH SA's clearing operations with respect to the non-U.S. business lines, and (ii) do not significantly affect any CDSClear operations or any rights or obligations of LCH SA with respect to its CDSClear services or persons using the CDSClear services.[60] Additionally, LCH SA requests relief from the requirement of Rule 17a–22 to file physical copies with respect to materials primarily concerning its CDSClear services. LCH SA requests instead, that it be permitted to provide the Commission with electronic submissions for such materials.[61]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning LCH SA's Form CA–1 and Request for Exemptive Relief. The Commission requests comment

[47] *See generally* LCH SA Form CA–1, Exhibit Q.

[48] *See* Request for Exemptive Relief, at 2.

[49] *See* Request for Exemptive Relief, at 3–4.

[50] 17 CFR 240.3b–16.

[51] *See* Request for Exemptive Relief at 4.

[52] *See* Request for Exemptive Relief at 2–3.

[53] *See* Request for Exemptive Relief at 5–12.

[54] *See* Request for Exemptive Relief at 4.

[55] *See* Request for Exemptive Relief at 15.

[56] *Id.*

[57] *See* Request for Exemptive Relief at 14.

[58] *Id.*

[59] *Id.*

[60] *See* Request for Exemptive Relief at 15–16.

[61] Id.

regarding whether granting the Request for Exemptive Relief is appropriate, whether the conditions required for granting such relief, as set forth in the Request for Exemptive Relief, are appropriate, and whether any other conditions should be required. In particular, the Commission requests comment concerning the appropriateness of granting exemptive relief under Section 19(b) and Rule 19b–4 thereunder as described above, in connection with LCH SA's non-U.S. business. 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 600–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 600–36. 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 of submission. The Commission will post all comments on the Commission's internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the Form CA–1 and the Request for Exemptive Relief, all subsequent amendments, all written statements with respect to LCH SA's Form CA–1 and the Request for Exemptive Relief that are filed with the Commission, and all written communications relating to the Form CA–1and the Request for Exemptive Relief 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.

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 600–36 and should be submitted on or before November 2, 2016.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23747 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78949; File No. SR–NYSEArca-2016–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Listing and Trading of Shares of Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

September 27, 2016.

On July 26, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Cumberland Municipal Bond ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 15, 2016.[3] On September 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission has received no comment letters on the proposed rule change, as modified by Amendment No. 1 thereto.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 29, 2016. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1 thereto.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates November 13, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–107), as modified by Amendment No. 1 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23750 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–68, OMB Control No. 3235–0074]

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:
Regulation C

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation C (17 CFR 230.400 through 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides standard instructions for persons filing registration statements under the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78523 (Aug. 9, 2016), 81 FR 54155.

[4] In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (1) Described additional diversification requirements that would apply to the Fund's holdings in municipal bonds; (2) clarified the Fund's holdings in non-exchange-traded investment company securities; and (3) corrected certain references to the regular trading session of the Exchange. Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2016–107/nysearca2016107–1.pdf.* Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

Securities Act. The information collected is intended to ensure the adequacy of information available to investors. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether this 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 imposed by 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 unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, 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: September 27, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23761 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32284; 812–14660]

Foreside ETF Trust, et al.; Notice of Application

September 26, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.[1]

APPLICANTS: Foreside Advisor Services, LLC (the ''Initial Adviser''), a limited liability company organized under the laws of the state of Delaware and registered as an investment adviser under the Act, Foreside ETF Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Foreside Fund Services, LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on June 6, 2016, and amended on August 5, 2016 and September 22, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel at (202) 551–6812, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[2] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of self-indexing Funds (''Self-Indexing Funds''), an affiliated person, as defined

[1] The requested order would supersede a prior order permitting the offering of ETFs. Foreside Advisor Services, LLC, *et al.*, Investment Company Act Release Nos. 30284 (Nov. 29, 2012) (notice) and 30318 (Dec. 27, 2012) (order).

[2] Applicants request that the order apply to the initial series of the Trust, currently expected to be Foreside Diversified Miners Index ETF, and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity or any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. The term ''successor,'' as applied to each Adviser, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[3]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[4] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

Action as set forth or recommended herein *Approved* pursuant to authority delegated by the Commission under Public Law 87–592.

For: Division of Investment Management

By: _____

[David J. Marcinkus]

[FR Doc. 2016–23759 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

[3] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV as of a specified time as set forth in each Fund's prospectus. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

[4] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

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 Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, October 5, 2016, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On September 15, 2016, the Commission published notice of the Committee meeting (Release No. 33–10208), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 28, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–23910 Filed 9–29–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78945; File No. SR–IEX–2016–15]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Optional Risk Management Controls

September 27, 2016.

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 September 22, 2016, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend Rule 11.380 to provide that the Aggregate Risk Controls (''ARC'') mechanism is available to any IEX Member as well as to clearing firms for their broker correspondent IEX Member firms, and to specify the manner in which Members shall contact IEX to arrange to utilize the ARC mechanism. The Exchange has designated this rule change as non-controversial under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) thereunder.[7]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 11.380, entitled Risk Management, describes the optional ARC mechanism that is designed to assist IEX clearing firms [8] in their risk management efforts. IEX does not charge a fee for use of ARC. As described in the rule, ARC can be configured to provide trading limits based on the gross notional exposure for matched and routed trades for a clearing firm's broker correspondent across MPIDs, by MPID, by FIX session or in combination, per clearing firm relationship. As specified in the rule, ARCs are elected, and the upper value of any limits is set by the clearing firm of a Member. Once the gross notional exposure, as elected and configured, has exceeded the pre-determined limit, IEX will reject new orders and cancel all open orders for the applicable MPID(s) and/or FIX session specified. As specified in paragraph (a)(3)(A) of Rule 11.380, gross notional exposure is calculated as the absolute sum of the notional value of all buy and sell trades (*i.e.,* equal to the value of executed buys plus the absolute value of executed long sells plus the absolute value of executed short sells). There is no netting of buys and sales in the same symbol or across symbols. Gross notional exposure resets for each new trading day.

IEX proposes to revise the rule to provide that ARC is optionally available to any Member as well as to clearing firms for their broker correspondent IEX Member firms. This change will serve to clarify that ARC may be used by a clearing firm Member for its own trading on IEX as well as for its correspondent firm customers that are IEX Members. Because a Member that is self-clearing technically has a ''clearing firm relationship'' with itself, the Exchange believes that the rule already provides that ARC may be used by a clearing firm Member for its own trading on IEX. In addition, IEX proposes to amend Rule 11.380 to provide that ARC is available to any Member. Thus, as proposed, ARC may be elected by a Member for its own trading on IEX (whether or not such Member is self-clearing) as well as by a clearing firm Member for its

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] As described in Rule 11.250(a), a clearing firm is an IEX Member that is a member of a registered clearing agency. Pursuant to IEX Rule 2.160(c)(4) an IEX Member must be a member of a registered clearing agency or clear transactions executed on the Exchange through another Member that is a member of a registered clearing agency.

correspondent firm customers that are IEX Members.[9] In addition, IEX proposes to add new text to provide that ARC limits may be increased or decreased on an intra-day basis by a Member or the clearing firm of a Member, as applicable. Further, IEX proposes to make several nonsubstantive changes to subparagraphs (a)(2) and (3) of the rule text to simplify and streamline such provisions, including replacing GNE as a defined term within the rule text with references simply to ''gross notional exposure'' throughout. Finally, IEX proposes to add new paragraph (b) to Rule 11.380 to provide that Members shall contact IEX Market Operations to arrange to utilize the ARC mechanism. Accordingly, IEX proposes to make the following revisions to the rule:

1. References in paragraph (a) to the term ''Clearing Firms'' will be replaced with ''Members''.

2. Paragraph (a)(1) will be revised to state that ARCs are elected by a Member or the clearing firm of a Member.

3. Paragraphs (a)(2) and (3) will be revised to combine the provisions, replace the defined term GNE with references to ''gross notional exposure'' throughout, and state that gross notional exposure accumulates the notional values for a Member or a clearing firm's broker correspondent.

4. New paragraph (b) will be added to specify that Members shall contact IEX Market Operations at *marketops@iextrading.com* to arrange to utilize ARC.

IEX believes that making ARC available to all Members as an optional service will enhance the risk management tools available to IEX Members. The Exchange notes, however, that use of ARC by a Member does not automatically constitute compliance with IEX rules or SEC rules, nor does it replace Member-managed risk management solutions. The Exchange does not propose to require Members to use ARC, and Members may use any other appropriate risk-management tool or service instead of, or in combination with, ARC. The Exchange will not provide preferential treatment to Members using ARC, nor will the use of ARC impact a Member's use of IEX other than when it results in orders being rejected or cancelled pursuant to ARC. In addition, IEX will continue to provide ARC to Members without charge.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Sections 6(b)[10] of the Act in general, and furthers the objectives of Section 6(b)(5)[11] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by clarifying and enhancing the risk management protections available to Exchange members. The Exchange believes that the proposed rule change supports these objectives because it is designed to enable all IEX Members to manage and limit their own trading exposure on IEX, in addition to enabling clearing firms to monitor their correspondent firm customer and their own trading exposure, including by intra-day increases or decreases in the limits.

Further, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it provides a mechanism to enable IEX Members to manage their risk by preventing trading that is erroneous or exceeds a Member's financial resources, and thereby contributing to the stability of the equities markets.

The Exchange also believes that the aspects of the proposed rule change that clarify that ARC is available to clearing firms for their own trading on IEX is consistent with the protection of investors and the public interest because it will eliminate any confusion in this regard among IEX Members.

In addition, the Exchange believes that the nonsubstantive changes to subparagraphs (a)(2) and (3) of the rule text to simplify and streamline such provisions are consistent with the protection of investors and the public interest because such changes will enhance the readability of the relevant rule provisions.

Finally, the Exchange believes that adding rule text to specify how IEX Members shall contact IEX Market Operations to arrange to utilize the ARC mechanism will provide greater clarity and eliminate any confusion in this regard.

The Exchange notes that most other exchanges offer risk management tools to their members, with functionality similar to ARC.[12]

In addition, the Exchange believes that the proposal is consistent with just and equitable principles of trade because ARC is available to all IEX Members without charge.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX 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. The proposal is designed to clarify and expand the availability of the optional ARC risk management mechanism as described in the Purpose section. The Exchange is not proposing to charge any fee for use of ARC, which as proposed, is available to all Members without charge. The Exchange does not believe the proposed rule change will impose any intermarket burden on competition because other exchanges offer similar functionality.[13] The Exchange also does not believe that the proposal will impose an intramarket burden on competition because it is available to all Members and provides a mechanism to enable IEX Members to manage their risk by preventing trading that is erroneous or exceeds a Member's financial resources, thereby contributing to the stability of the equities markets. Accordingly, this proposal will have no impact on competition.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[14] of the Act and Rule 19b–4(f)(6)[15] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent

[9] In the case of a Member that is subject to ARC limits set by its clearing firm, the Member will be advised of such limits by IEX. In the event a Member that is subject to ARC limits set by its clearing firm also elects to set ARC limits for its own trading, the Exchange will apply both such limits with a lower limit(s) being applicable.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] *See,* for example, Nasdaq Stock Market LLC Rules 6100–6120; Securities Exchange Act Release No. 68330 (November 30, 2012), 77 FR 72894 (December 6, 2012) (File No. SR–BATS–2012–045 concerning Bats BZX Exchange, Inc. (formerly BATS Exchange, Inc.) Risk Management Tool).

[13] *See, supra* note 12.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to make ARC risk management protections immediately available to all Members. While IEX has proposed certain clarifying changes to Rule 11.380 that do not materially alter the scope of the rule, the primary material change extends the rule beyond clearing brokers and makes the ARC optionally available to any Member. IEX has represented above that, if an IEX Member elects to use the ARC, IEX will inform that Member if its clearing firm also set ARC limits for the Member, in which case IEX would apply the lower limit. The Commission believes that extending the ARC functionality to all Members will provide them with an additional tool that can be used as part of a Member's approach to risk management, which may promote the maintenance of fair and orderly markets. For this reason, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[20] 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–IEX–2016–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–15. 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–IEX–2016–15 and should be submitted on or before October 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

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[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78953; File No. SR–NYSE–2016–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of a Proposed Change, as Modified by Amendment Nos. 1 and 2, Establishing Fees Relating to End Users and Amending the Definition of ''Affiliate,'' as Well as Amending the NYSE Price List To Reflect the Changes

September 27, 2016.

On April 4, 2016, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') 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 co-location section of the NYSE Price List to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of ''Affiliate.'' The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received two comment letters on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77642 (April 18, 2016), 81 FR 23786 (''Notice'').

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Price List. Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-11/nyse201611-1.pdf.*

[5] *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 (''Friedman Letter''), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 (''Pikat Letter'') (together, the ''Comment Letters,'').

In response to the Comment Letters, the NYSE submitted a response (''Response Letter'') and filed Amendment No. 2.

rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange submitted a Response Letter and filed Amendment No. 2 to the proposed rule change. [7] On July 27, 2016, the Commission instituted proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] The Commission received no additional comments on the proposed rule change.

On September 22, 2016, the Exchange withdrew the proposed rule change, as modified by Amendment Nos. 1 and 2. (SR–NYSE–2016–11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

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[6] *See* Securities Exchange Act Release No. 34–77976 (June 2, 2016), 81 FR 36981.

[7] In Amendment No. 2 the Exchange proposed that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 was noticed in the Commission's Order Instituting Proceedings and is also available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-11/nyse201611-4.pdf.*

[8] *See* Securities Exchange Act Release No. 34–78387 (July 21, 2016); 81 FR 49300.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78950; File No. SR–MIAX–2016–33]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule

September 27, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2016, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule''). While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on October 1, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to offer two (2) additional Limited Service MIAX Express Interface (''MEI'') Ports to Market Makers.

Currently, MIAX assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines [3] used by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [4] and two (2) Limited Service MEI Ports [5] per matching engine to which they connect. The Exchange currently assesses the following MEI Port fees: (i) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) $10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (iii) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (v) $20,500.00 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX.[6] In each of the foregoing categories, the stated fee applies if the less of the two applicable measurements is met. For example, a Market Maker that wishes to make markets in just one symbol would require the two (2) MEI Ports in a single matching engine; a Market Maker wishing to make markets in all symbols traded on MIAX would require the two (2) MEI Ports in each of the Exchange's matching engines. The Exchange also currently charges $50 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports, and the additional Limited Service MEI Ports all include access to MIAX's primary and secondary data centers and its disaster recovery center.

The Exchange originally added the Limited Service MEI Ports to enhance the MEI Port connectivity made available to Market Makers, and subsequently made additional Limited Service MEI Ports available to Market Makers.[7] Limited Service MEI Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEI Ports per matching engine over and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

[4] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine.

[5] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine.

[6] *See* MIAX Fee Schedule, Section 5)d)ii).

[7] *See* Securities Exchange Act Release No. 70137 (August 8, 2013), 78 FR 49586 (August 14, 2013) (SR–MIAX–2013–39); *see also* Exchange Act Release No. 70903 (November 20, 2013), 78 FR 228 (November 26, 2013) (SR–MIAX–2013–52).

above the current two (2) additional Limited Service MEI Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes to charge the same amount that it currently charges, $50 per month, for each extra Limited Service MEI Port per matching engine. The Exchange proposes making a corresponding change to footnote 31 of the Exchange's Fee Schedule to specify that Market Makers will now be limited to purchasing four (4) additional Limited Service MEI Ports per matching engine, for a total of six (6) per matching engine. All other fees related to MEI Ports shall remain unchanged.

The purpose of this amendment to the Fee Schedule is to provide Market Makers with greater and improved technical flexibility to connect additional Limited Service MEI Ports to independent servers that host their eQuote and purge functionality. The Exchange believes that the offering of additional ports will help Market Makers mitigate the risk of using the same server for all of their Market Maker quoting activity. By using the additional Limited Service MEI Ports for risk purposes, Market Makers can place purge functionality on a different server than the Market Maker quoting server (via the Limited Service MEI Ports), which provides them a failsafe for getting out of the market in case they have an issue with the quote server. Market Makers can also use the extra Limited Service MEI Ports to submit eQuotes. Since eQuotes are frequently generated by a different algorithm that determines when to respond to an auction message, the Exchange believes that the offering of additional ports will further enable Market Makers to connect to a different server that processes auctions and eQuotes rather than forcing them to use their Market Maker Standard quote server as a gateway for communicating eQuotes to MIAX.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that decide that they need the extra Limited Service MEI Ports will be charged the additional fee. The Exchange further believes that the availability of the additional Limited Service MEI Ports is equitable and not unfairly discriminatory because it further enhances Market Makers' access to the MIAX System and consequently enhances the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act [11] because the additional Limited Service MEI Ports are available to all Market Makers and the proposed fees assessable for the additional Limited Service MEI Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models to be assessed a MEI Port fee and to have technical connectivity that best matches their quoting activity on the Exchange and the offering of additional Limited Service MEI Ports comports with this objective.

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. The Exchange believes that the proposal increases both intermarket and intramarket competition by enabling Market Makers to enhance their connectivity to the Exchange in a manner that is designed to provide Market Makers of different sizes and business models to be assessed a MEI Port fee and to have technical connectivity that best matches their quoting activity on the Exchange and the offering of additional Limited Service MEI Ports comports with this objective. The Exchange believes that the proposal will increase competition amongst Market Makers of different sizes and business models by encouraging Market Makers to connect additional Limited Service Ports to independent servers that host their eQuote and purge functionality and thereby increase such functionality. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and in order to attract market participants to use its services. The Exchange believes that the proposal reflects this competitive environment because it increases the Exchange's fees in a manner that continues to encourage market participants to register as Market Makers on the Exchange, to provide liquidity, and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b-4(f)(2) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–MIAX–2016–33 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–33. 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–MIAX–2016–33 and should be submitted on or before October 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23751 Filed 9–30–16; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78952; File No. SR–NYSEArca–2016–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Establish Certain End User Fees, Amend the Definition of Affiliate, and Amend the Co-Location Section of the Fee Schedule To Reflect the Changes

September 27, 2016.

On April 4, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location section of the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the NYSE Arca Options Fee Schedule to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of ''Affiliate.'' The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] On July 27, 2016, the Commission instituted proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] The Commission received no comments in response.

On September 22, 2016, the Exchange withdrew the proposed rule change, as modified by Amendment Nos. 1 and 2. (SR–NYSEArca–2016–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23753 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77641 (April 18, 2016), 81 FR 23773 (''Notice'').

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedules. Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysearca-2016-19/nysearca201619-1.pdf.*

[5] The Commission received two comment letters on a companion filing, NYSE–2016–11 (the ''NYSE companion filing''), filed by the Exchange's affiliate, the New York Stock Exchange LLC (''NYSE''). *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 (''Friedman Letter''), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 (''Pikat Letter'') (together, the ''Comment Letters,'').

In response to the Comment Letters, the NYSE submitted a response and filed Amendment No. 2 to the NYSE companion filing.

[6] *See* Securities Exchange Act Release No. 34–77977 (June 2, 2016), 81 FR 36967.

[7] In Amendment No. 2 the Exchange proposed that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 was noticed at part of the Commission's Order Instituting Proceedings and is also available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysearca-2016-19/nysearca201619-2.pdf.*

[8] *See* Securities Exchange Act Release No. 34–78388; (July 21, 2016); 81 FR 49332.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78951; File No. SR–NYSEMKT–2016–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Withdrawal of a Proposed Change, as Modified by Amendment Nos. 1 and 2, Establishing Fees Relating to End Users and Amending the Definition of ''Affiliate,'' as Well as Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Reflect the Changes

September 27, 2016.

On April 4, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 co-location section of the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of ''Affiliate.'' The Commission published the proposed

rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] On July 27, 2016, the Commission instituted proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] The Commission received no comments in response.

On September 22, 2016, the Exchange withdrew the proposed rule change, as modified by Amendment Nos. 1 and 2. (SR–NYSEMKT–2016–15).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23752 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 34–77640 (April 18, 2016), 81 FR 23780 (''Notice'').

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedules. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysemkt-2016-15/nysemkt201615-1.pdf.*

[5] The Commission received two comment letters on a companion filing, NYSE–2016–11 (the ''NYSE companion filing''), filed by the Exchange's affiliate, the New York Stock Exchange LLC (''NYSE''). *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 (''Friedman Letter''), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 (''Pikat Letter'') (together, the ''Comment Letters,'').

In response to the Comment Letters, the NYSE submitted a response and filed Amendment No. 2 to the NYSE companion filing.

[6] *See* Securities Exchange Act Release No. 34–77978 (June 2, 2016), 81 FR 36966.

[7] In Amendment No. 2 the Exchange proposed that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 was noticed at part of the Commission's Order Instituting Proceedings and is also available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysemkt-2016-15/nysemkt201615-2.pdf.*

[8] *See* Securities Exchange Act Release No. 34–78389; (July 21, 2016); 81 FR 49304.

[9] 17 CFR 200.30–3(a)(12).

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:

Regulation 13D and Regulation 13G; Schedule 13D and Schedule 13G, SEC File No. 270–137, OMB Control No. 3235–0145

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the office of Management and Budget for extension and approval.

Schedules 13D and 13G are filed pursuant to Sections 13(d) and 13(g) of the Securities Exchange Act and Regulations 13D and 13G thereunder to report beneficial ownership of equity securities registered under Section 12 of the Exchange Act. Regulations 13D and 13G provide investors, the subject issuers, and market participants with information about the accumulation of equity securities that may have the potential to change or influence control of an issuer. Schedules 13D and 13G are filed by persons, including small entities, to report their ownership of more than 5% of a class of equity securities registered under Section 12. We estimate that it takes approximately 14.5 burden hours to prepare a Schedule 13D and that it is filed by approximately 1,508 respondents. In addition, we estimate that 25% of the 14.5 hours per response (3.625 hours per response) is carried internally by the respondent for a total annual reporting burden of 5,467 hours (3.625 hours per response × 1,508 responses).

We estimate that it takes approximately 12.4 burden hours to prepare Schedule 13G and that it is filed by approximately 7,079 respondents. We estimate that 25% of the 12.4 hours per response (3.1 hours per response) is carried internally by the respondent for a total annual reporting burden of 21,945 hours (3.1 hours per response × 7,079 responses).

Written comments are invited on: (a) Whether this 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 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 unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549.

Dated: September 27, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23760 Filed 9–30–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14869 and #14870]

Wisconsin Disaster #WI–00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Wisconsin dated 09/21/2016.

Incident: Severe Storms and Flash Flooding.

Incident Period: 08/11/2016.

DATES: *Effective Date:* 09/21/2016

Physical Loan Application Deadline Date: 11/21/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be

filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Buffalo

Contiguous Counties:

Wisconsin: Eau Claire, Pepin, Trempealeau.

Minnesota: Wabasha, Winona.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14869 6 and for economic injury is 14870 0.

The States which received an EIDL Declaration # are Wisconsin, Minnesota.

(Catalog of Federal Domestic Assistance Number 59008).

Dated: September 21, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–23763 Filed 9–30–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0047]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0047].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 2, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Statement of Agricultural Employer (Year Prior to 1988; and 1988 and later)—20 CFR 404.702, 404.802, 404.1056—0960–0036. If agricultural workers believe their employers (1) did not report their wages, or (2) reported incorrect wage amounts, SSA will assist them in resolving this issue. Specifically, SSA will send Forms SSA–1002–F3 or SSA–1003–F3 to the agricultural employers to collect evidence of wages paid. The respondents are agricultural employers whose workers request wage verification or correction for their earnings records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1002	7,500	1	30	3,750
SSA–1003	25,000	1	30	12,500
Total	32,500			16,250

2. Continuing Disability Review Report—20 CFR 404.1589, 416.989—0960–0072. Sections 221(i), 1614(a)(3)(H)(ii)(I) and 1633(c)(1) of the Social Security Act (Act) requires SSA to periodically review the cases of individuals who receive benefits under Title II or Title XVI, based on disability, to determine if disability continues. SSA uses Form SSA–454, Continuing Disability Review Report, to complete the review for continued disability. SSA considers adults eligible for payment if they continue to be unable to do substantial gainful activity because of their impairments; and we consider Title XVI children eligible for payment if they have marked and severe functional limitations due to their impairments. SSA also uses Form SSA–454 to obtain information on sources of medical treatment, participation in vocational rehabilitation programs (if any); attempts to work (if any); and the opinions of individuals regarding whether their conditions improved. The respondents are Title II or Title XVI disability recipients or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–454–BK (Paper version)	270,500	1	60	270,500
Electronic Disability Collect System	270,500	1	60	270,500
Totals	541,000			541,000

3. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009, and 418.1325—0960–0760. The Consent Based Social Security Number Verification (CBSV) process is a fee-based automated Social Security number (SSN) verification service available to private businesses and other requesting parties. To use the system, private businesses and requesting parties must register with SSA and obtain valid consent from SSN holders prior to verification. We collect the information to verify if the submitted name and SSN match the information in SSA records. After completing a registration process and paying the fee, the requesting party can use the CBSV process to submit a file containing the names of number holders who gave valid consent, along with each number holder's accompanying SSN and date of birth (if available) to obtain real-time results using a web service application or SSA's Business Services Online (BSO) application. SSA matches the information against the SSA master file of SSNs, using SSN, name, date of birth, and gender code (if available). The requesting party retrieves the results file from SSA, which indicates only a match or no match for each SSN submitted.

Under the CBSV process, the requesting party does not submit the consent forms of the number holders to SSA. SSA requires each requesting party to retain a valid consent form for each SSN verification request. The requesting party retains the consent forms in either electronic or paper format.

SSA added a strong audit component to ensure the integrity of the CBSV process. At the discretion of the agency, we require audits (called ''compliance reviews'') with the requesting party paying all audit costs. Independent certified public accounts (CPAs) conduct these reviews to ensure compliance with all the terms and conditions of the party's agreement with SSA, including a review of the consent forms. CPAs conduct the reviews at the requesting party's place of business to ensure the integrity of the process. In addition, SSA reserves the right to perform unannounced onsite inspections of the entire process, including review of the technical systems that maintain the data and transaction records. The respondents to the CBSV collection are the participating companies; members of the public who consent to the SSN verification; and CPAs who provide compliance review services.

Type of Request: Revision of an OMB-approved information collection.

Time Burden

PARTICIPATING COMPANIES

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Registration process for new participating companies	*13	1	120	26
Creation of file with SSN holder identification data; maintaining required documentation/forms	90	**251	60	22,590
Using the system to upload request file, check status, and download results file	90	251	5	1,883
Storing Consent Forms	90	251	60	22,590
Activities related to compliance review	90	251	60	22,590
Total	373			69,679

* One-time registration process/approximately 13 new participating companies per year.
** Please note there are 251 Federal business days per year on which a requesting party could submit a file.

PARTICIPATING COMPANIES WHO OPT FOR EXTERNAL TESTING ENVIRONMENT (ETE)

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
ETE Registration Process (includes reviewing and completing ETE User Agreement)	20	1	180	60
Web Service Transactions	20	1	50	17
Reporting Issues Encountered on Web service testing (*e.g.*, reports on application's reliability)	20	1	50	17
Reporting changes in users' status (*e.g.*, termination or changes in users' employment status; changes in duties of authorized users)	20	1	60	20
Cancellation of Agreement	20	1	30	10
Dispute Resolution	20	1	120	40

PARTICIPATING COMPANIES WHO OPT FOR EXTERNAL TESTING ENVIRONMENT (ETE)—Continued

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Total	120			164

PEOPLE WHOSE SSNS SSA WILL VERIFY

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Reading and signing authorization for SSA to release SSN verification	2,800,000	1	3	140,000
Responding to CPA re-contact	5,750	1	5	479
Total	2,805,750			140,479

There is one CPA respondent conducting compliance reviews and preparing written reports of findings. The average burden per response is 4,800 minutes for a total burden of 7,200 hours annually.

Cost Burden

The public cost burden is dependent upon the number of companies and transactions. SSA based the cost estimates below upon 90 participating companies submitting a total 2.8 million transactions per year.

One-Time Per Company Registration Fee—$5,000.

Estimated Per SSN Transaction Fee—$1.40.[i]

Estimated Per Company Cost to Store Consent Forms—$300.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 2, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 418.1350, and 42 CFR 405.722—0960–0269. When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, the Social Security Act entitles those applicants or beneficiaries to request a hearing to appeal the decision. To request a hearing, individuals complete Form HA–501, the associated Modernized Claims System (MCS) or Modernized Supplemental Security Income Claims System (MSSICS) interview, or the Internet application (i501). SSA uses the information to determine if the individual: (1) Filed the request within the prescribed time; (2) is the proper party; and (3) took the steps necessary to obtain the right to a hearing. SSA also uses the information to determine: (1) The individual's reason(s) for disagreeing with SSA's prior determinations in the case; (2) if the individual has additional evidence to submit; (3) if the individual wants an oral hearing or a decision on the record; and (4) whether the individual has (or wants to appoint) a representative. The respondents are Social Security benefit applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits, and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

This is a correction notice: SSA published the incorrect burden information for this collection at 81 FR 47845, on 7/22/49. We are correcting this error here.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–501; Modernized Claims System (MCS); Modernized Supplemental Security Income Claims System (MSSICS)	10,953	1	10	1,826
I501 (Internet iAppeals)	658,516	1	5	54,876
Totals	669,469			56,702

2. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009, and 418.1325—0960–0622. Individuals use Form SSA–561–U2, the associated MCS interview, or the Internet application (i561) to

[i] The annual costs associated with the transaction to each company are dependent upon the number of SSN transactions SSA submits by the company on a yearly basis. For example, if a company submits 1 million requests to SSA for the year, its total transaction cost for the year would be $1.40 × 1,000,000, or $1,400,000. Periodically, SSA will calculate our costs to provide CBSV services and adjust the fees as needed. SSA notifies companies in writing and via **Federal Register** Notice of any changes and companies have the opportunity to cancel the agreement or continue service using the new transaction fee.

initiate a request for reconsideration of a denied claim. SSA uses the information to document the request and to determine an individual's eligibility or entitlement to Social Security benefits (Title II); SSI payments (Title XVI); Special Veterans Benefits (Title VIII); Medicare (Title XVIII); and for initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration of a denied claim.

This is a correction notice: SSA published the incorrect burden information for this collection at 81 FR 47845, on 7/22/49. We are correcting this error here.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–561 and Modernized Claims System (MCS)	330,370	1	8	40,049
I561 (Internet iAppeals)	1,161,300	1	5	96,775
Totals	1,491,670			136,824

3. Request for Accommodation in Communication Method—0960–0777. SSA allows disabled or impaired Social Security applicants, beneficiaries, recipients, and representative payees to choose one of seven alternative methods of communication they want SSA to use when we send them benefit notices and other related communications. The seven alternative methods we offer are: (1) Standard print notice by first-class mail; (2) standard print mail with a follow-up telephone call; (3) certified mail; (4) Braille; (5) Microsoft Word file on data CD; (6) large print (18-point font); or (7) audio CD. However, respondents who want to receive notices from SSA through a communication method other than the seven methods listed above must explain their request to us. Those respondents use Form SSA–9000 to: (1) Describe the type of accommodation they want; (2) disclose their condition necessitating the need for a different type of accommodation; and (3) explain why none of the seven methods described above are sufficient for their needs. SSA uses Form SSA–9000 to determine, based on applicable law and regulation, whether to grant the respondents' requests for an accommodation based on their impairment or disability. SSA collects this information electronically through either an in-person interview or a telephone interview during which the SSA employee keys in the information on our iAccommodate Intranet screens. The respondents are disabled or impaired Social Security applicants, beneficiaries, recipients, and representative payees who ask SSA to send notices and other communications in an alternative method besides the seven modalities we currently offer.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–9000/iAccommodate	5,000	1	20	1,667

Dated: September 28, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–23773 Filed 9–30–16; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0049]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0049].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 2, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2—0960–0432. Each year employers report the wage amounts they paid their employees to the Internal Revenue Service (IRS) for tax purposes, and separately to SSA for retirement and disability coverage purposes. Employers should report the same figures to both SSA and the IRS; however, each year some of the employer wage reports SSA receives show wage amounts lower than those

employers report to the IRS. SSA uses Forms SSA–L93–SM, SSA–L94–SM, SSA–95–SM, and SSA–97–SM to ensure employees receive full credit for their wages. Respondents are employers who reported lower wage amounts to SSA than they reported to the IRS.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
SSA–95–SM and SSA–97–SM (and accompanying cover letters SSA–L93, L94)	360,000	1	30	180,000

2. Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions (Bench Decision Regulation)—20 CFR 404.953 and 416.1453—0960–0694. If an administrative law judge (ALJ) makes a wholly favorable oral decision, including all the findings and rationale for the decision for a claimant of Title II or Title XVI payments, at an administrative appeals hearing, the ALJ sends a Notice of Decision (Form HA–82), as the records from the oral hearing preclude the need for a written decision. We call this the incorporation-by-reference process. In addition, the regulations for this process state that if the involved parties want a record of the oral decision, they may submit a written request for these records. SSA collects identifying information under the aegis of Sections 20 CFR 404.953 and 416.1453 of the Code of Federal Regulations to determine how to send interested individuals written records of a favorable incorporation-by-reference oral decision made at an administrative review hearing. Since there is no prescribed form to request a written record of the decision, the involved parties send SSA their contact information and reference the hearing for which they would like a record. The respondents are applicants for Disability Insurance Benefits and SSI payments, or their representatives, to whom SSA gave a wholly favorable oral decision under the regulations cited above.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
HA–82	2,500	1	5	208

3. Request for Waiver of Special Veterans Benefits (SVB) Overpayment Recovery or Change in Repayment Rate—20 CFR 408.900–408.950—0960–0698. Title VIII of the Social Security Act (Act) requires SSA to pay a monthly benefit to qualified World War II veterans who reside outside the United States. When an overpayment in this SVB occurs, the beneficiary can request a waiver of recovery of the overpayment or a change in the repayment rate. SSA uses the SSA–2032–BK to obtain the information necessary to establish whether the claimant meets the waiver of recovery provisions of the overpayment, and to determine the repayment rate if we do not waive repayment. Respondents are SVB beneficiaries who have overpayments on their Title VIII record and wish to file a claim for waiver of recovery or change in repayment rate.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
SSA–2032–BK	450	1	120	900

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 2, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Travel Expense Reimbursement—20 CFR 404.999(d) and 416.1499—0960–0434.* The Act provides for travel expense reimbursement from Federal and State agencies for claimant travel incidental to medical examinations, and to parties, their representatives, and all reasonably necessary witnesses for travel exceeding 75 miles to attend medical examinations; reconsideration interviews; and proceedings before an administrative law judge. Reimbursement procedures require the claimant to provide: (1) A list of expenses incurred, and (2) receipts of such expenses. Federal and state personnel review the listings and receipts to verify the reimbursable amount to the requestor. The respondents are claimants for Title II benefits and Title XVI payments, their representatives, and witnesses.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
404.99(d) & 416.1499	60,000	1	10	10,000

2. Disability Report—Child—20 CFR 416.912—0960–0577. Sections 223 (d)(5)(A) and 1631(e)(1) of the Act require Supplemental Security Income (SSI) claimants to furnish medical and other evidence to prove they are disabled. SSA uses Form SSA–3820 to collect various types of information about a child's condition from treating sources or other medical sources of evidence. The State Disability Determination Services evaluators use this information from Form SSA–3820 to develop medical and school evidence, and to assess the alleged disability. This information, together with medical evidence, forms the evidentiary basis upon which SSA makes its initial disability evaluation. The respondents are claimants seeking SSI childhood disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3820 (Paper Form)	279,002	1	90	418,503
Electronic Disability Collection System	1,000	1	120	2,000
i3820 (Internet)	119,464	1	120	238,928
Totals	399,466			659,431

Dated: September 28, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–23774 Filed 9–30–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9744]

Culturally Significant Objects Imported for Exhibition Determinations: ''Matisse/Diebenkorn'' Exhibition

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), E.O. 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, 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 ''Matisse/Diebenkorn,'' 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 Baltimore Museum of Art, Baltimore, Maryland, from on or about October 23, 2016, until on or about January 29, 2017, at the San Francisco Museum of Modern Art, San Francisco, California, from on or about March 11, 2017, until on or about May 29, 2017, 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 the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 27, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–23976 Filed 9–30–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 507 (Sub-No. 2X)]

Florida Northern Railroad Company, Inc.—Discontinuance of Service Exemption—in Marion County, Fla.

Florida Northern Railroad Company, Inc. (Florida Northern) [1] has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 5.3-mile rail line from milepost 756.8 in Lowell, to milepost 762.1 in Zuber, in Marion County, Fla. (the Line).[2] The Line traverses U.S. Postal Service Zip Codes 34482, 32686, and 34475.

Florida Northern has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of the complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line*

[1] Florida Northern is a wholly owned subsidiary of Pinsly Railroad Company, a noncarrier holding company, which also controls three other Class III rail carriers in Florida and Massachusetts. *See Pinsly R.R.—Continuance in Control Exemption—Fla. N. R.R.,* FD 31369 (ICC served Dec. 21, 1988).

[2] According to Florida Northern, it operates ''approximately 88 miles of rail line'' and ''commenced operations in 1988 after acquiring two lines (including a portion of the line over which service is to be discontinued).'' (Notice of Exemption 2); *see also Fla. N. R.R.—Acquis. & Operation Exemption—Certain Rail Lines of CSX Transp., Inc.,* FD 31368 (ICC served Dec. 21, 1988).

Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on November 2, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by October 13, 2016.[4] Petitions to reopen must be filed by October 21, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Florida Northern's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: September 27, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–23727 Filed 9–30–16; 8:45 am]

BILLING CODE 4915–01–P

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinue proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 8, 2016, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 8, 2016, in Cooperstown, New York, the Commission took the following actions: approved or tabled the applications of certain water resources projects; and took additional actions, as set forth in the Supplementary Information below.

DATES: The business meeting was held on September 8, 2016. Please refer to the notice published in 81 FR 64812, September 21, 2016, for additional information on the proposed rulemaking, including public hearing dates and locations. Comments on the proposed consumptive use mitigation policy may be submitted to the Commission on or before January 6, 2017.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788, or submitted electronically at *http://www.srbc.net/pubinfo/publicparticipation/PublicComments.aspx?type=5&cat=20.*

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) rescission of the Commission's Information Technology Services Fee; (2) approval/ratification of a contract and several grants; (3) release of proposed rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions, and release of a consumptive use mitigation policy; (4) a report on delegated settlements with the following project sponsors, pursuant to SRBC Resolution 2014–15: Lackawanna Energy Center, in the amount of $2,000; and Troy Borough Municipal Authority, in the amount of $5,000.; 5) approval to extend the term of an emergency certificate with Furman Foods, Inc. to November 30, 2016; and 6) continuance of the Show Cause proceeding granted to Montage Mountain Resorts, LP, to the December 2016 Commission meeting.

Project Applications Approved

The Commission approved the following project applications:

1. *Project Sponsor and Facility:* Bloomfield Borough Water Authority, Centre Township, Perry County, Pa. Groundwater withdrawal of up to 0.180 mgd (30-day average) from Well 3.

2. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20120904).

3. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, Pa. Groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 1.

4. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.106 mgd (30-day average) from Well 3.

5. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, Pa. Groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 4.

6. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.187 mgd (30-day average) from Well 8.

7. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 9.

8. *Project Sponsor and Facility:* Geisinger Health System, Mahoning Township, Montour County, Pa. Modification to increase consumptive water use by an additional 0.319 mgd (peak day), for a total consumptive water use of up to 0.499 mgd (peak day) (Docket No. 19910103).

9. Project Sponsor: Pennsylvania American Water Company. Project Facility: Nittany Water System, Walker Township, Centre County, Pa. Groundwater withdrawal of up to 0.262 mgd (30-day average) from Nittany Well 1.

10. *Project Sponsor and Facility:* Republic Services of Pennsylvania, LLC, Windsor and Lower Windsor Townships, York County, Pa. Renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from groundwater remediation wells (Docket No. 19860903).

11. *Project Sponsor and Facility:* SWN Production Company, LLC, Herrick Township, Bradford County, Pa. Groundwater withdrawal of up to 0.101 mgd (30-day average) from the Fields Supply Well.

12. *Project Sponsor and Facility:* Talisman Energy USA Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Renewal of surface water withdrawal of

up to 1.500 mgd (peak day) (Docket No. 20120912).

13. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Chiques Creek), West Hempfield Township, Lancaster County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

14. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

15. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

16. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

17. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

18. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Deep Creek), Hegins Township, Schuylkill County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

19. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, Pa. Surface water withdrawal of up to 2.592 mgd (peak day).

20. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Pequea Creek), Martic Township, Lancaster County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

21. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Roaring Creek), Franklin Township, Columbia County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

22. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 2.592 mgd (peak day).

23. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

24. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

25. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

26. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Swatara Creek), East Hanover Township, Lebanon County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. *Project Sponsor:* Exelon Generation Company, LLC. Project Facility: Muddy Run Pumped Storage Project, Drumore and Martic Townships, Lancaster County, Pa. Application for an existing hydroelectric facility.

2. *Project Sponsor and Facility:* Gilberton Power Company, West Mahanoy Township, Schuylkill County, Pa. Application for renewal of consumptive water use of up to 1.510 mgd (peak day) (Docket No. 19851202).

3. *Project Sponsor and Facility:* Gilberton Power Company, West Mahanoy Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 1.870 mgd (30-day average) from the Gilberton Mine Pool.

4. *Project Sponsor and Facility:* Manbel Devco I, LP, Manheim Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 4.320 mgd (30-day average) from the Belmont Quarry.

5. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, Pa. Application for surface water withdrawal of up to 2.880 mgd (peak day).

6. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, Pa. Application for consumptive water use of up to 0.100 mgd (peak day).

7. *Project Sponsor and Facility:* Village of Windsor, Broome County, N.Y. Application for groundwater withdrawal of up to 0.380 mgd (30-day average) from Well 2.

8. *Project Sponsor and Facility:* West Manchester Township Authority, West Manchester Township, York County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 7.

Project Application Withdrawn by Project Sponsor

The following project sponsor withdrew its project application:

1. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Little Fishing Creek), Mount Pleasant Township, Columbia County, Pa. Application for surface water withdrawal of up to 2.880 mgd (peak day).

Authority: Pub.L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 27, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–23737 Filed 9–30–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Revise Notice of Intent for an Environmental Impact Statement: North-South Corridor Study: Interstate 10 to U.S. Highway 60, Pinal County, Arizona

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (USDOT).

ACTION: Revised Notice of Intent (NOI).

SUMMARY: A NOI to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** on September 20, 2010. The FHWA is issuing this notice to advise the public of a change to the environmental review process for the proposed North-South Corridor. The FHWA and the project sponsor, the Arizona Department of Transportation (ADOT), intend to use a tiered process in which a Tier 1 EIS will be prepared to evaluate potential corridor alternatives, along with a No-Action alternative, for a future project-specific alignment.

The proposed tiering approach will allow FHWA and ADOT to evaluate a range of potential corridors within the North-South Corridor Study (NSCS) area boundaries and to broadly evaluate social, economic, and environmental impacts and mitigation approaches in the Tier 1 EIS. In addition, the NSCS area will be expanded to include an adjacent State Route 24 (SR 24) corridor study resulting in an updated study area encompassing the original study area between Interstate 10 (I–10) and U.S. Highway 60 (U.S. 60) and adding the extension of SR 24 from Ironwood Drive to the North-South Corridor in Pinal County, Arizona.

The Tier 1 analysis will utilize technical data obtained thus far in the environmental review process and collect other information as required. If the Record of Decision identifies an Action (Build) corridor alternative, subsequent projects will complete a Tier 2 National Environmental Policy Act (NEPA) review where the agencies will evaluate project-level, site-specific impacts, and required mitigation and commitments.

FOR FURTHER INFORMATION CONTACT: Aryan Lirange, Senior Urban Engineer, Federal Highway Administration, 4000 N. Central Avenue, Suite 1500, Phoenix, AZ 85012, Telephone: (602) 382–8973, Email: *aryan.lirange@dot.gov.*

SUPPLEMENTARY INFORMATION: On September 20, 2010, at 75 FR 57327, FHWA, in cooperation with ADOT, issued an NOI to prepare an EIS on a proposed 40-mile-long project along a new route located between U.S. 60 on the north and I–10 on the south, in Pinal County, Arizona. The project is considered necessary to achieve a transportation objective identified in Pinal County's 2008 Regionally Significant Routes for Safety and Mobility. The Study would address current and future transportation needs in an area that currently exceeds existing road capacity and is expected to continue to worsen with the projected increase in traffic demand associated with regional growth. The project scope also incorporates the extension of SR 24 from Ironwood Drive to the NSCS boundary. Information and documents regarding the environmental review process will be made available for the duration of the Tier 1 EIS process on the following Web site: *https://www.azdot.gov/projects/south-central/north-south-corridor-study.*

The Tier 1 EIS will use all existing data including the NSCS Alternatives Selection Report completed in October 2014 and engineering, environmental, and socioeconomic data collected since the issuance of the original NOI. The FHWA intends to issue a single Final Tier 1 EIS and Record of Decision document pursuant to Fixing America's Surface Transportation Act Section 1311 requirements, unless FHWA determines statutory criteria or practicability considerations preclude issuance of a combined document.

Stakeholder and Public Involvement: Stakeholder and public outreach will continue throughout this Tier 1 EIS process to provide opportunities for agency and public input on the study. A public hearing will be held upon release of the Tier 1 Draft EIS for public and agency review.

Alternatives: Corridor alternatives with widths appropriate for the evaluation of the full range of potential impacts will be developed within the updated study area. The Tier 1 EIS will evaluate a reasonable range of ''Action'' corridor alternatives and the ''No Action'' alternative.

Environmental Review Process: The Tier 1 EIS will be developed in accordance with Council on Environmental Quality (CEQ) regulations (40 Code of Federal Regulations [CFR] part 1500 *et seq.*) implementing NEPA (42 U.S.C. 4321 *et seq.*), and FHWA regulations. The FHWA and ADOT will use a tiered process, as provided for in 40 CFR 1508.28 and in accordance with FHWA guidance, in the completion of the environmental study.

If the Record of Decision indicates that FHWA has selected one of the corridor alternatives as the environmentally preferred alternative, the evaluation of a specific highway alignment within the selected corridor would occur in a subsequent phase of the study. Subsequent Tier 2 assessment(s) would address a proposed highway alignment to be developed within the corridor alternative selected in the Tier 1 EIS, and would incorporate by reference the Tier 1 data, evaluations, and findings. The Tier 2 NEPA evaluation(s) would concentrate on site-specific issues and alternatives relevant to implementing a new highway alignment within the selected Tier 1 alternative corridor, and would identify the environmental consequences and measures necessary to mitigate environmental impacts at a site-specific level of detail.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; U.S.C. 771.123.

Issued on: September 27, 2016.

Karla S. Petty,

Arizona Division Administrator, Federal Highway Administration.

[FR Doc. 2016–23784 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0003]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 26 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate commercial motor vehicles (CMV) in interstate commerce. Granting these exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 2, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0003 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of

the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

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

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The 26 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11), which applies to drivers who operate CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Application for Exemptions; National Association of the Deaf, (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Subsequent to the publication February 1, 2013 of the notice, the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

II. Qualifications of Applicants

Kay Baden

Ms. Baden, age 59, holds a class A CDL in Oregon.

Wyatt M. Baldwin

Mr. Baldwin, age 31, holds an operator's license in Nevada.

Moises Becerra

Mr. Becerra, age 26, holds an operator's license in Texas.

Matthew R. Burgoyne

Mr. Burgoyne, age 29, holds a class A CDL in Minnesota.

Pedro H. Calas

Mr. Calas, age 30, holds a class A CDL in Florida.

David T. Carlson

Mr. Carlson, age 76, holds a class A CDL in Wisconsin.

Marco A. Cisneros

Mr. Cisneros, age 26, holds an operator's license in California.

Mark B. Cole

Mr. Cole, age 40, holds an operator's license in California.

Filipe S. Fernandez

Mr. Fernandez, age 49 holds an operator's license in Florida.

Joshua Gelona

Mr. Gelona, age 25, holds an operator's license in Oklahoma.

William D. Gum

Mr. Gum, age 76, holds an operator's license in Texas.

Reginald C. Holmes

Mr. Holmes, age 31, holds an operator's license in Arizona.

Gary D. McBride

Mr. McBride, age 50, holds an operator's license in Florida.

Brent D. McCaffery

Mr. McCaffery, age 29, holds an operator's license in Iowa.

Benjoel C. Morton

Mr. Morton, age 35, holds an operator's license in Georgia.

Anthony S. Papa

Mr. Papa, age 51, holds an operator's license in Ohio.

Eduardo Pedregal

Mr. Pedregal, age 27, holds an operator's license in Texas.

Charles L. Pitt

Mr. Pitt, age 52, holds an operator's license in Alabama.

David Y. Pro

Mr. Pro, age 55, holds an operator's license in California.

Leonardo Pupo-Tuperet

Mr. Pupo-Tuperet, age 26, holds an operator's license in Washington.

Edgar J. Ramos

Mr. Ramos, age 52, holds an operator's license in Illinois.

Ronald D. Rumsey

Mr. Rumsey, age 53, holds an operator's license in Iowa.

Johnny Seng

Mr. Seng, age 22, holds an operator's license in Rhode Island.

Michael J. Sladick

Mr. Sladick, age 48, holds an operator's license in Ohio.

Brian J. Walthall

Mr. Walthall, age 49, holds an operator's license in Kansas.

Jack Whitewater

Mr. Whitewater, age 38, holds an operator's license in Florida.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public

comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0003 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0003 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: September 21, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23790 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0031]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted September 8, 2016. The exemptions expire on September 8, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

II. Background

On August 8, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 52514). That notice listed 11 applicants' case histories. The 11 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 11 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 11 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, Coat's retinopathy, corneal scar, exotropia, and refractive amblyopia. In most cases, their eye conditions were not recently developed. All of the applicants were either born with their vision impairments or have had them since childhood.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10),

each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 11 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 34 years. In the past three years, two drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 8, 2016, notice (81 FR 52514).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 11 applicants, two drivers were involved in crashes and no drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 11 applicants listed in the notice of July 12, 2016 (81 FR 52514).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 11 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's

or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received 12 comments in this proceeding. Brenda Hood, Shaun Bivens, Dana Arredondo, Brad Wright, Felicia Daza, Thomas Hood, John Bourne, Sherrilyn Arredondo, Nicholas Washington, Ernesto Valdespino, Irene Galvan, and an anonymous commenter are all in favor of granting Duane Brojer an exemption from the vision standard.

IV. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Daniel S. Billig (MN)
Duane N. Brojer (NM)
Jeffrey D. Davis (NC)
Paul D. Evenhouse (IL)
Jonathan W. Gibbons (IL)
Shane J. Graff (MI)
Brian D. Hoover (IA)
Michael A. Kafer (KS)
Christopher Robinson (NY)
Joshua R. Stanley (OK)
Charles F. Tibbetts (SC)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 22, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23789 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0094]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated September 9, 2016, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0094.

Applicant: Union Pacific Railroad Company, Mr. Kevin D. Hicks, AVP Engineering-Design, 1400 Douglas Street, Mail Stop 0910, Omaha, NE 68179.

UP seeks approval of the discontinuance of Control Point D120, Milepost 119.7, on the Chester Subdivision, St. Louis Service Unit Division at Thebes, IL. Two crossovers and four signals on the main tracks will be removed and will be replaced with regenerative repeaters. The reason given for the proposed discontinuance is to expedite train movements in the area and to make the switch renewal portion of a 2017 track project unnecessary.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 17, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–23795 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Railworthiness Directive for Certain Railroad Tank Cars Equipped With Bottom Outlet Valve Assembly and Constructed by American Railcar Industries and ACF Industries

AGENCY: Federal Railroad Administration (FRA) Department of Transportation (DOT).

ACTION: Notice of issuance and availability of Railworthiness Directive.

SUMMARY: On September 30, 2016, FRA issued a Railworthiness Directive (Directive or RWD) to all owners of Department of Transportation (DOT) specification 111 general purpose tank cars. This document announces FRA's issuance of the RWD and its availability on FRA's Web site.

FOR FURTHER INFORMATION CONTACT: Larry Strouse, General Engineer, Hazardous Materials Division, Office of

Technical Oversight, FRA, 200 W. Adams Street, Suite 310, Chicago, Illinois 60606, (312) 353–6203, *Larry.Strouse@dot.gov.*

SUPPLEMENTARY INFORMATION: FRA issued this Directive under 49 CFR 180.509(b)(4) to all owners of DOT specification 111 general purpose tank cars based on its finding that as a result of non-conforming welding practices, DOT–111 tank cars built by American Railcar Industries, Inc. (ARI) or ACF Industries, LLC (ACF) between 2009 and 2015 to the ARI or ACF 300 stub sill design and equipped with a two-piece cast sump and bottom outlet valve skid may be in an unsafe operating condition and could result in the release of hazardous materials. As a result of the identified non-conforming welding practices, these cars may have substantial weld defects at the sump and BOV skid groove attachment welds, potentially affecting each tank's ability to retain its contents during transportation. FRA issued the Directive to ensure public safety, ensure compliance with the applicable Federal regulations governing the safe movement of hazardous materials by rail, and ensure the railworthiness of the tank cars. The full text of the Directive is available on FRA's Web site at *www.fra.gov* by searching for RWD No. 2016–01.

Issued in Washington, DC, on September 27, 2016.

Robert C. Lauby,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2016–23770 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0086]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated August 19, 2016, BNSF Railway Company (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, *Railroad Locomotive Safety Standards,* and 49 CFR part 232, *Brake System Safety Standards* for freight *and other non-passenger trains and equipment; end-of-train devices.* Specifically, BNSF seeks a test waiver to investigate whether the 92-day interval for calibration of the air flow method (AFM) indicator required by 49 CFR 229.29(b) and 232.205(c)(1)(iii) can be safely extended to 184 days on locomotives equipped with New York Air Brake (NYAB) CCB–II air brake systems. This petition has been assigned Docket Number FRA–2016–0086.

In the petition for waiver, BNSF states that it has been collecting data for 3 years in support of an extended interval of 184 days for calibration of the AFM indicator on CCB–II air brake systems, and it has obtained support for this extension from NYAB. Summaries and analysis of this data and a statement from NYAB are included as appendices. To validate this assertion, BNSF proposes to designate a test group of 200 locomotives running on the Southern Transcon route between Kansas City (Argentine), KS, and Barstow, CA. These locomotives would be evaluated by a test waiver team at initial AFM indicator calibration, after 92 days, and for locomotives qualified to continue the test, at 184 days. To help ensure the validity of this testing, BNSF has already updated the AFM indicator calibration training of its mechanical forces and has completed a software upgrade on 93 percent of CCB–II equipped locomotives to eliminate a previous problem with loss of AFM calibration data due to dead batteries in the locomotive computer's CPU.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 17, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–23794 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0107]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 18, 2016, CSX Transportation (CSX) requested that the Federal Railroad Administration's (FRA) Railroad Safety Board (Board) issue an expansion of the territory allowed for its nonstop continuous rail testing process. CSX's existing waiver in this docket exempts it from the requirements of 49 CFR 213.113(a) so that it could implement a pilot test process for nonstop continuous rail testing. The projected starting date for implementing the process on the additional territories would be August 14, 2016, and the waiver process would continue up to December 31, 2017. The original

approved waiver allows CSX to perform the continuous test process on the main tracks between Richmond, VA, and Jacksonville, FL; between Albany, NY, and Buffalo, NY; and on the C&O Division from Russell, KY, to Newport News, VA. CSX is proposing the testing frequency along the mainline tracks not to exceed 62 days.

Expanded territory will include: Chicago Division, Barr Subdivision (Gary, IN, to Riverdale, IL, Milepost (MP) DC 0–DC 11.4 tracks 1 and 2); Barr Subdivision (Portage, IN, to Gary, IN, MP BI 236.9–BI 249 tracks 1 and 2); Garrett Subdivision (Auburn, IN, to Portage, IN, MP BI 124.7–BI 236.9 tracks 1, 2, and 3); Garrett East Subdivision (Deshler, OH, to Auburn, IN, MP BI 62.8–BI 124.7 tracks 1 and 2); Great Lakes Division, Willard Subdivision (Willard, OH, to Deshler, OH, MP BI 4.2–BI 62.8 tracks 1 and 2); Willard Terminal Subdivision (Willard, OH, to Willard, OH, MP BI 0–BI 4.2 1, 2, and 3); Willard Terminal Subdivision (Greenwich, OH, to Willard, OH, MP BG 192.9–BG 204 tracks 1, 2, and 3); Greenwich Subdivision (Berea, OH, to Greenwich, OH, MP QI 14.4–QI 54.46 tracks 1 and 2) Cleveland Shortline Subdivision (Cleveland, OH, to Berea, OH, MP QDS 0–QDS 23.5 tracks 1 and 2); Cleveland Terminal Subdivision (Euclid, OH, to Cleveland, OH, MP QD 171.2–QD 174.83 tracks 1 and 2); Erie West Subdivision (Derby, NY, to Euclid, OH, MP QD 15.6–QD 171.2 4 tracks 1, 2, 3, and 4); Albany Division, Buffalo Terminal Subdivision (Buffalo, NY, to Derby, NY, MP QD 0–QD 15.6 tracks 1, 2, and 3); Buffalo Terminal Subdivision (North Chili, NY, to Buffalo, NY, MP QC 382.8–QC 437.8 tracks 1, 2, 3, and 4) Rochester Subdivision (Syracuse, NY, to North Chili, NY, MP QC 296.8–382.8 tracks 1 and 2) Syracuse Terminal Subdivision (Oneida, NY, to Syracuse, NY, MP QC 263.7–QC 296.8 tracks 1, 2, and 3); Mohawk Subdivision (Amsterdam, NY, to Oneida, NY, MP QC 169.7–QC 263.7 tracks 1 and 2); Selkirk Subdivision (Selkirk, NY, to Amsterdam, NY, MP QG 13.7–QG 42.47 tracks 1 and 2); Castleton Subdivision (Selkirk, NY, to Selkirk, NY, MP QG 11.7–QG 13.7 tracks 1 and 2); River Subdivision (North Bergen, NJ, to Selkirk, NY, MP QR 1.68–QR 132.6 track 1 and 2); Trenton Subdivision (Philadelphia, PA, to Manville NJ, MP QA 0–QA 57.33 tracks 1, 2, and 3); Baltimore Division Philadelphia Subdivision (Philadelphia, PA, to Philadelphia, PA, MP BBF 0–BBF 1.38 tracks 1 and 2); Philadelphia Subdivision (Philadelphia, PA, to Baltimore, MD, MP BAK 0–BAK 89.6 tracks 1, 2, and 3); Baltimore Terminal Subdivision (Baltimore, MD, to Baltimore, MD, MP BAK 89.6–BAK 96.6 tracks 1 and 2); Baltimore Terminal Subdivision (Baltimore, MD, to Halethorpe, MD, MP BAA 0–BAA 6.5 tracks 1, 2, and 3) Capital Subdivision (Halethorpe, MD, to Hyattsville, MD, MP BAA 6.6–BAA 33.1 tracks 1 and 2) Capital Subdivision (Hyattsville, MD, to Washington, DC, MP CFP 113.8–CFP 121.7 tracks 1 and 2) RF&P Subdivision (Richmond, VA, to Washington, DC, MP CFP 5.1–CFP 113.8 tracks 1, 2, 3, and 4); Florence Division Richmond Terminal Subdivision (Richmond, VA, to Richmond, VA, MP CFP 1–5.1 tracks 1 and 2); Richmond Terminal Subdivision (Richmond, VA, to Richmond, VA, MP ARN 0–ARN 3.6 tracks 1 and 2); North End Subdivision (Richmond, VA, to Rocky Mount, NC, MP A–A 119.9 tracks 1 and 2); South End Subdivision (Rocky Mount, NC, to Dillon, SC, MP A 119.9–A 262.9 tracks 1 and 2).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

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- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by November 17, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–23793 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2016–0034]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of 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 Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 9, 2016 (81 FR 28158).

DATES: Comments must be submitted on or before November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE., Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2,

109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 9, 2016, FTA published a 60-day notice (81 FR 28158) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5339, Bus and Bus Facilities Program.

OMB Control Number: 2132–0576.

Type of Request: Revision of a currently approved information collection.

Abstract: 49 U.S.C. Section 5339, the Bus and Bus Facilities Program, was originally authorized by the Moving Ahead for Progress in the 21st Century (MAP–21). The program was reauthorized under the Fixing America's Surface Transportation (FAST) Act Section 3017. This program authorizes the Secretary of Transportation to provide funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities including technological changes or innovations to modify low or no emission vehicles or facilities.

Funding is provided through formula allocations and competitive grants. With the passing of the FAST Act, two competitive grant programs were added: 5339(b) for bus and bus facility projects and 5339(c) for bus and bus facility projects that support low and zero-emission vehicles. Eligible recipients include 5307 Direct Recipients, States and Federally Recognized Tribes. Eligible sub-recipients include those recipients that that receive a grant under the formula or discretionary programs and may allocate amounts from the grant to sub-recipients that are public agencies or private nonprofit organizations engaged in public transportation. Recipients apply for grants electronically and FTA collects milestone and financial status reports from designated recipients and states on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Annual Estimated Total Burden Hours: 60,650 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–23772 Filed 9–30–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2016–0033]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of 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 Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 9, 2016 (81 FR 28157).

DATES: Comments must be submitted on or before November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE., Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 9, 2016, FTA published a 60-day notice (81 FR 28157) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is

published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5337, the State of Good Repair Grants Program.

OMB Control Number: 2132–0577.

Type of Request: Extension without change of a currently approved information collection.

Abstract: 49 U.S.C. Section 5337, the State of Good Repair Grants Program was authorized by Moving Ahead for Progress in the 21st Century (MAP–21). It was reauthorized under the Fixing America's Surface Transportation (FAST) Act Section 3015. This program authorizes the Secretary of Transportation to make grants to designated recipients to maintain, replace, and rehabilitate high intensity fixed guideway systems and high intensity motorbus systems. Eligible recipients include state and local government authorities in urbanized areas with high intensity fixed guideway systems and/or high intensity motorbus systems operating for at least seven years. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. FTA will apportion funds to designated recipients. The designated recipients will then allocate funds as appropriate to recipients that are public entities in the urbanized areas. FTA can make grants to direct recipients after sub-allocation of funds. Recipients apply for grants electronically, and FTA collects milestone and financial status reports from designated recipients on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Annual Estimated Total Burden Hours: 9,120 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–23771 Filed 9–30–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Acceptance of Applications for the Award of Two Maritime Security Program Operating Agreements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of application period for the Maritime Security Program.

SUMMARY: The Maritime Administration (MARAD) is issuing this request for applications for eligible vessels to enroll in two Maritime Security Program (MSP) Operating Agreements, subject to the availability of appropriations, in accordance with the provisions of the Maritime Security Act of 2003, Public Law 108–136, div. C, title XXXV, as amended by Section 3508 of the National Defense Authorization Act for Fiscal Year (FY) 2013, Public Law 112–239 (NDAA 2013). The MSP maintains a fleet of active, commercially viable, militarily useful, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping. This request for applications provides, among other things, application criteria and a deadline for submitting applications for vessel enrollment in the MSP.

DATES: Applications for the enrollment of two vessels must be received no later than November 2, 2016. Applications should be submitted to the address listed in the **ADDRESSES** section below.

ADDRESSES: Application forms and instructions are available on the MARAD Web site at *http://www.marad.dot.gov/ships-and-shipping/strategic-sealift/maritime-security-program-msp/.* Applications shall be addressed to the Director, Office of Sealift Support, Maritime Administration, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., W25–310, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, Director, Office of Sealift Support, Maritime Administration, (202) 366–0688. For military utility questions, call Mr. Tim Boemecke, United States Transportation Command (USTRANSCOM), (618) 220–1452.

SUPPLEMENTARY INFORMATION: Section 53102(a) of Title 46, United States Code, directs the Secretary of Transportation (Secretary), in consultation with the Secretary of Defense (SecDef), to establish a fleet of active, commercially-viable, militarily-useful, privately-owned vessels to meet national defense and other security requirements. Payments to participating operators are subject to the availability of appropriations and are limited to the following amounts: $3.5 million per ship for FY 2016, $4.99995 million per ship for FY 2017, $5.0 million per ship for FY 2018 through 2020, $5.233463 million per ship for FY 2021, and $3.7 million per ship for FY 2022 through FY 2025. Consistent with the National Security Requirements section below, participating operators are required to make their commercial transportation resources available upon request by SecDef during times of war or national emergency.

Application Criteria

The NDAA 2013 amended the procedures in 46 U.S.C. 53103(c) for awarding new MSP Operating Agreements. Namely, it established a revised priority system whereby applications would first be evaluated on the basis of vessel type, as determined by Department of Defense (DOD) requirements, with secondary consideration then provided to the citizenship status of the applicant.

Vessel Requirements

Acceptable vessels for these MSP Operating Agreements must meet the requirements of 46 U.S.C. 53102(b) and 46 CFR 296.11. In addition, the Commander, USTRANSCOM, has established DOD general evaluation criteria on the military requirements for eligible MSP vessels. Priority consideration, consistent with the requirements of 46 U.S.C. 53103(c), will be given to applications providing for enrollment of the following vessel types in order of priority:

1. Roll-On/Roll-Off (RO/RO) Vessels.
2. Multi-Purpose/Heavy Lift Vessels.
3. Geared Container Ships.
4. All other vessel types, which will be considered after all applications for the above listed vessels types have been reviewed.

For each individual application, the offered vessel's class society vessel-type designation will serve as the primary factor in determining the priority category in which the vessel is placed.

National Security Requirements

Successful applicants will be required to enter into an Emergency Preparedness Agreement (EPA) pursuant to 46 U.S.C. 53107. The EPA incorporates the terms of the Voluntary Intermodal Sealift Agreement (VISA), available in 79 FR 64462 (October 29, 2014).

Documentation

Vessels must be documented in the United States under 46 U.S.C. chapter 121 prior to being eligible for MSP payments. Further, proof of U.S. Coast Guard vessel documentation and all relevant charter and management agreements must be approved by MARAD before the vessel will be eligible to receive MSP payments. If a vessel being considered is not currently under U.S. documentation, MARAD requires information regarding the time line proposed that would bring the vessel under U.S. Coast Guard documentation.

Vessel Operation

Vessels under MSP Operating Agreements shall be operated exclusively in foreign commerce as defined in 46 U.S.C. 53101(4) or in permissible mixed foreign commerce and domestic trade as provided by 46 U.S.C. 53105(a)(1)(A).

Prior Applicants

Applicants who previously responded to MARAD's November 27, 2015, Notice of Application Period for the Maritime Security Program, 80 FR 74209 (November 27, 2015), that wish to submit the same vessel(s) for consideration may do so by submitting a letter expressing their intention and providing any updated information and documentation.

Award

MARAD does not guarantee the award of MSP Operating Agreements in response to applications submitted under this Notice. In the event that no awards are made or an application is not selected for an award, the applicant will be provided with a written reason why the application was denied, consistent with the requirements of 46 U.S.C. 53103(c).

Protection of Confidential Commercial or Financial Information

If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Commercial or Financial Information (CCFI)''; (2) mark each affected page ''CCFI''; and (3) highlight or otherwise denote the CCFI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(Authority: 46 U.S.C. 53102 and 53103; 46 CFR 296.24; 49 CFR 1.92 and 1.93)

By Order of the Maritime Administrator.

Dated: September 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–23823 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Global Positioning System Adjacent Band Compatibility Assessment Workshop V Meeting

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to inform the public that the U.S. Department of Transportation will host its fifth workshop on the Global Positioning System (GPS) Adjacent Band Compatibility Assessment effort. The purpose of this workshop is to discuss the results from testing of various categories of GPS/Global Navigation Satellite System (GNSS) receivers to include aviation (non-certified), cellular, general location/navigation, high precision and networks, timing, and space-based receivers. The workshop also will include a discussion on the development of use-case scenarios for these categories.

DATES:

Meeting date/time: October 14, 2016 10 a.m.–4 p.m. (Eastern Daylight Time).

Registration deadline: October 11, 2016. Request alternative meeting formats or services by October 7, 2016.

ADDRESSES: RTCA, Inc., 1150 18th St. NW., Suite 910, Washington, DC 20036.

Several days leading up to the workshop, an email containing the agenda, dial-in, and WebEx information will be provided.

FOR FURTHER INFORMATION CONTACT: Stephen M. Mackey, U.S. Department of Transportation, John A. Volpe National Transportation Systems Center, V–345, 55 Broadway, Cambridge, MA 02142, *Stephen.Mackey@dot.gov* 617–494–2753.

SUPPLEMENTARY INFORMATION: The goal of the GPS Adjacent Band Compatibility Assessment Study is to evaluate the adjacent radio frequency band power levels that can be tolerated by GPS/GNSS receivers, and advance the Department's understanding of the extent to which such power levels impact devices used for transportation safety purposes, among other GPS/GNSS applications. The Department obtained input from broad public outreach in development of its GPS Adjacent Band Compatibility Assessment Test Plan that included four public meetings with stakeholders on September 18 and December 4, 2014, and March 12 and October 2, 2015, public issuance of a draft test plan on September 9, 2015 (see 80 FR 54368), and comments received regarding the test plan. The final test plan was published March 9, 2016 (see 81 FR 12564) and requested voluntary participation in this Study by any interested GPS/GNSS device manufacturers or other parties whose products incorporate GPS/GNSS devices. In April 2016, radiated testing of GNSS devices took place in an anechoic chamber at the U.S. Army Research Laboratory at the White Sands Missile Range (WSMR) facility in New Mexico. Additional lab testing was conducted in July 2016 at Zeta Associates in Fairfax, Virginia and

MITRE Corporation in Bedford, Massachusetts (see 81 FR 44408).

Registration

This workshop is open to the general public by registration only. For those who would like to attend the workshop, we request that you register no later than October 11, 2016. Please use the following link to register: *https://volpecenterevents.webex.com/volpecenterevents/onstage/g.php?MTID=e856d4f062c520e41d0793b581a9ead82*

You must include:

- Name
- Organization
- Telephone number
- Mailing and email addresses
- Attendance method (WebEx or on site)
- Country of citizenship

The U.S. Department of Transportation is committed to providing equal access to this workshop for all participants. If you need alternative formats or services because of a disability, please contact Stephen Mackey (see **FOR FURTHER INFORMATION CONTACT** section) with your request by close of business October 7, 2016.

Issued in Washington, DC, on September 26, 2016.

Gregory D. Winfree,

Assistant Secretary for Research and Technology.

[FR Doc. 2016–23791 Filed 9–30–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13413, and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective September 28, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 28, 2016 OFAC blocked the property and interests in property of the following two individuals pursuant to E.O. 13413, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo'':

1. KUMBA, Gabriel Amisi (a.k.a. AMISI, Nkumba; a.k.a. ''Tango Fort''; a.k.a. ''Tango Four''); DOB 28 May 1964; nationality Congo, Democratic Republic of the; Gender Male; Major General; Commander of the First Defense Zone; Former Armed Forces of the Democratic Republic of the Congo land forces commander (individual) [DRCONGO].

2. NUMBI, John; DOB 1957; POB Kolwezi, Katanga Province, Democratic Republic of the Congo; Gender Male; General; Former National Inspector, Congolese National Police (individual) [DRCONGO].

Dated: September 28, 2016.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–23831 Filed 9–30–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–50, Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

DATES: Written comments should be received on or before December 2, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

OMB Number: 1545–2041.

Revenue Procedure Number: Revenue Procedure 2006–50.

Abstract: This revenue procedure provides the procedures under which the whaling expenses of an individual recognized by the Alaska Eskimo Whaling Commission (AEWC) as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities are substantiated for purposes of Internal Revenue Code § 170(n), as enacted by the American Jobs Creation Act of 2004 and effective for whaling expenses incurred after December 31, 2004. Public Law 109–357, § 335.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 24.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 48.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall 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 to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 28, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–23943 Filed 9–29–16; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 81 Monday,

No. 191 October 3, 2016

Part II

Environmental Protection Agency

40 CFR Parts 51, 52, 60, *et al.*

Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60, 70 and 71

[EPA–HQ–OAR–2015–0355; FRL–9951–79–OAR]

RIN 2060–AS62

Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise provisions applicable to greenhouse gases (GHG) in the EPA's Prevention of Significant Deterioration (PSD) and title V permitting regulations. This action is in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG)* v. *EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA.* The proposed PSD and title V revisions involve changes to several regulatory definitions in the PSD and title V regulations, revisions to the PSD provisions on GHG Plantwide Applicability Limitations (PALs), and revisions to other provisions necessary to ensure that neither the PSD nor title V rules require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs above the applicable thresholds. In addition, the EPA is also proposing a significant emissions rate (SER) for GHGs under the PSD program that would establish an appropriate threshold level below which Best Available Control Technology (BACT) is not required for a source's GHG emissions.

DATES: Comments must be received on or before December 2, 2016.

If anyone contacts us requesting to speak at a public hearing by October 13, 2016, we will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0355, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed rule should be addressed to Ms. Carrie Wheeler, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–01), Research Triangle Park, NC 27711, telephone number (919) 541–9771, email at *wheeler.carrie@epa.gov*.

To request a public hearing or information pertaining to a public hearing on this proposal, contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–01), Research Triangle Park, NC 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email at: *long.pam@epa.gov* (preferred method of contact).

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

I. General Information
A. To whom does this action apply?
B. Where To Get a Copy of This Document and Other Related Information
C. What acronyms, abbreviations and units are used in this preamble?
II. Overview of the Proposed Rule
III. Background
A. PSD Program
B. Title V Program
C. Application of PSD and Title V Programs to GHG Emissions
1. Regulation of the Pollutant GHGs
2. Revisions to PSD and Title V Regulations in the Tailoring Rule
3. Actions After the Tailoring Rule
IV. Revisions to the PSD and Title V GHG Permitting Regulations
A. What revisions to the PSD and title V GHG permitting regulations is the EPA proposing with this action?
1. Revisions to the PSD Regulations
2. Revisions to the PSD PAL Regulations
3. Revisions to State-Specific PSD Regulations
4. Revisions to the Title V Regulations
5. Revisions to State-Specific Title V Regulations
B. What additional regulatory revisions is the EPA proposing with this action?
V. Establishment of a GHG SER
A. What is the legal basis for establishing a GHG SER?
B. What is the regulatory context for the *de minimis* exception proposed in this rule?
C. Historical Approaches to Establishing a *De Minimis* Level in the PSD Program
D. What is the technical basis for the proposed GHG SER?
1. Summary of Technical Support Information
2. Review of PSD Permitting and GHG Emission Sources
a. GHG Permitting Under Step 1 of the Tailoring Rule
b. RBLC Permitting Information
3. GHG Emissions Levels for Combustion Units
4. Non-Combustion Related GHG Emissions
5. Potential BACT Techniques Applicable to GHG Emission Sources
a. Energy Efficiency Measures
b. Carbon Capture and Storage
c. Gas Recovery and Utilization
d. Leak Detection and Repair Measures
6. Costs of GHG BACT Review
E. Proposed GHG SER and Request for Comment
VI. What would be the economic impacts of the proposed rule?
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I. General Information

A. To whom does this action apply?

This proposal potentially affects owners and operators of sources in all industry groups, such as the owners and operators of proposed new and modified major stationary sources. The majority of potentially affected categories and entities include:

Industry group	NAICS [a]
Mining	21.
Utilities (electric, natural gas, other systems)	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing	321, 322.
Petroleum and coal products manufacturing	32411, 32412, 32419.
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing	3261, 3262.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359.
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369.
Furniture and related product manufacturing	3371, 3372, 3379.
Miscellaneous manufacturing	3391, 3399.
Waste management and remediation	5622, 5629.

[a] North American Industry Classification System.

Potentially affected entities also include state, local and tribal permitting authorities [1] responsible for implementing the PSD and title V permitting programs.

As noted, the potentially affected entities could be in any industry group. Thus, the earlier table is not intended to be exhaustive, but rather provides a guide for readers regarding likely affected entities. The EPA believes this table lists the most typical types of affected entities. Other types of entities not listed in the table could also be regulated. To determine if an entity is regulated by this action, the applicability criteria found in the PSD and title V regulations (and which are briefly described in Sections III.A and B of this preamble) should be consulted.

B. Where To Get a Copy of This Document and Other Related Information

In addition to being available in the docket, an electronic copy of this proposal notice will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations section of our New Source Review (NSR) Web site, under Regulatory Actions, at *http://www.epa.gov/nsr/nsr-regulatory-actions* and the title V Web site, under Current Regulations and Regulatory Actions, at *http://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.* A ''track changes'' version of the full regulatory text that incorporates and shows the full context of the changes in this proposed action is also available in the docket for this rulemaking. In addition to the proposal and regulatory text documents, other relevant documents are located in the docket, including technical support documents referenced in this preamble.

C. What acronyms, abbreviations and units are used in this preamble?

APA Administrative Procedures Act
AQRV[s] Air Quality Related Value[s]
BACT Best Available Control Technology
CAA or Act Clean Air Act
CCS Carbon Capture and Sequestration
CFR Code of Federal Regulations
CH_4 Methane
CO Carbon Monoxide
CO_2 Carbon Dioxide
CO_2e Carbon Dioxide Equivalent
D.C. Circuit United States Court of Appeals for the District of Columbia Circuit
EGU Electric Generating Unit
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GHG[s] Greenhouse Gas[es]
GHGRP Greenhouse Gas Reporting Program
GWP Global Warming Potential
HP Horsepower
HFC[s] Hydrofluorocarbons
IC Internal Combustion
ICR Information Collection Request
LAER Lowest Achievable Emission Rate
LDAR Leak Detection and Repair
LDVR Light-Duty Vehicle Rule
NAAQS National Ambient Air Quality Standard
NESHAP National Emission Standard for Hazardous Air Pollutants
NHTSA National Highway Transportation Safety Administration
NO_X Nitrogen Oxides
NO_2 Nitrogen Dioxide
NSPS New Source Performance Standard
NSR New Source Review
OMB Office of Management and Budget
PAL[s] Plantwide Applicability Limitation[s]
PFC[s] Perfluorocarbons
PM Particulate Matter
PSD Prevention of Significant Deterioration
PTE Potential To Emit
RACT Reasonably Available Control Technology
SER Significant Emissions Rate
SF_6 Sulfur Hexafluoride
SIP State Implementation Plan
SO_2 Sulfur Dioxide
TCEQ Texas Commission on Environmental Quality
TIP Tribal Implementation Plan
Tpy Tons Per Year
UARG Utility Air Regulatory Group
UMRA Unfunded Mandates Reform Act
VOC Volatile Organic Compound

II. Overview of the Proposed Rule

The EPA is proposing revisions to the provisions applicable to GHGs in its PSD and title V permitting regulations in order to conform those regulations with the U.S. Supreme Court's decision in *UARG* v. *EPA,* 134 S.Ct. 2427 (2014), and the April 10, 2015, Amended Judgment by the D.C. Circuit in *Coalition for Responsible Regulation* v. *EPA,* Nos. 09–1322, 10–073, 10–1092 and 10–1167 (D.C. Cir. April 10, 2015) (Amended Judgment). Some of these provisions were promulgated as part of

[1] Under the PSD regulations, the entities that implement the program are referred to as ''reviewing authorities,'' while under the title V program the implementing entities are referred to as ''permitting authorities.'' For simplicity, in this preamble we refer to both as ''permitting authorities.''

the June 3, 2010, regulation titled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' [2] (hereinafter ''Tailoring Rule''). The D.C. Circuit Amended Judgment ordered that: (1) The regulations under review be vacated to the extent they require a stationary source to obtain a PSD or title V permit solely because the source emits or has the potential to emit GHG above the applicable thresholds and (2) that the EPA consider whether any further revisions to its regulations are appropriate in light of *UARG* v. *EPA* and, if so, that it undertake to make such revisions. The proposed revisions to the PSD and title V GHG permitting regulations include changes to certain regulatory definitions and the PSD PAL provisions applicable to GHGs. In addition, we are proposing to establish a SER for GHGs [3] under the PSD air permitting program to establish an appropriate threshold level below which BACT review is not required for GHG emissions from a source that is required to obtain a PSD permit.

The EPA published an initial set of revisions in light of the *UARG* v. *EPA* decision and the D.C. Circuit's Amended Judgment on August 19, 2015.[4] These revisions removed entire sections and paragraphs that were readily severable from other provisions in the PSD and title V regulations and specifically identified in the D.C. Circuit's Amended Judgment. These removed provisions required a stationary source to obtain a PSD permit solely on the basis of the source's GHG emissions and required that the EPA study and consider further phasing-in the PSD and title V permitting requirements at lower GHG emissions thresholds. Because of the nature of the D.C. Circuit's Amended Judgment, these earlier revisions were ministerial in nature and exempt from notice-and-comment rulemaking procedures under the ''good cause'' exception of the Administrative Procedure Act (APA).

In this action, the EPA is proposing a second set of regulatory revisions that we believe are necessary to fully implement the *UARG* decision and D.C. Circuit Amended Judgment and further revisions that are appropriate in light of *UARG.* The revisions proposed in this action were not included in the August 19, 2015, rule because the revisions proposed in this action amend, rather than completely remove, text that remains pertinent to the PSD and title V programs as a whole and their continued application to GHGs. As a result, these revisions are not ministerial in nature and not exempt from notice-and-comment rulemaking procedures under the ''good cause'' exception of the APA. Therefore, this action gives the public an opportunity to comment on how the EPA proposes to revise other parts of its regulations to conform to the Amended Judgment as further explained in Section IV.

In general, this action proposes revisions to the PSD definitions at 40 Code of Federal Regulations (CFR) sections 51.166 and 52.21 for the following terms: ''major stationary source,'' ''major modification,'' ''significant,'' and ''subject to regulation.'' This action also proposes to revise the title V definitions at 40 CFR parts 70 and 71 for the terms ''major stationary source'' and ''subject to regulation.'' In addition, this action proposes to add a definition of ''greenhouse gases'' to these PSD and title V regulations, which contains content that was previously part of the definition of ''subject to regulation'' in each set of regulations. The EPA believes these revisions are appropriate to fully implement the Amended Judgment. We are also proposing to revise the PSD GHG PAL provisions at 40 CFR part 52 to reflect the *UARG* decision, which stated that sources that only emit or have the potential to emit GHGs above the applicable thresholds are no longer required to obtain a PSD permit. Furthermore, we are proposing to revise certain provisions under 40 CFR part 60, which the EPA wrote to ensure that the existing GHG applicability threshold for the PSD BACT requirement continues to apply on an interim basis after this pollutant became regulated under standards set forth in those parts. Finally, we are proposing to revise a few state-specific PSD or title V permitting provisions that, in general, established permitting requirements for sources that only emit or have the potential to emit GHGs above the major source thresholds. We are proposing the revisions listed in this paragraph in response to the D.C. Circuit's directive in the Amended Judgment.

In addition, the EPA is proposing to establish a SER for the pollutant GHGs under the PSD permitting program in response to the *UARG* decision. The U.S. Supreme Court recognized that the EPA did not justify on *de minimis* grounds the 75,000 tons per year (tpy) carbon dioxide equivalent (CO_2e) threshold that currently determines whether GHG BACT is required for ''anyway sources.'' [5] 134 S.Ct. at 2438 n. 3. The U.S. Supreme Court also expressly did not address whether 75,000 tpy CO_2e necessarily exceeds a true *de minimis* level, holding only that the EPA must justify its selection of such a level on proper grounds. 134 S.Ct. at 2449. An ''anyway source'' in this context refers to a facility or emission source that is otherwise required to obtain a PSD permit based on its emissions of one or more regulated NSR pollutants other than GHG. The U.S. Supreme Court limited the scope of the PSD permitting program to ''anyway sources'' and added that the EPA may exempt an ''anyway source'' from the GHG BACT requirement if the source emits a *de minimis* amount of GHGs. 134 S.Ct. at 2449.

In response to the outcome of the *UARG* decision, this rulemaking action proposes a GHG SER that represents a *de minimis* level of GHG emissions for the purposes of determining the applicability of the GHG BACT requirement at ''anyway sources,'' new and modified sources that trigger PSD permitting obligations on the basis of their emissions of air pollutants other than GHGs. If not for provisions that remain in the EPA's definition of ''subject to regulation'' at this time, any GHG emissions increase at an ''anyway source'' would be considered ''significant'' and thus require a newly constructed major source, or a major modification at an existing major source, to undergo PSD BACT review for GHGs.[6]

In July 2014, following the *UARG* decision, the EPA issued a memorandum titled, ''Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the U.S. Supreme Court's Decision in *UARG* v. *EPA*'' (Preliminary Views Memo).[7] In that memorandum

[2] 75 FR 31514, June 3, 2010.

[3] In this document, we reserve the abbreviations ''GHG'' and ''GHGs'' to refer to the air pollutant ''greenhouse gases,'' which is defined as the aggregate of six individual greenhouse gases as discussed in Section III C.2 of this preamble. We spell out ''greenhouse gas'' where we refer more broadly to compounds that trap heat in the atmosphere.

[4] 80 FR 50199, August 19, 2015.

[5] Under existing regulations, a threshold level of 75,000 tpy CO_2e is contained in the definition of a ''subject to regulation'' to determine the applicability of the GHG PSD permitting requirements to ''anyway sources.'' 40 CFR part 51.166(b)(48)(iv); 40 CFR part 52.21(b)(49)(iv). This value was based principally on addressing potential permitting burdens, but it was not proposed or promulgated as a permanent GHG SER (75 FR 31560).

[6] Definition of ''significant,'' 40 CFR part 51.166(b)(23)(ii) and 40 CFR part 52.21(b)(23)(ii).

[7] Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA,* Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant

the EPA explained that, among other things, it would consider whether to promulgate a *de minimis* level.[8] The EPA also explained that, with respect to new ''anyway sources,'' we preliminarily ''intend to continue applying the PSD BACT requirements to GHG if the source emits or has the potential to emit 75,000 tpy or more of GHG on a [CO_2e] basis.'' [9] With respect to modified sources, we said that initially ''the EPA intends to continue applying the PSD BACT requirements to GHG if both of the following circumstances are present: (1) The modification is otherwise subject to PSD for a pollutant other than GHG; (2) the modification results in a GHG emissions increase and a net GHG emissions increase equal to or greater than 75,000 tpy CO_2e and greater than zero on a mass basis.'' [10]

In this proposed rule, based on our technical and legal analyses as described in Section V of this preamble, we are proposing to establish a 75,000 tpy CO_2e SER. We propose to determine that this level represents a *de minimis* level of GHG emissions for purposes of determining whether the GHG BACT review should be required as part of an ''anyway source'' PSD permit. A 75,000 tpy CO_2e GHG SER, based on our technical analysis, represents a level of GHGs, below which there is trivial or no value in conducting a BACT analysis for GHGs because we would not expect to obtain meaningful GHG reductions from requiring application of BACT at all such sources. In addition, there does not appear to be a basis to set a GHG SER level above 75,000 tpy CO_2e based on our review of the GHG permitting experience to date and the fundamental principles for establishing a *de minimis* exception to a statutory requirement as described in Section V of this preamble. Therefore, we are not considering a GHG SER level greater than 75,000 tpy CO_2e. Finally and although our analysis supports a SER at 75,000 tpy CO_2e, we are soliciting comments on (and associated supporting documentation for) establishing a GHG SER level below 75,000 tpy CO_2e and at or above 30,000 tpy CO_2e. Based on our current understanding, we do not believe there is any basis for a SER level to be established below 30,000 tpy CO_2e, and we are not considering SER values below this level.

Administrator, Office of Enforcement and Compliance Assurance, U.S. EPA, to Regional Administrators, July 24, 2014. Available at *http://www.epa.gov/sites/production/files/2015-12/documents/20140724memo.pdf.*

[8] *Id.* at 4.

[9] *Id.* at 3.

[10] *Id.* at 3.

III. Background

A. PSD Program

Part C of title I of the CAA contains the requirements for the PSD program. The primary element of this program is a preconstruction review and permitting requirement for new and modified stationary sources of air pollution locating in areas meeting a national ambient air quality standard (NAAQS) (''attainment'' areas) and areas for which there is insufficient information to classify the area as either attainment or nonattainment (''unclassifiable'' areas). Under the CAA, the PSD preconstruction permitting requirement applies to any ''major emitting facility'' that commences construction or undertakes a ''modification.'' CAA 165(a) and CAA 169(2)(C). The Act defines the term ''major emitting facility'' as a stationary source that emits or has the potential to emit any air pollutant in the amount of at least 100 or 250 tpy, depending on the source category. CAA section 169(1). The Act also defines ''modification'' as any physical or operational change that increases the amount of any air pollutant emitted by the source. CAA section 111(a)(4).

The EPA's regulations reflect these requirements.[11] Under the regulations, PSD applies to any ''major stationary source'' that begins actual construction on a new facility or undertakes a ''major modification'' in an area designated as attainment or unclassifiable for a NAAQS. 40 CFR 52.21(a)(2)(i)–(iii). The regulations define a ''major stationary source'' as a stationary source that emits, depending on the source category, at least 100 or 250 tpy, of a ''regulated NSR pollutant.'' 40 CFR part 52.21(b)(1)(i)(*a*)–(*b*). A ''regulated NSR pollutant'' is defined as any of the following: (1) In general, any pollutant subject to a NAAQS, (2) any pollutant subject to a standard of performance for new sources under CAA section 111, (3) any of a certain type of stratospheric ozone depleting substances, or (4) any pollutant that otherwise is subject to regulation under the Act. 40 CFR part 52.21(b)(50)(i)–(iv). Regulated NSR pollutants do not include hazardous air pollutants listed under CAA section 112. 40 CFR part 52.21(b)(v).

Construction of a new major stationary source [12] is subject to preconstruction review under PSD if the source has the potential to emit any regulated NSR pollutant in the amount of at least 100 or 250 tpy, depending on the source category. The PSD permitting requirements then apply to each regulated NSR pollutant that the source would have the potential to emit in ''significant amounts.'' 40 CFR parts 52.21(j); 52.21(m)(1)(i). PSD does not apply to pollutants for which the area in which the source would be located is a nonattainment area (often referred to as ''nonattainment pollutants'') 40 CFR part 52.21(i)(2). The amount of emissions of each pollutant that is considered significant is specified in the definition of the term ''significant.'' 40 CFR part 52.21(b)(23)(i). Because these values are expressed as a rate of emissions in tpy, the EPA often refers to each value as a ''significant emissions rate'' or ''SER.'' For any regulated NSR pollutant for which no SER is specified, any emissions rate is considered significant. 40 CFR part 52.21(b)(23)(ii).

The PSD program also applies to an existing major stationary source when there is a planned ''major modification'' to the source, which is a physical change or change in the method of operation that would result in both a significant emissions increase and a significant net emissions increase of one or more regulated NSR pollutants, other than nonattainment pollutants.[13] The SERs are the measure that is used to determine whether projected emissions increases of regulated NSR pollutants are significant.

One principal PSD requirement is that a permit authorizing construction of a new major source or major modification must contain emissions limitations based on application of the BACT for each regulated NSR pollutant. BACT is

[11] The EPA's PSD regulations are found in two parts of 40 CFR, part 51 and part 52. The part 52 regulations at 40 CFR 52.21 constitute the federal PSD program that applies in any state or other area, such as Indian country, that does not have an approved PSD program in its implementation plan. The part 51 regulations at 40 CFR 51.166 spell out the requirements that must be met for the EPA to approve a PSD program into an implementation plan. The language in the regulations is nearly identical, with small differences reflecting their different purposes. For simplicity, we cite only the 40 CFR part 52 regulations in this section, but the part 51 regulations contain analogous provisions in 40 CFR 51.166.

[12] A new major stationary source can be either a newly constructed facility or a physical change at an existing minor source that would qualify as a major stationary source by itself. 40 CFR 52.21(b)(1)(i)(*c*).

[13] There is a two-step process for determining whether a planned physical or operational change at an existing major stationary source qualifies as a major modification that is subject to PSD. First, the change itself must be projected to result in a significant increase in a regulated NSR pollutant. If so, the change must also be projected to result in a significant net emissions increase of that pollutant when other contemporaneous, creditable increases and decreases of that pollutant at the source are taken into account. This process is spelled out at 40 CFR 52.21(a)(2)(iv); the definition of ''major modification'' is at 40 CFR 52.21(b)(2) and the definition of ''net emissions increase'' is at 40 CFR 52.21(b)(3).

determined on a case-by-case basis, taking into account, among other factors, the energy, environmental, and economic impacts. 40 CFR part 52.21(b)(12) and (j). To ensure these criteria are satisfied in individual permitting decisions, the EPA has developed a ''top-down'' approach for BACT review that the EPA applies and recommends to state permitting authorities. This involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. *In re Prairie State Generating Company,* 13 E.A.D. 1, 13–14 (EAB 2006). Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that is projected to increase over its PSD significance level as a result of new construction or a modification project at an existing major source.

In addition to complying with the BACT requirements, the source must analyze impacts on ambient air quality and demonstrate that the construction will not cause or contribute to a violation of any NAAQS or PSD increments. However, this requirement is not applicable to GHGs because there are no NAAQS or PSD increments for GHGs. A permit applicant must also analyze impacts on soil, vegetation and visibility. In addition, new sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas (*e.g.,* visibility). Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs. Because it is not possible with current climate change modeling to quantify the impacts at particular locations attributable to a specific GHG source, the EPA considers the reduction of GHG emissions to the maximum extent achievable under the BACT requirement to be the best technique to satisfy the additional impacts analysis and Class I area requirements related to GHGs. PSD and Title V Permitting Guidance for Greenhouse Gases at 47–49.[14]

State or local air pollution control agencies issue most PSD permits. The EPA establishes the basic requirements for the PSD program in two sections of its regulations—40 CFR part 51.166 and 52.21. Under 40 CFR part 51.166, which sets out the minimum requirements for obtaining the EPA's approval of the PSD program in a State Implementation Plan (SIP), states may develop unique PSD requirements and procedures tailored for the air quality needs of each area as long as the program is at least as stringent as the EPA requirements. Because a state's SIP is required to contain a PSD program, states with PSD programs approved under 40 CFR part 51.166 are typically referred to as ''SIP-approved states.'' Some local air pollution agencies have also developed their own PSD programs that have been approved, so typically they are also referred to as SIP-approved. To date, no tribes have developed PSD programs under Tribal Implementation Plans (TIP). In cases where state, tribal or local air pollution control agencies do not have a SIP-approved or TIP-approved PSD program, as applicable, the federal PSD program at 40 CFR part 52.21 applies. In these areas, such state, tribal or local air pollution control agencies can be delegated the federal law authority to issue permits on behalf of the EPA, and those programs are often referred to as ''delegated programs.'' To date, no tribes have requested delegation of the federal PSD program and, therefore, the EPA is the permitting authority in those areas. The EPA is also the permitting authority in all areas where no other entity has requested delegation of the federal program or has requested approval of its own PSD program under a SIP or a TIP (*e.g.,* Puerto Rico, other U.S. Territories, and the jurisdictions of several local agencies in California).

B. Title V Program

Title V of the CAA establishes requirements for an operating permit program for major sources of air pollutant emissions and certain other sources. CAA section 502. The operating permit requirements under title V are intended to ensure that sources comply with CAA applicable requirements. CAA section 504; 40 CFR parts 70.1(b) and 71.1(b). The title V program is implemented through regulations contained in 40 CFR part 70 for the EPA-approved programs implemented by state and local agencies and tribes, and 40 CFR part 71 for the federal program generally implemented by the EPA in jurisdictions without a program approved under part 70 (*e.g.,* much of Indian country).

The title V program requires major sources and certain other sources to apply for operating permits. The EPA has interpreted the term ''major source'' to include stationary sources that emit or have a potential to emit (PTE) of 100 tpy or more of any air pollutant subject to regulation, as now reflected in the regulatory definition of ''major source'' in 40 CFR parts 70.2 and 71.2. 75 FR 31521. In general and under the EPA's longstanding interpretation, a pollutant is ''subject to regulation'' for purposes of title V if it is subject to a CAA requirement establishing actual control of emissions and it is first considered ''subject to regulation'' for title V purposes when such a requirement ''takes effect.''[15] Title V generally does not add new pollution control requirements, but it does require that each permit contain emission limitations and other conditions as are necessary to assure compliance with all ''applicable requirements'' required by the CAA, and it requires that certain procedural requirements be followed. ''Applicable requirements'' for title V purposes include stationary source requirements (*e.g.,* New Source Performance Standards (NSPS), and SIP requirements, including PSD). Procedural requirements include providing review of permits by the EPA, states, and the public, and requiring permit holders to track, report, and annually certify their compliance status with respect to their permit requirements.

C. Application of PSD and Title V Programs to GHG Emissions

1. Regulation of the Pollutant GHGs

On April 2, 2007, the U.S. Supreme Court held that GHGs fit within the definition of the term ''air pollutant'' under CAA section 302(g). *Massachusetts* v. *EPA,* 549 U.S. 497 (2007). As a result, the EPA was required to determine, under CAA section 202(a) whether: (1) GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) the science is too uncertain to make a reasoned decision.[16] After issuing a proposal and receiving comment, the EPA Administrator signed two distinct findings regarding GHGs under CAA section 202(a), which were subsequently published in the **Federal Register** on December 15, 2009:[17]

• *Endangerment Finding:* The Administrator found that the current

[14] U.S. EPA, Document No. EPA–457/B–11–001, March 2011. *http://www2.epa.gov/nsr/new-source-review-policy-and-guidance-document-index.*

[15] A more detailed definition of the term ''subject to regulation'' can be found in 40 CFR 70.2 and 71.2.

[16] This background is also summarized in the Tailoring Rule. 75 FR 31519.

[17] 74 FR 66496.

and projected atmospheric concentrations of the mix of six long-lived and directly emitted GHGs are reasonably anticipated to endanger the public health and welfare of current and future generations. The six gases are carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6) (referred to as ''well-mixed greenhouse gases'' in the endangerment finding).

• *Cause or Contribute Finding:* The Administrator found that the emissions of the single air pollutant defined as the aggregate group of six ''well-mixed greenhouses gases'' from new motor vehicles and new motor vehicle engines contributes to the GHG air pollution that threatens public health and welfare.

These findings did not themselves impose any requirements on industry or other entities. However, they triggered a requirement for the EPA to issue standards under CAA section 202(a) ''applicable to'' emissions of the air pollutant that the EPA found causes or contributes to the air pollution that endangers public health and welfare. Accordingly, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) finalized the Light-Duty Vehicle Rule (LDVR) as a joint rule on May 7, 2010. 75 FR 25324. Consistent with the Cause or Contribute Finding, the LDVR contains standards and other regulations applicable to the emissions of the air pollutant defined as the aggregate group of six greenhouse gases: CO_2, N_2O, CH_4, HFCs, PFCs and SF_6. 40 CFR part 86.1818–12(a).

When controls on GHGs in the LDVR took effect, the pollutant GHGs became a pollutant ''subject to regulation under the Act,'' and therefore subject to PSD and title V requirements. 75 FR 17004. The EPA identified January 2, 2011, as the date when GHGs first became subject to regulation and subject to the stationary source permitting programs under the CAA. *Id.*

2. Revisions to PSD and Title V Regulations in the Tailoring Rule

Prior to promulgation of the LDVR, the EPA recognized that the regulation of GHGs under the PSD and title V programs would radically increase the number of sources subject to the program at the 100 or 250 tpy major source applicability thresholds provided under the CAA. 74 FR 55292. This is primarily because combustion sources emit GHGs (specifically CO_2) at levels that may be from several hundred times to over 1,000 times the emissions of other combustion pollutants that are subject to permitting under the longstanding PSD and title V major source applicability thresholds.

Under these circumstances, the EPA estimated that thousands of sources, mostly smaller sources that would otherwise not be subject to PSD permitting, would become subject to PSD review each year, thereby incurring the costs of the permit applications and individualized PSD BACT requirements that the PSD provisions require. We also estimated that millions of new and existing sources, mostly existing commercial and residential sources that had never before been required to obtain an air permit, would become subject to title V, and would incur the costs of obtaining title V permits. Additionally, state and local permitting authorities would be burdened by the large number of these permit applications, which would be orders of magnitude greater than the current inventory of applications and permits and would vastly exceed the administrative resources of the permitting authorities.

Therefore, to relieve the overwhelming permitting burdens that would have fallen on permitting authorities and sources under the Act in the absence of the EPA action, we promulgated the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule).[18] This rule limited the scope of permitting requirements that would have otherwise applied under the EPA's understanding of the CAA by including applicability criteria specifically ''tailored'' for GHGs. These criteria determined which GHG emission sources initially became subject to the PSD and title V programs when controls of GHG under the LDVR became effective. Thus, the rule established a phase-in approach for PSD and title V applicability, with the first two steps of the phase-in only applicable to the largest emitters of GHGs, and also included enforceable commitments for the EPA to study and consider further phasing-in the PSD and title V permitting requirements under the Act for sources emitting at lower GHG emissions thresholds.

Under Step 1, which went into effect on January 2, 2011, only ''anyway sources'' required a PSD permit and were subject to PSD requirements for their GHG emissions based on an applicability threshold of 75,000 tpy CO_2e.[19] For a Step 1 PSD ''anyway source'' that met or exceeded the GHG emissions threshold, the primary additional requirement, beyond the PSD permitting requirements already applicable to pollutants other than GHGs, was to determine and implement BACT for GHGs.[20] The EPA explained that the establishment of a significance level—which, in effect, is a BACT threshold—[wa]s appropriate and . . . decided [at that time] to establish this level at 75,000 tpy CO_2e. 75 FR 31568. The EPA also described this value as a ''significance level'' for convenience because it was intended to function in a manner similar to the significance levels for other pollutants. 75 FR 31559. However, the EPA did not add a GHG value to the definition of ''significant'' in the regulations or attempt to determine a *de minimis* level for GHGs. 75 FR 31560. The EPA selected the 75,000 tpy CO_2e level for this purpose in Step 1 because it was the same as one that the EPA established for Step 2, based on a judgment that the administrative burdens of addressing GHGs in the PSD program would be manageable using that value as an applicability level. 75 FR 31568.

For the title V program under Step 1, no sources were subject to title V permitting solely as a result of their GHG emissions. Only existing sources with, or new sources obtaining, title V permits based on pollutants other than GHGs were required to address GHGs as part of their title V permitting to the extent necessary to assure compliance with GHG applicable requirements established under other CAA programs. For a Step 1 title V ''anyway source,'' the only additional requirement, beyond the already-applicable title V permitting requirements for the pollutants other than GHGs, was to apply any title V requirements to its GHG emissions when it applied for, renewed or revised its permit. These requirements included incorporating any GHG applicable requirements (*e.g.,* GHG BACT requirements from a PSD permit) and associated monitoring, recordkeeping and reporting. This also included a requirement to identify GHG emissions and other information to the extent required under the title V regulations.

Step 2, which went into effect on July 1, 2011, allowed PSD applicability

[18] 75 FR 31514, June 3, 2010.

[19] In addition to the applicability thresholds established in the Tailoring Rule on a CO_2e basis, in order for a source's GHG emissions to trigger PSD or title V requirements, the quantity of the GHGs also had to equal or exceed the statutory thresholds of 100 or 250 tpy on a mass basis. 75 FR 31523, June 3, 2010.

[20] Shortly after Step 1 went into effect, the EPA issued guidance on permitting, including BACT determinations, for GHGs titled ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA Document No. EPA–457/B–11–001, March 2011. *http://www3.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf.*

under the Act to extend beyond ''anyway sources'' to new stationary sources that emit or have a PTE of 100,000 tpy CO_2e or more. Step 2 also covered modifications at existing major stationary sources that emit or have a PTE of 100,000 tpy CO_2e or more that would increase GHG emissions by 75,000 tpy CO_2e or more, even though the modification would not otherwise be subject to PSD based on emissions of any pollutant other than GHGs. A Step 2 source was required to obtain a PSD permit, with the associated procedural requirements, but the primary substantive requirement for GHGs was again to determine and implement BACT. Once PSD was triggered by GHG emissions, these Step 2 PSD sources also were subject to the applicable PSD requirements for any new or increased emissions of regulated NSR pollutants other than GHGs at or above of the applicable SERs.

Step 2 also extended the applicability of title V beyond ''anyway sources'' to new and existing sources that emitted or had a PTE of 100,000 tpy CO_2e or more, even if the new or existing source would not otherwise be subject to title V based on emissions of any pollutant other than GHGs. These Step 2 title V sources incurred the procedural expenses of obtaining a title V permit, but the requirement to apply for a permit did not, in itself, trigger any additional substantive requirements for control of GHGs. These permits also incorporated any applicable CAA requirements that applied to the source for any other air pollutants.

In addition, the Tailoring Rule made clear that the pollutant regulated in the PSD and title V programs was the same as the one regulated in the LDVR—the single air pollutant defined as the aggregate group of the six well-mixed GHGs. 75 FR 31522. To reflect this, the Tailoring Rule adopted a definition of the term ''greenhouse gases'' or ''GHGs'' in revisions to the PSD and title V regulations that describes this aggregate air pollutant (as opposed to the individual gases). We use a similar convention regarding GHGs in this preamble, using the abbreviation ''GHG'' or ''GHGs'' to refer to the aggregate air pollutant.

In the existing regulations adopted in the Tailoring Rule, this aggregate pollutant is measured in terms of ''carbon dioxide equivalent'' or ''CO_2e'' emissions, which is a metric that allows all the compounds comprising GHGs to be evaluated on an equivalent basis despite the fact that the different compounds have different heat-trapping capacities. The Global Warming Potential (GWP) that has been determined for each compound reflects its heat-trapping capacity relative to CO_2. The mass of emissions of a constituent compound is multiplied by its GWP to determine the emissions in terms of CO_2e. A source's emissions of all compounds in terms of CO_2e are summed to determine the source's total GHG emissions.

3. Actions After the Tailoring Rule

After the Tailoring Rule was completed, in accordance with the phase-in process begun in that rule, on July 12, 2012, the EPA completed a Step 3 rulemaking. In this rule, the EPA determined that the Tailoring Rule Step 1 or Step 2 permitting thresholds did not need to be revised at that time. The EPA also improved the usefulness of PALs for GHG emissions by allowing GHG PALs to be established on a CO_2e basis, in addition to the already-available mass basis.[21] The action revised the regulations to allow a source emitting only GHGs in major amounts (*i.e.,* an existing Step 2 source) to submit an application for a CO_2e-based GHG PAL while also maintaining its minor source status.[22]

The United States courts also resolved several challenges to the Tailoring Rule and other EPA actions regarding GHGs. On June 26, 2012, the D.C. Circuit upheld in all respects the Endangerment Finding, LDVR, Tailoring Rule, and other actions pertinent to the regulation of GHGs under the PSD and title V programs. After an appeal of this case, on June 23, 2014, the U.S. Supreme Court issued a decision in *UARG* v. *EPA* addressing only the application of stationary source permitting requirements to GHGs.

The U.S. Supreme Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a PSD or title V permit. However, the U.S. Supreme Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs pollutants, contain limitations on GHG emissions based on the application of BACT. That is, the ruling effectively upheld PSD and title V permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for ''anyway sources,'' and invalidated the application of PSD and title V permitting requirements to Step 2 sources to the extent that these sources triggered permitting requirements solely because they had GHG emissions above the applicable thresholds.

The U.S. Supreme Court also noted that BACT applied to GHGs under provisions in the Tailoring Rule only if a source emits GHGs in excess of 75,000 tpy CO_2e, but that the EPA had not arrived at that number by determining that the impacts of emissions below that level were *de minimis.* 134 S.Ct. at 2449. The U.S. Supreme Court recognized that the ''EPA may establish an appropriate *de minimis* threshold below which BACT is not required for a source's greenhouse gas emissions,'' but said that the EPA would need to justify such a threshold on proper grounds. *Id.* The U.S. Supreme Court had earlier noted that the EPA's 75,000 CO_2e tpy threshold was not an exercise of its authority to establish *de minimis* exceptions. 134 S.Ct. at 2438 n. 3. To address this part of the U.S. Supreme Court's decision, the EPA is now proposing to exercise that authority. This action proposes a GHG SER, which represents a *de minimis* exception level, for purposes of determining the applicability of the BACT requirement in PSD permitting.

To communicate the EPA's preliminary views on the effect of the *UARG* v. *EPA* decision to the public, on July 24, 2014, the EPA issued the previously-described Preliminary Views Memo. In that memorandum, the EPA explained that, with respect to ''anyway sources,'' we initially intended ''to continue applying the PSD BACT requirements to GHG if the source emits or has the potential to emit 75,000 tpy or more of GHG on a [CO_2e] basis.'' [23] With respect to modified sources, we said that initially ''the EPA intends to continue applying the PSD BACT requirements to GHG if both of the

[21] Under the EPA's existing regulations, a PAL is an emissions limitation for a single pollutant expressed in tpy that is enforceable as a practical matter and is established source-wide in accordance with specific criteria. 40 CFR 52.21(aa)(2)(v). Sources may, but are not required to, apply for a PAL, and the decision to issue a PAL to particular source is at the discretion of the permitting authority. 77 FR 41060. PALs offer an alternative method for determining major NSR applicability by allowing sources to make a change without triggering PSD review, as long as the source can maintain its overall emissions of the PAL pollutant below the PAL level. Therefore, PALs allow sources to make the changes necessary to respond rapidly to market conditions, while generally assuring the environment is protected from adverse impacts from the change. *Id.*

[22] 77 FR 41051, July 12, 2012.

[23] Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA,* Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. EPA, to Regional Administrators, p. 3, July 24, 2014.

following circumstances are present: (1) The modification is otherwise subject to PSD for a pollutant other than GHG; (2) the modification results in a GHG emissions increase and a net GHG emissions increase equal to or greater than 75,000 tpy CO_2e and greater than zero on a mass basis.'' *Id.* at 3. The EPA based this initial approach on the 75,000 tpy CO_2e applicability level that remained in the EPA's regulations pending further action by the courts. However, the EPA also explained that it would consider whether to promulgate a *de minimis* level, which the EPA is now proposing to do in this action. *Id.* at 4.

Because the *UARG* v. *EPA* decision affirmed in part and reversed in part the earlier decision of the D.C. Circuit in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012), the matter was returned to the D.C. Circuit to determine whether particular parts of the regulations adopted by the EPA in the Tailoring Rule should be struck down (vacated) or left in place with instructions that the EPA revise them (remanded). On April 10, 2015, the D.C. Circuit issued an Amended Judgment, which provided a more specific remedy reflecting the *UARG* v. *EPA* U.S. Supreme Court decision.

In the Amended Judgment, the D.C. Circuit ordered that the EPA regulations under review (including 40 CFR parts 51.166(b)(48)(v) and 52.21(b)(49)(v)) be vacated to the extent they require a stationary source to obtain a PSD permit if GHGs are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification. The D.C. Circuit also ordered that the regulations under review be vacated to the extent they require (i) a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds and (ii) the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds (in particular 40 CFR part 52.22 and 40 CFR parts 70.12 and 71.13). The Court did not vacate the provisions implementing Step 1 of the Tailoring Rule (in particular, for the PSD program, 40 CFR parts 51.166(b)(48)(iv) and 52.21(b)(49)(iv)).[24] However, the D.C. Circuit ordered that the EPA take steps to rescind and/or revise the applicable provisions of the CFR as expeditiously as practicable to reflect the relief granted in the Amended Judgment and to consider whether any further revisions are appropriate in light of *UARG* and, if so, to undertake such revisions.

Consistent with the Amended Judgment, on August 12, 2015, the EPA issued a final rule that removed from the PSD and title V regulations entire sections and paragraphs that were readily severable from other provisions in the PSD and title V regulations and specifically identified in the D.C. Circuit's Amended Judgment. These removed provisions required a stationary source to obtain a PSD permit solely on the basis of the source's GHG emissions and required the EPA to study and consider further phasing-in of GHG permitting requirements into the PSD and title V permitting programs at lower GHG emissions thresholds. 80 FR 50199. Because of the nature of the D.C. Circuit's Amended Judgment, these revisions were ministerial in nature and exempt from notice-and-comment rulemaking procedures under the ''good cause'' exception of the APA. In that rulemaking, we also announced that we intended to further revise the PSD and title V regulations to fully implement the Amended Judgment in a separate rulemaking, and the present action initiates that separate rulemaking. This action proposes revisions to several regulatory definitions in the PSD and title V permitting regulations, revisions to the PSD GHG PALs and revisions to other provisions necessary to ensure that neither the PSD nor title V rules require a source to obtain a permit solely because the source emits or has the potential to emit GHGs above the applicable thresholds. These latter revisions include revisions to the title V regulations that were vacated in the Amended Judgment case—those that require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds. They also include revisions to state-specific GHG PSD or title V permitting regulations that, in general, the EPA believes are no longer necessary in light of the other proposed revisions in this action and that the EPA considers no longer appropriate to the extent that they might have the effect of establishing federal permitting requirements for sources that only emit or have the potential to emit GHGs above the major source thresholds. These additional revisions to the PSD and title V regulations, although necessary to implement the Amended Judgment, are not purely ministerial in nature because they amend, rather than completely remove, text that remains pertinent to the PSD and title V programs as a whole and their continued application to GHGs. As a result, we are addressing them in this separate notice-and-comment rulemaking to give the public an opportunity to comment on how the EPA proposes to address those portions of the Amended Judgment.

IV. Revisions to the PSD and Title V GHG Permitting Regulations

A. What revisions to the PSD and title V GHG permitting regulations is the EPA proposing with this action?

1. Revisions to the PSD Regulations

In this action, the EPA is proposing to revise certain definitions in the PSD permitting regulations to fully implement the Amended Judgment. The first revision would add an exemption clause to the definitions of ''major stationary source'' and ''major modification'' to ensure that the PSD rules do not require a source to obtain a permit solely because the source emits or has the potential to emit GHGs above the major source thresholds or significance level. In other words, a new stationary source that emits, or has the potential to emit, 100 or 250 tpy or more, as applicable, of any regulated NSR pollutant except for GHGs would be required to obtain a PSD permit before it is constructed. Furthermore, a physical change or change in the method of operation at an existing major source that would result in a significant increase in emissions of any regulated NSR pollutant except for GHGs and a significant net emission increase of that regulated NSR pollutant would be a major modification required to obtain a permit.

The EPA is proposing to establish a freestanding definition of the term ''greenhouse gases'' in the PSD regulations at 40 CFR parts 51.166(b)(31) and 52.21(b)(32) to facilitate the application of the exemptions clauses described earlier. Previously, the definition of this pollutant was located within the definition of the term ''subject to regulation'' and we are now proposing to simply move the language that defined GHGs in this context into an independent definition for the term ''greenhouse gases.'' This proposed definition of GHGs does not change the meaning of the term; we are proposing to use the same language as in the existing regulations.

[24] Without these provisions in the definition of ''subject to regulation'' at this time, any GHG emissions increase would require a newly constructed major source, or a major modification at an existing facility, to undergo PSD BACT review for GHGs. 40 CFR 51.166(b)(23)(ii); 40 CFR 52.21(b)(23)(ii).

In this action we are also proposing to simplify the definition of ''subject to regulation'' in other ways. In the Tailoring Rule, the EPA placed the GHG applicability thresholds in a new definition of the term ''subject to regulation'' in an effort to enable states with approved PSD programs to rapidly apply the Tailoring Rule limitations without necessarily having to revise state regulations. 75 FR 31580–81. The EPA intended to enable states to immediately read rules that already contained the term ''subject to regulation'' in a manner consistent with the definition of this term adopted by the EPA in the Tailoring Rule. *Id.* at 31581. However, after the Tailoring Rule, most states concluded that it was still necessary to revise their regulations to incorporate the limitations on PSD applicability reflected in the Tailoring Rule. Also, experience has shown that this mechanism for implementing the GHG applicability thresholds is confusing and cumbersome. Thus, the EPA is proposing to eliminate this mechanism and revert to a more traditional approach of placing the value that determines applicability of BACT within the definition of the term ''significant.'' This approach also enables the EPA to eliminate the Tailoring Rule Step 1 thresholds in 40 CFR parts 51.166(b)(48)(iv) and 52.21(b)(49)(iv) that were not vacated but that nevertheless, as the U.S. Supreme Court noted, lacked a *de minimis* rationale.

The EPA thus is proposing to repeal all parts of the definitions of ''subject to regulation'' except for the first paragraph, which simply served to codify our interpretation of the term ''subject to regulation'' that was reflected in prior actions. 75 FR 31582. Those prior actions are the following: (1) A Memorandum from Administrator Stephen Johnson titled ''EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program'' [25] and (2) An action titled Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs.[26] This second action was subsequently described as the ''Timing Decision'' in Court proceedings. The EPA is not proposing to change or reconsider the interpretation of its regulations and the CAA reflected in these actions. Thus, we are retaining the first paragraph in the definition ''subject to regulation'' at 40 CFR parts 51.166(b)(48) and 52.21(b)(49) that codify this interpretation of the term ''subject to regulation'' that is used elsewhere in the PSD regulations.

Finally, consistent with deleting most of the remaining parts of the definition of ''subject to regulation,'' we are proposing to amend the definition of ''significant'' to add the proposed value for the GHG SER. With these revisions to the PSD regulations, GHG will only be subject to BACT review under the PSD permitting requirements at 40 CFR parts 52.21(j) and 51.166(j) if the source has been classified as a major stationary source or a major modification for another regulated NSR pollutant first and there is a significant net emissions increase of the source's GHGs emissions equal to or greater than the GHG SER that is being proposed in this action.

2. Revisions to the PSD PAL Regulations

The EPA is proposing a number of revisions to the PSD PAL provisions at 40 CFR 52.21(aa) to address the *UARG* decision and Amended Judgment. Because a PSD PAL permit is only available to an existing major stationary source, and a source is no longer subject to PSD solely because of its emissions of GHGs, we are proposing to revise the PSD PAL provisions to remove the ability for a source that would be ''major'' [27] only for GHGs to obtain a GHG PAL and the ability of a source establishing a GHG PAL to retain its minor NSR status. We are proposing to make refinements to the PSD PAL provisions whereby an existing ''anyway source'' could still apply for and obtain a GHG PAL, but only for the limited purpose of relieving the source from having to address the BACT requirement for GHGs when triggering PSD for another NSR pollutant.[28] The EPA has previously observed that the PAL provisions may still have relevance for this purpose after the U.S. Supreme Court decision.[29] A PAL may be issued for this purpose if all requirements for obtaining a GHG PAL are met. As a result of our proposed revisions, a GHG PAL would be established and function in this narrower context in much the same way as a PAL for any other regulated NSR pollutant. The main difference will be that a GHG PAL would not be issued on a mass basis, but rather on a CO_2e basis since the regulated pollutant GHGs is the aggregate of six individual gases calculated on a CO_2e basis. Finally, all PALs must include enforceable requirements for the monitoring system to accurately determine plantwide emissions of the PAL pollutant. As current monitoring systems do not measure tpy CO_2e, we would also like to clarify that permitting authorities can specify in each individual GHG PAL permit, much as they already do for GHG PSD permits, the type of mass-based monitoring to be carried out for each individual gas and require the applicant to perform the applicable CO_2e calculations.

3. Revisions to State-Specific PSD Regulations

The EPA is also taking this opportunity to propose to remove elements in a specific SIP-approved program that are no longer needed as a result of the Amended Judgment. The EPA is proposing to remove the provisions at 40 CFR 52.2305, which establish the Federal Implementation Plan (FIP) requirements for the issuance of PSD permits for GHG emissions in the state of Texas.

On November 10, 2014, the EPA approved the revisions to the Texas PSD program for GHG emissions which provided the state of Texas the authority to regulate GHGs in the Texas PSD program and to issue GHG PSD permits to ''anyway sources.'' 79 FR 66626. However, to avoid delays to some permit applicants, we retained limited authority under the Texas GHG PSD FIP at 40 CFR part 52.2305 to issue GHG PSD permits in certain circumstances. We retained the authority to: (1) Issue permits to those permit applicants who elected to continue their permit application with the EPA by May 15, 2014; (2) issue permits to those permit applicants who did not request a transfer to the Texas Commission on Environmental Quality prior to the date of final permit decision; and (3) complete the permit action for all GHG PSD permits issued by the EPA for which the time for filing an

[25] 75 FR 80300, December 31, 2008.

[26] 75 FR 17004, April 2, 2010.

[27] Assuming GHGs could still be considered in defining a source as ''major.'' The EPA recognizes they cannot be after the U.S. Supreme Court decision. If the proposed changes in this rule are enacted, no source will be considered major for GHGs.

[28] We are not proposing similar revisions to 40 CFR 51.166 because the June 29, 2012, final rule that adopted the GHG PAL provisions under 40 CFR 52.21 did not adopt these changes into the existing PAL provisions contained in 40 CFR 51.166. 77 FR 41051. However, nothing in that 2012 action was intended to restrict states, tribes or local permitting authorities from adopting changes into their SIP-approved PAL program to allow for the issuance of PALs on a CO_2e basis if they choose to do so. Moreover, the revisions we are proposing in this action do not preclude a state, local or tribal program from applying construction permitting requirements equivalent to the PSD GHG PAL requirements for Step 2 sources under state law, although such provisions are no longer approvable parts of a PSD or title V program under federal law.

[29] 79 FR 70095; 80 FR 14062; 80 FR 23245; 80 FR 28901.

administrative appeal had not expired or all administrative and judicial appeals processes had not been completed by November 10, 2014. The EPA proposes to find that all three circumstances for limited authority to issue GHG PSD permits in Texas have now been satisfied; therefore, we no longer need to retain the authorities provided to us in 40 CFR part 52.2305 and propose to remove that section.

For questions on whether federally approved SIPs or TIP would need to be revised to address the regulatory revisions in this proposal, see Section VII of this preamble.

4. Revisions to the Title V Regulations

The EPA is proposing to revise certain definitions in the title V permitting regulations at 40 CFR parts 70 and 71 to fully implement the Amended Judgment. Specifically, we are proposing to revise the definition of ''major source'' in 40 CFR parts 70.2 and 71.2 to clarify that GHGs are no longer considered in determining whether a stationary source is a major source and thus subject to major source permitting requirements under the title V program. We are also proposing to remove paragraphs from the definition of ''subject to regulation'' to remove those provisions that incorporated the Tailoring Rule CO_2e applicability thresholds into the title V regulations. Those provisions are no longer necessary or appropriate, in light of the proposed revisions to the definition of ''major source'' in 40 CFR parts 70.2 and 71.2 described immediately above. Furthermore, we are proposing to move the definition of ''GHGs'' from the definition of ''subject to regulation'' to its own definition under the title V regulations at both 40 CFR parts 70.2 and 71.2. By moving this definition, the EPA does not intend to make any material changes in how the air pollutant GHGs is defined, but rather intends to clarify that the definition applies throughout the title V regulations and that it continues to include a description of CO_2e and how it is calculated.

While the EPA is proposing to revise its title V regulations so that they no longer require that a source obtain a title V permit solely because it emits or has the potential to emit GHGs above major source thresholds, the agency does not read the *UARG* decision or the Amended Judgment to affect other grounds on which a title V permit may be required or the applicable requirements that must be addressed in title V permits. The proposed revisions are not intended to change the existing title V requirements in that regard.

5. Revisions to State-Specific Title V Regulations

On December 30, 2010, we issued a final rule that narrowed the EPA's previous approval of state title V operating permit programs that apply (or may apply) to GHG-emitting sources under 40 CFR part 70, and, in a few instances, under 40 CFR part 52. 75 FR 82254. For most states, title V programs are federally-approved only under 40 CFR part 70, but, in some cases, states have chosen to submit their title V programs as part of their SIPs. The EPA has approved provisions related to the operating permit program into the SIP as codified in 40 CFR part 52 for three states that were addressed in the December 2010 rule: Arizona (Pinal County Air Quality Control District), Minnesota, and Wisconsin.

In that December 2010 final rule, we narrowed our previous approval of certain state permitting thresholds for GHG emissions so that only sources that equal or exceed the GHG thresholds established in the Tailoring Rule would be covered as major sources by the EPA-approved programs in the affected states. For most of the affected states, this was accomplished by amending our approvals under 40 CFR part 70, Appendix A. For Minnesota, and Wisconsin, which had title V applicability provisions that were federally approved under both 40 CFR part 70 and 40 CFR part 52, we amended our title V program approval in both 40 CFR part 70 and 40 CFR part 52 to ensure that the scope of the approved title V program was consistent. In Arizona (Pinal County Air Quality Control District), we amended our approval under 40 CFR part 52. In this proposal, however, we are proposing to remove those provisions from all the applicable state title V operating permit programs except for Arizona (Pinal County Air Quality Control District), which we intend to address in a separate action. For Minnesota and Wisconsin, we are proposing to remove the narrowing provisions under both 40 CFR parts 52 and 70 to ensure consistency.

We are proposing to remove those provisions from the applicable title V programs because they no longer seem necessary after the *UARG* decision, the Amended Judgment, and the EPA's actions to implement that decision and the Amended Judgment, since a source would no longer be required to obtain a title V permit solely because it emits or has the potential to emit GHGs above the major source threshold.

For questions regarding whether title V program approvals would need to be revised to address these regulatory revisions, *see* Section VII of this preamble.

B. What additional regulatory revisions is the EPA proposing with this action?

The EPA is also proposing to repeal provisions in its 40 CFR parts 60 regulations that the EPA considered advisable to ensure that the 75,000 tpy CO_2e applicability threshold for the GHG BACT requirement continued to apply on an interim basis after GHGs became regulated under section 111 of the CAA. These provisions were included in the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units,[30] the Standards of Performance for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units,[31] and the Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015.[32]

As we explained previously, under 40 CFR parts 51.166(b)(49) and 52.21(b)(50), we define a ''regulated NSR pollutant'' to include, among other requirements, ''any pollutant subject to a new source standard of performance under CAA section 111'' and ''any pollutant that otherwise is subject to regulation under the Act.'' This definition first applied to GHGs in 2011 under the fourth part of this definition because this pollutant was then ''otherwise subject to regulation under the Act'' in the LDVR. However, because the EPA chose to include the Tailoring Rule thresholds in the definition of the term ''subject to regulation,'' some question arose as to whether those thresholds would continue to apply after GHGs also became a regulated NSR pollutant when this pollutant became subject to a standard of performance under section 111. Thus, the EPA adopted provisions in 40 CFR part 60 that made clear that promulgation of CAA section 111 requirements for GHGs under these rules would not result in BACT applying to GHGs at an ''anyway source'' that increased GHGs by any amount below 75,000 tpy CO_2e. To ensure this was clear, the final regulatory text for these rules said that ''the pollutant that is subject to the standard promulgated under section 111 of the Act'' shall be considered to be the

[30] 80 FR 64662, October 23, 2015. On February 9, 2016, the U.S. Supreme Court stayed this rule pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the U.S. Supreme Court.

[31] 80 FR 64510, October 23, 2015.

[32] 81 FR 35823, June 3, 2016.

pollutant that otherwise is ''subject to regulation'' under the Act as defined under the respective ''subject to regulation'' definitions under the PSD and title V provisions. With the addition of a SER for GHGs, these 40 CFR part 60 provisions are no longer needed to ensure that a BACT applicability threshold remains applicable to GHGs after the regulation of GHGs under section 111 of the Act. Thus, we are proposing to remove the provisions at 40 CFR parts 60.5360a(b), 60.5515(b) and 60.5705(b).

V. Establishment of a GHG SER

A. What is the legal basis for establishing a GHG SER?

In the *UARG* decision, the U.S. Supreme Court observed that the EPA may limit application of the BACT requirement for GHGs to those situations where a source has the potential to emit ''more than a *de minimis* amount of greenhouse gases.'' 134 S.Ct. at 2449. The Court also acknowledged the EPA's past practice of establishing *de minimis* levels for other pollutants that determine whether individual pollutants are subject to the BACT requirement. *Id.* at 2435 n. 1. In both of these parts of its opinion, the U.S. Supreme Court cited the D.C. Circuit's decision in *Alabama Power Co.* v. *Costle.*[33] The D.C. Circuit's opinion in that case provides the foundational legal principles upon which the EPA has previously established the *de minimis* levels in the NSR program that are known as ''significant emission rates.'' In light of the U.S. Supreme Court's favorable citation of the *Alabama Power* case, the EPA continues to look to this case as providing the controlling legal principles for an agency to establish a *de minimis* exception to a statutory requirement.

Agencies have inherent authority ''to overlook circumstances that in context may fairly be considered *de minimis*'' and need not ''apply the literal terms of a statute to mandate pointless expenditures of effort.'' *Alabama Power,* 636 F.2d at 360. ''Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide an exemption when the burdens of regulation yield a gain of trivial or no value.'' *Id.* at 360–361. Determining when matters are truly *de minimis* depends on the particular circumstances and the agency bears the burden of making the required showing. *Id.* Thus, the *de minimis* authority is ''tightly bounded by the need to show that the situation is genuinely *de minimis* or one of administrative necessity'' *Id.* at 361. *De minimis* authority is not a mechanism to ''depart from the statute, but rather a tool to be used in implementing the legislative design'' and cannot be used where there are acknowledged benefits but the agency concludes they ''are exceeded by the costs.'' *Id.*[34]

As the U.S. Supreme Court noted, the CAA does not specify how much of a given regulated pollutant a major source must emit before it is subject to the BACT requirement for that pollutant. 134 S.Ct. 2427 n. 1. The Act requires application of BACT to ''each pollutant subject to regulation'' under the Act but does not address whether the EPA has discretion not to apply the BACT requirement to pollutants emitted below a particular level. CAA section 169(3). The EPA has previously recognized that sources that trigger PSD can emit some pollutants at levels below which application of the BACT requirement would be a pointless expenditure of effort. Accordingly, the EPA's regulations specify that the BACT requirement need only be applied to pollutants that: (1) A new major source has ''the potential to emit in significant amounts'' and (2) will increase by a ''net significant'' amount as a result of a major modification at an existing major source. 40 CFR parts 51.166(j)(2)–(3) and 52.21(j)(2)–(3).

After acknowledging these existing regulations, the U.S. Supreme Court specifically recognized in *UARG* that the EPA could establish ''an appropriate *de minimis* threshold below which BACT is not required.'' 134 S.Ct. at 2449. Inherent in this aspect of the *UARG* decision is a judgment by the U.S. Supreme Court that Congress has not been ''extraordinarily rigid'' with respect to application of the PSD BACT requirement to pollutants emitted in lower amounts. The U.S. Supreme Court has now recognized, consistent with the principles of *Alabama Power,* that the PSD statutory scheme includes the inherent authority for the EPA to overlook *de minimis* levels of pollutant emissions when applying the BACT requirement in the PSD permitting program.

However, the U.S. Supreme Court also emphasized that the EPA must justify its selection of a *de minimis* threshold ''on proper grounds,'' citing the discussion at page 405 of *Alabama Power.* This part of the *Alabama Power* decision consists of two paragraphs expressly addressing the application of *de minimis* principles to BACT. The Court said that a ''*de minimis* exception must be designed with the specific administrative burdens and the specific statutory context in mind'' and then specifically considered the BACT context. *Id.* at 405. The Court recognized that *de minimis* principles could be used to address ''severe administrative burdens on the EPA, as well as severe economic burdens on the construction of new facilities.'' 636 F.2d at 405. A rational approach to the application of BACT, the Court continued, would consider ''the danger posed by increases in'' emissions and ''the degree of administrative burden posed by enforcement at various *de minimis* threshold levels.'' *Id.*

At first, there may appear to be an internal tension in *Alabama Power* between the language describing general parameters for the exercise of *de minimis* exemption authority and the BACT discussion. The Court's recognition that a *de minimis* exemption cannot be based simply on a conclusion that a requirement's costs outweigh its benefits, 636 F.2d at 361, was paired with explicit acknowledgement that a *de minimis* threshold could be ''rationally designed to alleviate severe administrative burdens.'' 636 F.2d at 405. The Court also observed that a rational approach would consider the following factors: ''the administrative burden with respect to each statutory context;'' ''whether the *de minimis* threshold should vary depending on the specific pollutant and the danger posed by increases in its emissions;'' and ''the degree of administrative burdens posed by enforcement at various *de minimis* threshold levels.'' *Id.* While the degree of burden might be viewed as part of a cost-benefit analysis, EPA believes it is possible to harmonize these parts of the Court's opinion by treating each of these elements as factors for the Agency to consider in a rational approach to determining a *de minimis* threshold.

Considering all the relevant parts of the *Alabama Power* opinion, the EPA believes that it need not focus solely on the programmatic advantages of regulation and disregard implementation burdens when establishing a *de minimis* exception. Where the record shows that the burdens of regulation are high relative to a small gain that is achievable by regulation, the EPA reads *Alabama Power* to allow an agency to consider such gains to be *de minimis* if the Agency finds this appropriate after considering the statutory context, the nature of pollutant, and the danger caused by increases of that pollutant. However, where the gains of regulation

[33] 636 F.2d 323, D.C. Cir. 1979.

[34] *See* also 44 FR 51937, September 5, 1979 (the EPA proposal to establish SERs stating that it would not be appropriate to base a SER on ''a cost-effectiveness rationale'').

are greater, the EPA reads *Alabama Power* to preclude the agency from declining to regulate on the basis of a judgment that the costs simply exceed achievable benefits that further the regulatory objectives.

In sum, therefore, to justify a *de minimis* exemption by regulation, an agency must show that the benefits of regulating an activity below the level set forth in the exemption are trivial or of no value. The supporting analysis must consider the regulatory context, including the nature of the pollutant and the dangers caused by increases in that pollutant, the nature and purposes of the regulatory program, the administrative and implementation burdens of, and the gain achieved from, regulating the activities at or below a certain level. Based on that analysis, the agency must make a reasoned judgment whether, in light of the regulatory context, the gains from regulating an activity below the exemption level can fairly be characterized as being trivial or of no value. In developing the SER for GHGs proposed in this action, the EPA has considered the factors laid out by the Court in *Alabama Power.*

B. What is the regulatory context for the de minimis exception proposed in this rule?

The *Alabama Power* opinion said that a ''*de minimis* exception must be designed with . . . the specific statutory context in mind.'' *Id.* at 405. The SER for GHGs that the EPA is proposing in this rule will apply only in the particular context of determining whether the BACT requirement applies to GHG emissions from a new source or modification that requires a PSD permit based on emission of pollutants other than GHGs.

Because GHGs are a regulated NSR pollutant under the applicable definition, the BACT provisions in 40 CFR parts 51.166(j) and 52.21(j) apply to GHGs when an ''anyway source'' triggers the obligation to obtain a PSD permit. Under the specific terms of 40 CFR parts 51.166(j)(2)–(3) and 52.21(j)(2)–(3) of the EPA's regulations, the SER adopted in this rule will determine whether the BACT requirement applies to GHGs.

Because of the U.S. Supreme Court's decision, the requirement to obtain a PSD permit does not apply to a source that emits only GHGs in major amounts. Likewise, the modification of an existing major source cannot trigger the requirement to obtain a PSD permit based solely on a significant increase in the amount of GHGs. In order to qualify as a major modification under the revisions proposed in this rule, a modification of an existing major source must result in a significant net emissions increase of a regulated NSR pollutant other than GHGs. If a modification triggers PSD on this basis, then the SER proposed in this rule will apply to determine whether the PSD permit for that modification must contain a BACT limit for GHGs. But the SER proposed in this rule will not determine whether a modification at an existing major source requires a PSD permit in the first instance.

This contrasts with the 75,000 tpy CO_2e value the EPA identified as a ''significance level'' in parts of the Tailoring Rule. During Step 2 of the Tailoring Rule phase-in, this value was used to determine whether a PSD permit was required based solely on an increase in GHG emissions resulting from a modification at an existing major source that did not increase any other pollutants above the significance levels. In this context, the EPA said that if the agency were to establish a *de minimis* level for GHGs, ''that amount could be below—perhaps even well below—the 'major emitting facility' thresholds established in this rulemaking on the grounds of 'administrative necessity' and other doctrines.'' 75 FR 31560. Paraphrasing this statement, the U.S. Supreme Court noted that the ''EPA stated . . . that a truly *de minimis* level might be 'well below' 75,000 tons per year [CO_2e].'' 134 S. Ct at 2427 n.3. At the time of the Tailoring Rule, the EPA read the definition of ''major emitting facility'' in section 169(1) of the CAA to require that the agency apply the 100 or 250 tpy major source threshold to all regulated pollutants, including GHGs. In that light, the EPA believed it would be difficult for the agency to justify a value substantially greater than the statutory major source thresholds as a *de minimis* or trivial level of emissions. Thus, the EPA said that a *de minimis* level for GHGs could perhaps be ''well below'' 75,000 tpy CO_2e based on its understanding at the time that the EPA's *de minimis* exception authority was constrained by the Congressional determination that it was worth regulating any source emitting more than 100 or 250 tpy of a regulated pollutant. The U.S. Supreme Court has since clarified that the EPA cannot apply the 100 or 250 tpy levels to GHGs, or even consider the pollutant GHGs in defining a major source (or modification thereof) that requires a PSD permit. The Court's reasoning suggests that Congress has not determined that 100 or 250 tpy is a major amount of GHGs. Thus, the EPA no longer views the 100 and 250 tpy thresholds as a constraint on the level of GHGs that the EPA may identify as *de minimis* in the PSD program context. Furthermore, in this proposed rule, the EPA is considering the application of a *de minimis* level in a PSD program context that is narrower than the one the EPA was addressing in the Tailoring Rule. The SER the EPA proposes in this rule will apply only to determine whether BACT applies to GHGs and not to determine whether a source is required to obtain a PSD permit.

In addition, because there is no NAAQS for GHGs, the SER for GHGs proposed in this rule will not determine whether a PSD permit application is required to include an ambient air quality analysis for this pollutants. 40 CFR parts 51.166(m)(1)(i) and 52.21(m)(1)(i). In the absence of a NAAQS or PSD increment for GHGs, a permit applicant need not make an air quality demonstration for GHGs, as required for other pollutants under section 165(a)(3) of the Act and 40 CFR parts 51.166(k) and 52.21(k) of the EPA's regulations.[35]

Accordingly, in light of the Court direction that an agency consider the particular context for a *de minimis* exception, the EPA has based the proposed SER for GHGs on an evaluation of the benefits and burdens of applying the BACT requirement to GHGs when an ''anyway source'' emits this pollutant at various levels. Under section 169(3) of the CAA, BACT is an emissions limitation based on ''the maximum degree of reduction . . . which the permitting authority . . . determines is achievable'' through application of pollutant control technology. CAA section 169(3). Thus, in assessing the value of regulating GHG emissions under the PSD BACT requirement at sources emitting GHGs at various emissions levels, the EPA has focused on the degree of emission reduction that would be expected to be achieved at individual sources emitting GHGs below the levels under consideration. Furthermore, since the regulation the EPA is proposing will apply across the PSD program as a whole, the EPA has also considered the potential for GHG emissions reduction, principally through the characterization of affected sources and units, that one would expect to achieve at ''anyway sources'' emitting (or modifications increasing) GHGs below prospective *de minimis* levels as compared in relation to the potential for GHG emissions

[35] ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–457/B–11–001, pp. 47–48, March 2011.

reductions expected from the population of sources that would be subject to the BACT requirement because they emit GHGs above that level.

While the dangers caused by increases in GHGs are relevant under the factors discussed in the preceding section, since the SER for GHGs will not be used to determine what sources must apply for a PSD permit or whether an ambient air quality analysis must be conducted for GHG, the EPA does not believe it is necessary for the Agency to attempt to identify the specific nature or degree of environmental impact predicted from various levels of GHG emissions from ''anyway sources'' that are required to obtain a PSD permit. Likewise, EPA does not believe it is necessary for the Agency to try to distinguish specific environmental impacts at a given level from those expected at other levels. As the EPA has noted, climate change modeling and evaluations of risks and impacts of GHG emissions is typically conducted for changes in emissions that are orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews.[36] In the context of PSD permitting, the EPA is continuing to use the *level* of GHG emissions from a stationary source as the more credible and appropriate means for assessing the potential environmental impact of such a source. This aligns with the Congressional direction in the BACT provision to achieve the maximum degree of emissions reduction of each pollutant. Congress established a separate requirement in the PSD program to demonstrate that the air quality impact of a source does not cause a violation of air quality standards, but that requirement is not applicable to GHGs at this time.

Considering this context and Congressional intent that BACT reflect a ''degree of reduction'' that is achievable, the SER that the EPA proposes to establish for GHGs represents a level of GHG emissions below which application of the BACT requirement would be expected to yield a ''degree of emissions reduction'' that has trivial or no value. In this proposed rule, the EPA's analysis shows that the proposed SER is *de minimis* only as applied in the particular context of determining whether application of the BACT requirement to GHGs would be of value in reducing GHG emissions from ''anyway sources'' that trigger the requirement to obtain a PSD permit. The proposed SER is not a level of GHGs below which the EPA has concluded there is a *de minimis* impact on the global climate. Rather, the *de minimis* level proposed in this rule reflects only a level of GHG emissions from an ''anyway source'' below which the EPA is proposing to find that there would be trivial or no value in applying the BACT requirement to GHGs in the context of preparing a PSD permit.

C. Historical Approaches to Establishing a De Minimis Level in the PSD Program

The EPA has previously established *de minimis* levels for several pollutants in the PSD program that are reflected in the definition of ''significant'' in existing PSD regulations. 40 CFR parts 51.166(b)(23)(i) and 52.21(b)(23)(i). In this section of the preamble, we discuss the approaches the EPA has previously used to establish *de minimis* emissions levels. We then examine the extent to which these approaches can be employed to support the development of a *de minimis* emissions level for GHGs. The EPA's judgment at this time is that the approaches we have previously used to establish SERs are not workable for the establishment of a GHG SER due the unique nature of GHG emissions.

The EPA first established SERs in 1980 as part of the revised PSD regulations that the EPA completed following the *Alabama Power* decision. 45 FR 52676 (1980 PSD Rule). The 1980 PSD Rule included the current approach for defining ''major'' modifications, based on the use of SERs to define ''significant'' increases in emissions. As discussed previously, a modification must be ''major'' to trigger the PSD permitting requirement. The EPA determined the level of these SERs following the principles regarding *de minimis* exceptions that the Court provided in *Alabama Power.*

In the preamble to the 1980 PSD Rule, the EPA identified the primary objectives the Agency sought to meet in selecting *de minimis* values: (1) Provide effective Class I area protection, (2) guard against excessive un-reviewed consumption of the Class II or III PSD increments, and (3) assure meaningful permit reviews. 45 FR 52676, 52706. ''Meaningful'' in this context meant that there would be a possibility of obtaining useful air quality information or obtaining greater emission reductions as a result of BACT analysis than would be expected from otherwise-applicable state permit or NSPS/national emission standards for hazardous air pollutants (NESHAP) processing. *Id.*

Within this framework, the *de minimis* levels finalized for each pollutant in the 1980 PSD Rule were based on consideration of both environmental impacts and administrative burden. The Administrator chose to specify *de minimis* level cutoffs in terms of emissions rate (*i.e.,* tpy). The derivation of the *de minimis* levels are described in preambles published in the **Federal Register** and two technical support documents to the 1980 rulemaking.[37] In setting the *de minimis* levels for each pollutant, the EPA relied on existing ''data on sources permitted under the PSD program'' to predict the environmental/air quality impacts associated with regulating emissions above that level, and a measure of the number of PSD permitting actions that might result from a particular *de minimis* level. 45 FR 52676, 52707.

The EPA assessed the air quality impacts differently for criteria and non-criteria pollutants.[38] For criteria pollutants, where there was extensive health and welfare documentation based on ambient concentration data used in setting NAAQS, the EPA based the *de minimis* emission levels on ambient air impacts. For non-criteria pollutants, for which no ambient air quality standards existed, the EPA based the *de minimis* emission levels on emission rates embodied in NSPS and NESHAP, which are national emission standards developed under CAA 111 and CAA 112, respectively. The bases for the *de minimis* emissions rates are summarized below.

For the criteria pollutants (all except carbon monoxide (CO), as discussed later), the final *de minimis* levels were based on 2 to 4 percent of the primary NAAQS for the pollutant. 45 FR 52676, 52708. To develop these SERs in tpy, the EPA first established a range of potential air quality ''design values'' [39] representing percentages of the then-current primary NAAQS and, for particulate matter (PM) and sulfur dioxide (SO_2), percentages of the Class

[36] ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–457/B–11–001, p. 48, March 2011.

[37] One report is titled ''Impact of Proposed and Alternative *De Minimis* Levels for Criteria Pollutants,'' EPA–450/2–80–072; the other report is a staff paper titled ''Approach to Developing *De Minimis* Levels for Noncriteria Air Pollutants.'' Both papers have a June 1980 publication date.

[38] ''Criteria pollutants'' are those pollutants listed by the EPA under CAA section 108 for study and subsequent development of NAAQS under CAA section 109. ''Non-criteria'' pollutants are other pollutants that are subject to regulation under the Act.

[39] These ''design values'' are to be distinguished from the design values calculated from ambient air quality data as part of determining compliance with certain of the NAAQS.

II PSD increments.[40] These design values were then converted to annual emissions rates in accordance with the EPA modeling procedures using data on sources permitted under the PSD program. 45 FR 52676, 52707. Since at that time there was only an annual NAAQS for nitrogen dioxide (NO_2), the EPA elected to set the *de minimis* emissions rate for nitrogen oxides (NO_X) at the level corresponding to 2 percent of the annual NAAQS. *Id.* For CO, the emissions rates corresponding to all the evaluated percentages of the NAAQS were in excess of the major stationary source threshold of 100 tpy that applies to many source categories, so the EPA set the SER at 100 tpy. *Id.* The pollutant volatile organic compounds (VOC) is not a criteria pollutant in itself but was, and is, designated as a precursor to the formation of the criteria pollutant ozone in the atmosphere. The EPA set the SER for VOC at the same level as that for NO_X in recognition of the link between VOC and NO_X emissions in the formation of ozone. *Id.*

For other non-criteria pollutants, the *de minimis* emissions rates were generally based on 20 percent of the NSPS or 10 percent of the NESHAP that imposed limits on their emissions. For example, for sulfuric acid, the SER in tpy was determined based on 20 percent of a model sulfuric acid production plant's annual emissions using the NSPS-based emission standard. A model plant is considered a typical plant affected by the NSPS. 45 FR 52676, 52709.

Since no NAAQS has been set for GHGs, the EPA cannot use the approach based on a percentage of the NAAQS to identify a *de minimis* level for GHGs. In addition, current climate modeling tools are not capable of isolating the precise correlations between singular, incremental facility-specific GHG emissions changes, ambient CO_2 concentrations, and climate impacts. Thus, because of the absence of a NAAQS for GHGs and the inherent uncertainties and limitations in modeling climate-related impacts from incremental project-level GHG emission increases, the EPA's judgment at this time is that an ambient-air quality impact-based approach is not workable for setting a GHG SER.

Regarding the historical ''20 percent of NSPS'' approach for non-criteria pollutants, we believe that this would result in a GHG SER that would be inconsistent with the *de minimis* principles described earlier. The only NSPS containing a GHG emissions limit that EPA had finalized as of the date of our analysis[41] was the rule that limits CO_2 emissions from new electric generating units (EGUs).[42] Based on the modeled emissions profile for the EGU NSPS emissions limit, the ''20 percent of NSPS'' approach would result in a *de minimis* value of approximately 320,000 tpy CO_2e when applied to the standard for a 600 megawatt natural gas combined cycle EGU.[43] For comparison purposes, this level of GHG emissions is four times greater than the current interim GHG BACT applicability level of 75,000 tpy CO_2e. As described later in Section V.D.1 of this preamble, the 75,000 tpy CO_2e permitting level has been successfully implemented and is achieving meaningful GHG emission reductions through BACT review at larger, industrial GHG emission sources and units, some of which would not have GHG emission increases large enough to be subject to GHG BACT review at a 320,000 tpy CO_2e permitting level.

In addition, using the ''model plant'' approach for establishing a *de minimis* level for GHGs is problematic because GHGs are emitted from such a diverse group of sources, in terms of both type and size. Even if NSPS that regulated GHG emissions for source categories other than EGUs had been available for analysis, the diversity of sources and the differences in GHG emissions contribute to eliminate the viability of the ''model plant'' approach for setting a SER. The model plant approach worked for other non-criteria pollutants because there was a much narrower set of industrial source categories from which the pollutant of interest was emitted in quantities of any concern (*e.g.,* fluoride emissions from aluminum production plants).

Following the approach used for CO (*i.e.,* applying the major source threshold of 100 tpy as a SER level) would result in a GHG threshold that would exclude only very small emissions units. However, it may still require GHG BACT for what still can be considered relatively small units in terms of GHG emission increases for which, under any reasonable viewpoint, there would be trivial value in conducting a GHG BACT review. This would impose unreasonable administrative burdens for implementation and enforcement. As discussed previously, after the U.S. Supreme Court's *UARG* decision, PSD review is limited to only ''anyway sources,'' where emissions of a regulated pollutant other than GHGs triggers major stationary source or major modification status under PSD. Thus, the GHG BACT requirement will only apply to such sources. In this context, the term ''small unit'' is a relative term because the smallest units or modifications will be excluded from PSD entirely because they do not emit or increase any pollutant in major amounts. Cases where a new major stationary source or a major modification involves combustion units with emissions of other pollutants large enough to trigger PSD generally would be associated with large CO_2 emission increases as well, and thus would focus GHG BACT review on the larger emitting units. However, in cases where major stationary source or major modification status is triggered by non-combustion emissions units, such as large VOC emitters, there may be collateral GHG emission increases that are very small. In addition, CO_2 is emitted in much greater quantities than CO; the CO_2 emission factor for natural gas boilers is 1,400 times that of CO, meaning that a boiler triggering PSD for emissions of 100 tpy CO would emit 140,000 tpy CO_2.[44] Very small combustion units can emit 100 tpy CO_2, such as small stationary internal combustion (IC) engines, water heaters, and heating, ventilation and air conditioning units. Thus, a 100 tpy GHG SER may trigger BACT review for very small units or modifications. However, as will be discussed later in this preamble, the EPA believes applying the BACT requirement to such small combustion units would provide emission reductions gains of trivial or no value.

In addition, it should be noted that the SER for CO was set at 100 tpy in deference to the statutory definition of ''major stationary source'' that applies to many source categories, in spite of the fact that the emissions rates corresponding to all the percentages of the NAAQS that were evaluated as potential *de minimis* levels were in excess of 100 tpy. As a criteria

[40] At the time, increments had been established only for PM, which at that time was expressed as total suspended particulate (TSP), and SO_2.

[41] EPA has since completed other standards that contain GHG emission limits, but these were not available at the time of our analysis.

[42] Final Rulemaking titled ''Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units'' (80 FR 64510, October 23, 2015).

[43] ''Regulatory Impact Analysis for the Final Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.'' Chapter 5, Table 5–1. EPA–452/R–15–005, August 2015, (*http://www2.epa.gov/sites/production/files/2015-08/documents/cps-ria.pdf.*

[44] U.S. EPA, Compilation of Air Pollutant Emission Factors, Document No. AP–42, Volume I, Chapter 1, Section 1.4 ''Natural Gas Combustion,'' Tables 1.4.1 and 1.4.2, July 1998.

pollutant, CO is clearly covered by this statutory major source definition. However, the U.S. Supreme Court made clear in *UARG* that the major source levels are not applicable to GHG emissions. Thus, for the reasons discussed earlier, setting a SER for GHGs need not be limited by the major source thresholds in the same manner that the EPA viewed it as a limitation for CO.

D. What is the technical basis for the proposed GHG SER?

1. Summary of Technical Support Information

In this section, we summarize the key findings from our data reviews and how they support our proposed GHG SER value. Following this summary, Sections V.D.2 to V.D.5 of this preamble provide more detailed information on each of the individual reviews and analyses, the findings from each, and references to applicable supporting documents. Section V.E of this preamble then presents our proposed GHG SER, an overall summary of our findings that support our propose GHG SER level, and a request for comments.

It is important to note that no single review or analysis by itself constitutes the basis for the proposed GHG SER value of 75,000 tpy CO_2e. Instead, we based our proposed GHG SER on the collective findings from these technical reviews, some quantitative in nature and some qualitative, that sought to evaluate the potential coverage of GHG sources, and the opportunities for achieving meaningful GHG emissions reductions from the BACT review as part of projects at ''anyway sources'' under the PSD permitting program.

Information obtained from the following four categories of data reviews supports the proposed GHG SER level: (1) A review of recent PSD permitting information for ''anyway sources,'' including those subject to GHG BACT review since GHGs became subject to regulation in 2011; (2) a calculation of the equivalent GHG emissions corresponding to a 40 tpy NO_X SER level for different combustion unit types that could be expected to be part of ''anyway sources;'' (3) an analysis of non-combustion related GHG source category emissions data; and (4) a review of control strategies that have been or would likely be applied for GHG BACT reviews. In addition, the EPA considered the burdens of applying the GHG BACT requirement to sources emitting (or modifications increasing) GHGs in relatively small amounts. The following paragraphs summarize the key findings from each of these reviews that informed our decision on the proposed GHG SER.

Under the first category of data review, we examined existing PSD permitting information to determine the types and size of GHG emission units that are likely to be part of PSD ''anyway sources.'' We looked at two sources of permitting information for this review. First, we looked at GHG permitting information from the EPA Regional offices and states as part of the EPA's effort under the phase-in process established in the Tailoring Rule to collect information on actual permits issued that included GHG BACT limits. This information provided actual, historical information on the type of emissions units undergoing GHG BACT review at a 75,000 tpy CO_2e permitting applicability level. This was the effective applicability level for determining whether GHG BACT review applied to ''anyway sources'' that were otherwise subject to PSD permitting based on conventional (non-GHG) pollutants under Step 1 of the Tailoring Rule. It is also the current effective applicability level for determining if GHG BACT review applies to ''anyway sources.'' [45] The second data source we looked at as part of this permitting review was information from the EPA's Reasonably Available Control Technology (RACT)/BACT/Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC). The RBLC is a voluntary, national reporting database containing PSD permit information, including permits for which no GHG BACT review was conducted after GHGs became regulated in 2011. We reviewed the RBLC data to further characterize PSD permits in regards to potential GHG-emitting sources and to specifically identify the likelihood of new PSD ''anyway sources'' emitting (or a modified ''anyway source'' increasing) GHG emissions in an amount less than 75,000 tpy CO_2e. Such a source would not have been subject to GHG BACT review under Step 1 of the Tailoring Rule. Because all of this PSD permitting information was from a period when 75,000 tpy CO_2e was used as the effective BACT applicability level for GHGs, this value serves as a key reference point throughout each part of our analysis.

Our review of this permit information produced a number of important findings. First, we found that, using a 75,000 tpy CO_2e applicability level, BACT review for GHGs was triggered for the largest sources of GHGs from a national perspective. This was evidenced by the fact that the source categories represented in the ''anyway sources'' with PSD permits addressing GHGs correlated very well with the largest GHG-emitting source categories identified through the EPA's GHG Reporting Program (GHGRP).[46] The GHGRP emissions reports are submitted by stationary sources to the EPA on a yearly basis. Almost all of the PSD permits since 2011 that contained GHG BACT limits were issued to sources in categories that collectively represent over 92 percent of the 2013 reported emissions under the GHGRP. These GHGRP categories include power plants (66 percent of GHGRP emissions for 2013), petroleum and natural gas systems (7 percent), petroleum refineries (5.6 percent), organic and inorganic chemicals manufacturing (5.5 percent), minerals production (3.5 percent), metals production (3.4 percent) and pulp and paper manufacturing facilities (1.2 percent). The percentages provided above reflect the portion of the total nationally-reported GHG emissions, on a CO_2e basis, emitted from facilities in the particular source category. The distribution of ''anyway source'' permits containing a GHG BACT limit was similar: Power plants made up the largest percentage (47 percent) followed by the chemical production sector (20 percent), the oil and gas sector (10 percent), metals production (8 percent), refineries (6 percent), minerals production (6 percent) and the pulp and paper industry (3 percent). These same categories also contributed over 92 percent of the GHG emissions, based on CO_2e, as reported under the EPA's GHGRP.[47]

This correlation between source categories subject to the GHG BACT requirement and the source categories contributing the most reported GHG emissions confirms that at the current applicability level of 75,000 tpy CO_2e, the categories of sources contributing the most to national stationary source GHG emissions are included in the population of sources that were subject to the BACT requirement for GHGs. We did not see any prominent, high-ranking

[45] Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA,* Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. EPA, to Regional Administrators, p. 3, July 24, 2014.

[46] ''A Summary Analysis of the GHG Permitting Experience between 2011 and 2014,'' prepared by EPA Staff, March 2015.

[47] 2013 GHGRP Overview Report, *http://www.epa.gov/sites/production/files/2015-07/documents/ghgrp-overview-2013.pdf.*

GHG reporting source categories, in terms of their national GHG emissions contributions, that were not included in the ''anyway sources'' that obtained PSD permits with GHG BACT limits at the 75,000 tpy CO_2e level. This is one consideration in evaluating whether there is value in applying BACT to GHGs at sources emitting (or modifications increasing) this pollutant below the 75,000 tpy CO_2e level. Other parts of the EPA's analysis show that the potential for achieving meaningful GHG reductions from BACT review is highest at the GHG reporting source categories that are responsible for most of the national GHG emissions.

A second key finding from our review of past permitting actions was that the emissions from large, fossil-fueled combustion units were generally the principle cause for ''anyway sources'' requiring PSD permits based on emissions of pollutants other than GHGs. Across all industry categories, we found that ''anyway sources'' have been triggering PSD primarily because of the addition or modification of combustion units. Most of these projects involved some combination of turbines, boilers, process heaters/furnaces, and stationary IC engines that were principally fired with either diesel fuel or natural or process gas, with smaller numbers of biomass-fueled units. We found that even for a specific sector such as the oil and gas industry, where there are a variety of fugitive emission sources, combustion emissions still dominate the emission profile and are the primary driver of PSD applicability for new construction and major modification projects.

This finding that combustion units dominate the population of PSD permits that contain GHG BACT limits to date is also consistent with the general composition of the sources in the national GHG emissions inventory. Nationally, CO_2 is the GHG emitted in the largest quantities from stationary sources.[48] The 2.9 billion metric tons of CO_2 emissions reported by stationary sources under the EPA's GHGRP for the year 2013 represent 91.4 percent of the total reported GHGs, in terms of percent of total CO_2e emissions, from reporting stationary sources in 2013.[49] Of the reported 2.9 billion metric tons of CO_2 emissions, approximately 90 percent results from fossil fuel-fired combustion units.[50]

The fact that combustion units dominate the reported GHG emissions for industrial stationary sources and are to date the most prevalent units triggering the requirement to obtain a PSD permit at these same types of industrial sources is another important consideration in our development of a GHG SER. The EPA has no reason to believe that economic conditions or other factors will dramatically alter the nature of industrial activity triggering PSD permitting in the future. Thus, we expect that new and modified combustion units of a similar profile will continue to make up most of the potential ''anyway sources'' and modifications requiring a PSD permit, regardless of the GHG SER level that applies to determine whether BACT applies to GHGs at such sources

A third finding, resulting from our review of the RBLC permitting information, was that very few ''anyway sources'' obtaining permits experienced GHG emission increases less than 75,000 tpy CO_2e. From the RBLC dataset, we identified 20 PSD permits issued to ''anyway sources'' between 2011 and 2014 that included permitted combustion units that did not contain BACT limits for GHGs. All of these permits authorized modifications of an existing major source, and typically included some type of smaller, ancillary combustion units, such as a flare, an IC engine or process heater. It is possible that each of the projects authorized by these permits increased GHG emissions in an amount less than 75,000 tpy CO_2e (but greater than zero tpy). We use the term ''possible'' because our analysis is based on emissions unit information available for the permit from the RBLC database, or from individual permit documents in cases where those were available. The unit types and/or fuel used suggest the presence of GHG emission sources, but without a full site-specific PSD applicability determination prepared specifically for GHGs (accounting for all contemporaneous increases and decreases of GHG emissions), these occurrences should only be considered possible instances where there may have been GHG emission increases. These 20 permits represent 5 percent out of a total of about 400 PSD permits in the RBLC dataset occurring over a 4-year period. Although the RBLC dataset is based on voluntary reporting and, due to incomplete participation, does not represent a complete dataset of PSD permits issued nationally, we believe that this relatively small percentage of ''anyway source'' permits that we identified in the RBLC dataset reflects the unlikeliness of a significant number of ''anyway source'' PSD permits requiring GHG BACT review below a 75,000 tpy CO_2e SER level.

Given the nature and number of these permits that we identified, we would not expect to add many additional GHG BACT reviews nationwide at a GHG SER level below 75,000 tpy CO_2e. In addition, any additional BACT reviews would likely only be for modifications of existing major sources. The past permitting information shows that any wholly-new ''greenfield facilities'' would be expected to trigger the PSD BACT requirement at GHG SER level of 75,000 tpy CO_2e. Any new major stationary source that emits pollutants other than GHGs above the major source thresholds would be expected to emit GHGs in amounts of at least 75,000 tpy CO_2e or more. Thus, our technical analysis of past PSD permitting activity indicates that GHG SER values below 75,000 tpy CO_2e are only potentially meaningful for modification projects that trigger PSD at existing major sources. Modification projects may include both additions of new emissions units at existing facilities and physical changes to existing emissions units that result in increases in emissions.

The last key finding from our review of PSD permit information was that applying BACT to GHGs at the 75,000 tpy CO_2e permitting level has been administratively feasible for both sources and permitting authorities over the 4 years it has been in place. The EPA's analysis showed effective and timely implementation of the BACT requirement for GHGs. A knowledge base on BACT review and design for GHGs at source categories and units triggering the BACT requirement at the 75,000 tpy CO_2e level has also been developed over this permitting period that will facilitate future permit reviews.

Based on the finding, supported by our review of past PSD permit actions, that construction or modification of combustion units is the dominant form of activity that triggers the requirement to obtain a PSD permit, our second category of data review involved identifying the specific level of increased GHG emissions resulting from the construction or modification of combustion units most likely to trigger PSD in the future. As discussed earlier, the EPA projects that GHG SER values below 75,000 CO_2e would only be meaningful for modifications of existing major sources that trigger PSD review.

[48] 2013 GHGRP Overview Report, *http://www.epa.gov/sites/production/files/2015-07/documents/ghgrp-overview-2013.pdf.*

[49] 2013 GHGRP Overview Report, *http://www.epa.gov/sites/production/files/2015-07/documents/ghgrp-overview-2013.pdf.*

[50] 2013 GHGRP Reporting Dataset, *http://www.epa.gov/ghgreporting/ghg-reporting-program-data-sets.*

Thus, this portion of our analysis did not involve wholly new sources, but focused instead on projects involving the addition of new emissions units at an existing major source. Since GHG BACT review can only apply to a modification in cases where a pollutant other than GHGs is increased in significant amounts and is thus subject to BACT review for that pollutant, we used the existing PSD NO_X SER value of 40 tpy to calculate an equivalent level of increase in GHG emissions that we would expect to be associated with the combustion unit types most likely to be part of future modification projects that trigger the requirement to obtain a PSD permit. Using this approach, the GHG equivalency results simply provide an approximate measure of the theoretical minimum level of GHG emissions increase that could be associated with a project that adds a particular type of combustion unit that increases NO_X by just more than the NO_X SER level of 40 tpy. We then examined this equivalency level in relation to both the findings from our first technical review (the past actual permitting actions) and our fourth technical review, which evaluated the degree of reductions found to be achievable in GHG BACT reviews for these unit types.

The results of our equivalency analysis ranged from 17,529 tpy CO_2e for certain types of stationary IC engines, upwards to 425,665 tpy CO_2e for large power plant turbines. The average result across unit types was 98,333 tpy CO_2e. The analysis confirmed that, for some unit types, GHG emissions increases would clearly exceed the current 75,000 tpy CO_2e level if that unit increased NO_X emissions over the NO_X 40 tpy SER level. For example, a natural-gas fired combustion turbine, commonly added as part of a modification project at existing power plants, would have GHG emissions well in excess of 75,000 tpy CO_2e. In projects involving a large power plant turbine unit such as this, a single unit can trigger the requirement to obtain a PSD permit.

However, for other types of emissions units that might be added as part of a PSD triggering modification, we found it necessary to consider the results in light of the actual permitting experience. For example, our analysis showed equivalent GHG emissions increases below a 20,000 tpy CO_2e level for adding a stationary IC engine. In other words, an IC engine that just increases NO_X emissions by 40 tpy or more could be expected to increase GHGs by less than 20,000 tpy CO_2e. However, addition of a single IC engine is not commonly a PSD triggering event. Our permitting review showed that most of the IC engines addressed in ''anyway source'' PSD permits are present for one of the following two reasons: (1) As associated equipment (*e.g.,* emergency backup generator or fire pump engine) when the source is adding a large combustion unit (such as a turbine or boiler) that is principally responsible for triggering the requirement to obtain a permit; or (2) in multiple-unit configuration generator sets (*e.g.,* 10 or more large IC engines linked together for electricity production). Also, in practice, there is a low likelihood that a PSD project involving the addition of a single unit, of any type, will just exceed the 40 tpy NO_X SER level because, in such cases, the permit applicant very often accepts PTE emission limits to avoid triggering PSD if the project's NO_X emission increase is close to the NO_X SER level.

Therefore, while our equivalency analysis resulted in possible theoretical occurrences of ''anyway source'' projects involving combustion units that may have emissions less than 75,000 tpy CO_2e, we found very few actual PSD-triggering modification projects that involved adding a single combustion unit that would have total GHG emissions less than 75,000 tpy CO_2e. We found it is much more likely that a PSD-permitted project would have NO_X emissions well in excess of the 40 tpy NO_X SER level due to the addition of multiple combustion units or the sheer size of the primary unit itself, such as a power plant turbine or steam-generating unit. Such projects will have GHG emissions multiple times greater than our theoretical equivalency results.

Our third category of data review looked to identify any additional GHG emission sources, particularly non-combustion related units or processes that might be part of ''anyway sources'' PSD modification projects, which could potentially be subject to the BACT requirement for GHGs at applicability levels below 75,000 tpy CO_2e. Our review of past PSD permits showed that the large majority of PSD permitted projects that involved GHG emission increases triggered PSD because of the addition of combustion units. In addition, most of these combustion unit projects had GHG emission increases in excess of 75,000 tpy CO_2e. Nevertheless, we also assessed the coverage of non-combustion related GHG sources that might trigger PSD to ensure that we did not miss meaningful reductions of GHGs that could be achieved by applying BACT to GHG at modification projects that increase GHGs in amounts less than the 75,000 tpy CO_2e level that were used in prior permits. Using information from the EPA's GHGRP, we identified and evaluated emissions from GHG-emitting processes and units associated with non-combustion related GHG source categories relative to different GHG emission threshold levels.

One main finding from this evaluation was that a high percentage of GHG emissions from non-combustion units or processes triggering PSD would be covered by the BACT requirement at a level of 75,000 tpy CO_2e on a PTE basis. We found that at a 75,000 tpy CO_2e PTE-based emission threshold level, non-combustion related units and processes responsible for approximately 89 percent of the GHG emissions, on a CO_2e basis, all the non-combustion ''anyway source'' categories included in our analysis would be captured, and thus conceivably subject to GHG BACT review if the GHG SER was set at a 75,000 tpy CO_2e level. A construction project at a municipal waste landfill, for example, can trigger PSD applicability if its increased emissions exceed the PSD SER level of 50 tpy for non-methane organic compounds (NMOC), the regulated NSR pollutant most commonly emitted from municipal waste landfills. A landfill increasing its emissions by just over 50 tpy NMOC would add over 190,000 tpy CO_2e of GHG emissions (CH_4 expressed on a CO_2e basis), which is well in excess of 75,000 tpy CO_2e.[51] We found significant GHG emission source coverage at a 75,000 tpy CO_2e level for other important source categories containing non-combustion related GHG-emitting units and processes, including cement production, nitric acid production, refineries, and underground coal mines. The non-combustion related units and processes in these categories that emit GHGs in amounts greater than 75,000 tpy CO_2e are responsible for over 90 percent of the non-combustion related GHG emissions from each of these source categories.

Another important finding from our review of non-combustion sources that emit GHGs was that there is evidence that smaller GHG-emitting units that would not otherwise trigger PSD independently can be pulled into PSD when other emissions units are added in the same project. Once the BACT requirement is applicable to a given pollutant based on emissions in excess of the significance levels, the BACT review covers any associated processes emitting the same pollutants as the main units that are the principal reason for triggering PSD review. Because of the

[51] Memorandum from H. Ward, EPA/SPPD, to J. Mangino, EPA/AQPD, re: Methane to NMOC ratio at landfills. June 17, 2014.

definition of the GHG pollutant as the ''sum-of-six'' constituent gases, ancillary units that emit relatively small amounts of GHGs other than CO_2 could become subject to GHG BACT requirement if a combustion unit added to the source at the same time emits GHGs in excess of the significance level that the EPA promulgates. Based on the actual experience of permitted sources using a 75,000 tpy CO_2e level under Step 1 of the Tailoring Rule to determine GHG BACT applicability, we have seen smaller GHG-emitting units get pulled into PSD permits involving larger units at oil and gas production, processing and transmission facilities. At these facilities, projects that have triggered PSD involved addition of a large single or multiple smaller combustion units (such as large gas compressor turbines and engines that trigger PSD because of emissions of NO_X or another pollutant besides GHG). These projects also had associated CH_4 leaks from piping, valves, and gas storage equipment. The combustion unit(s) involved in such projects that triggered PSD had GHG emission increases exceeding 75,000 tpy CO_2e, and thus subjecting the project to GHG BACT review under previous PSD regulations. In addition to evaluating controls for GHG emission from the combustion units, the GHG BACT review accompanying these projects included measures directed at the fugitive CH_4 sources associated with the project because the GHG pollutant includes both CO_2 and CH_4 gases. By themselves, the CH_4 emissions fell below the 75,000 tpy CO_2e level, and the fugitive sources alone would not have triggered PSD based on pollutants other than GHGs. However, based on the definition of the GHG pollutant, because other emissions units at these sources triggered PSD and then also triggered BACT for GHGs based on emission in excess of 75,000 tpy CO_2e, these ancillary units were pulled into the overall GHG BACT review.

This finding explains in part why we did not find evidence of many ''anyway source'' PSD permits with emission units that emit less than 75,000 tpy CO_2e. Our review of prior ''anyway source'' PSD permitting actions showed that a large majority of PSD permits for projects that would be most likely to involve GHG emission increases are triggered by the addition of large combustion units. In addition, we found that most of these larger combustion units would have GHG emission increases in excess of a 75,000 tpy CO_2e GHG SER level. Thus, we can anticipate that setting a GHG SER below the 75,000 tpy CO_2e level would be unlikely to subject additional non-combustion emissions to the GHG BACT review. If these non-combustion units are constructed independently, they will generally not emit regulated NSR pollutants other than GHGs in amounts that are high enough to trigger PSD review, or they will not involve GHG emissions at all. So establishing a GHG SER lower than 75,000 tpy CO_2e would not likely cause these non-combustion sources to become subject to the GHG BACT requirement. Non-combustion GHG-emitting processes that are part of a project generally are not brought into the GHG BACT review without the contemporaneous addition of a combustion unit that serves as the PSD-triggering event. A GHG SER of 75,000 tpy CO_2e would ensure that such projects will be subject to the GHG BACT requirement.

Our fourth category of data review looked at the degree of GHG emissions reductions that one could expect to achieve by applying energy efficiency measures as BACT for GHGs at projects involving certain types and sizes of combustion units. Although we reviewed a variety of GHG reduction techniques focused on energy efficiency measures applied to combustion units since, as noted in our review of ''anyway source'' permitting, the addition or modification of combustion units is, and likely will continue to be, the principal triggering event for most PSD permits involving GHGs. The EPA's GHG permitting experience has been that BACT for such sources will usually be energy efficiency measures. Therefore, in evaluating a possible GHG SER option, we focused on the implementation, effectiveness and value of energy efficiency measures at combustion sources that may be expected to trigger PSD.

Our main finding from reviewing these energy efficiency measures is that the degree of emissions reductions achieved is greater at larger combustion units that would be subject to GHG BACT review at or above a 75,000 tpy CO_2e SER. We found that the maximum reduction potential from energy efficiency measures is approximately 7 percent [52] from a baseline industrial boiler configuration. Emissions reductions on this scale are generally only obtainable where site-specific design and construction criteria can be part of the combustion unit design and manufacture. Large industrial boilers, process heaters and furnaces of the size typically seen as part of ''anyway source'' PSD projects are custom-built and thus not generally purchased as ''off-the-shelf'' items. Thus, these units can be site-designed and constructed in a way that considers and incorporates a combination of energy efficiency measures.[53] The application of BACT review is thus particularly relevant to these types of units as it involves case-by-case review of technology implementation and cost considerations.

If carbon capture and sequestration (CCS) is found to be achievable at such large industrial boilers, process heaters and furnaces, the degree of emissions reductions that could be achieved is significantly increased. Thus, whether energy efficiency or more effective controls are applied, the BACT requirement would be expected to yield a meaningful degree of GHG emissions reductions when applied to an individual source or modification that increases GHG emission by 75,000 tpy CO_2e or more.

In contrast, when we consider emissions units that emit GHGs in amounts below 30,000 tpy CO_2e, we generally see smaller ''off-the-shelf'' type units, such as stationary IC engines. The ability to achieve additional GHG reductions from such units is limited or non-existent for several reasons. First, implementing the efficiency measures generally requires site-specific design and construction criteria, more typically associated with larger scale projects where these measures can be part of unit design and manufacture. Second, ''off-the-shelf'' units such as IC engines typically cannot be substantially modified or tampered with in order to be guaranteed to meet their certified performance standards. Third, there is little variation, typically within 1 or 2 percentage points, in the efficiency of these types of engines sold by different vendors. The market demands that all such engines be highly-efficient across vendors, and thus offers little opportunity for GHG reductions from the purchase decision. Finally, given the relatively small capital cost of these units and the anticipated high cost of CCS, it is unlikely that CCS will even be found to be achievable when such a unit is installed by itself without a much

[52] ''Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Industrial, Commercial, and Institutional Boilers,'' EPA Office of Air Quality Planning and Standards. October 2010. *http://www.epa.gov/sites/production/files/2015-12/documents/iciboilers.pdf.*

[53] ''Boiler Efficiency Projects-Development of Issues Papers for GHG Reduction Project Types: Boiler Efficiency Projects,'' Prepared for the California Climate Action Registry, January 7, 2009. *http://www.climateactionreserve.org/wp-content/uploads/2009/03/future-protocol-development_boiler-efficiency.pdf.*

larger combustion unit that will trigger the PSD BACT requirement.

It is worth recalling the definition of the word ''meaningful,'' as described earlier in Section V.C of this preamble where we discuss the historical background for *de minimis* levels under PSD. In the preamble to its 1980 PSD rule, the EPA defined ''meaningful'' reductions as greater emission reductions than one would expect to be achieved from otherwise-applicable regulatory requirements such as an NSPS or NESHAP. 45 FR 52706. The EPA does not expect that BACT review for IC engines would produce any reductions for GHGs beyond that resulting from the NSPS compliance standards that already exist for these new units. Given the nature of these units, the EPA and permitting authorities have not identified controls at this time that can be added to these engines to further reduce their GHG emissions. Where IC engines have been part of ''anyway source'' PSD projects to date, typically in association with a larger turbine or boiler units, the selection of high-efficiency engines that meet the requirements of the applicable NSPS has qualified as BACT. Therefore, the value for site-specific GHG BACT review on projects involving only one or two smaller combustion units of the type that might be implicated at GHG SER values less than 30,000 tpy CO_2e is likely to be virtually non-existent. The EPA therefore does not view potential emission reductions from the BACT requirement at projects that increase GHG emissions by less than 30,000 tpy CO_2e as meaningful in the context of setting a *de minimis* level under PSD.

For modifications at ''anyway sources'' that trigger PSD and increase GHG emissions by 30,000 tpy to 75,000 tpy CO_2e, we found that it may be possible to apply energy efficiency measures to achieve some reductions in emissions, but there is reason to question whether the degree of reduction achieved would be meaningful. For example, we found that the current maximum reduction potential from energy efficiency measures for combustion units, mainly at boiler configurations, is around 7 percent.[54] At smaller combustion units, there are reasons to question whether this maximum reduction potential could be achieved. However, assuming this percentage of reduction could be achieved by applying the most aggressive energy efficiency measures on an additional unit that emits at or near the current 75,000 tpy CO_2e permitting threshold, the total amount of GHG emissions avoided would be limited considering the total amount of increased GHG emissions from such a unit. A 7 percent improvement in a baseline boiler unit efficiency could reduce a 74,999 tpy CO_2e boiler unit's GHG emissions by approximately 5,500 tons CO_2e per year. Another way to view this is that exempting such a source from the BACT requirement for GHGs would result in a marginal increase of 5,500 tpy CO_2e in GHG emissions. The modification would still increase GHG emissions by 69,500 tpy CO_2e even after applying the most aggressive energy efficiency measures through the BACT requirement. In reality, the marginal emissions increase from not applying BACT to GHGs at such a source would likely be less than 5,500 tpy CO_2e because that increase is based on a PTE scenario.[55]

In addition to considering the findings from the four categories of analysis described earlier, we also considered the GHGRP's reporting threshold for GHG emissions, which is 25,000 metric tpy CO_2e for most reporting sources, based on *actual* emissions. Depending on utilization, the PTE-based emissions can be significantly greater than 25,000 metric tpy CO_2e. For example, a source actually emitting 25,000 tpy CO_2e would have a PTE of 50,000 tpy CO_2e if it were run at a 50 percent utilization rate over the course of the year. Also, the reporting rule does not require that those facilities above the reporting threshold take measures to control their GHG emissions; rather it only requires that sources monitor and report their emissions. So while the GHGRP illustrates a comparative level of GHG emissions associated with industrial type GHG-emitting facilities deemed significant for monitoring and reporting purposes, we did not see this threshold as a directly transferrable GHG metric for setting a GHG SER because of the different end-uses and requirements. However, the GHGRP reporting threshold did provide us a quantified GHG emission level for a relative frame of reference in evaluating our proposed GHG SER option as described in the sections of this preamble that follow.

Sections V.D.2 to V.D.5 of this preamble provide more detail on each of the individual technical reviews and analyses and the findings obtained from each.

2. Review of PSD Permitting and GHG Emission Sources

Under our first technical review, we examined existing PSD permitting information to determine the types and size of GHG emission sources that are likely to be part of PSD ''anyway sources.'' We looked at two sources of information for this review. First, we looked at GHG permitting information from the EPA Regional offices and states as part of an effort under the Tailoring Rule to collect information on actual PSD permits issued that included GHG BACT review. Second, we reviewed information from the EPA's RBLC, including permits for which no GHG BACT review was included. The subsections of this preamble that follow describe each review and the key findings.

a. GHG Permitting Under Step 1 of the Tailoring Rule

The main purpose of this analysis was to assess and summarize the GHG permitting experience to date for ''anyway sources'' emitting GHGs at or above the 75,000 tpy CO_2e GHG threshold level, the effective GHG permitting level for sources that were otherwise subject to PSD permitting for conventional non-GHG pollutants under Step 1 of the Tailoring Rule. The term ''anyway sources'' refers to sources that trigger PSD permitting requirements ''anyway'' based on pollutants other than GHGs, regardless of the amount of their project-related GHG emissions. We focused on these ''anyway source'' permits since they are the only GHG sources and projects that would potentially be subject to GHG permitting following the *UARG* decision that effectively limited GHG permitting to sources and projects that would otherwise be subject to permitting based on emissions of pollutants other than GHGs. We did not include in our review PSD permitting conducted under Step 2 of the Tailoring Rule since Step 2 required PSD permits and GHG BACT review for sources and modifications based solely on GHG emission increases. Such sources do not trigger PSD after the *UARG* decision and subsequent revisions to the EPA's regulations, including those proposed in this rule.

By analyzing the types of GHG emission units and sources subject to

[54] ''Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Industrial, Commercial, and Institutional Boilers,'' EPA Office of Air Quality Planning and Standards. October 2010. *http://www.epa.gov/nsr/ghgdocs/iciboilers.pdf.*

[55] As this summary of our technical review demonstrates, our findings are based on an analysis of currently available information. The information considered as part of our analysis, such as the average GHG emissions reduction that can be achieved from the application of energy efficiency or the availability of CCS for smaller sources, may change in the future. Thus, after this rule is finalized, EPA may need to periodically consider if there are significant changes to the information considered in our analysis.

GHG BACT review during the past four years, we developed a historical profile of the source coverage and GHG BACT review process at the 75,000 tpy CO_2e GHG permitting level. Looking at this historical record, we can better assess to what extent the existing 75,000 tpy CO_2e permitting level subjects significant GHG-emitting sources to BACT review, and whether GHG BACT review at that level yields emission reductions that were meaningful.

For this analysis, we reviewed summary information on 200 PSD permits issued during the 2011–2014 timeframe that contained GHG BACT requirements after GHGs became a regulated NSR pollutant. We summarized the characteristics of the sources and types of units that have been subject to GHG BACT review. Some of the key findings from this review are presented here; more details on this analysis are included in the docket for this proposed rulemaking.[56] Based on this review sample, approximately 90 percent of all the PSD permits with GHG BACT limits were issued to ''anyway sources,'' [57] with the other 10 percent issued to sources that were subject to PSD permitting only because of their GHG emissions (and thus would not be captured at any SER level because they are not ''anyway sources'').

The importance and contribution of the power generating sector to GHG national emissions cannot be overstated when considering opportunities for GHG reductions and identifying where there is clear, non-trivial value in applying BACT review to obtain such reductions. Power plants are responsible for a majority of the country's total stationary source GHG emissions, approximately 66 percent of the reported 2013 GHG emissions under the EPA's GHGRP.[58] Since combustion units, such as large gas turbines and steam boilers installed at power plants, consistently have GHG emission increases well in excess of 75,000 tpy CO_2e, a GHG SER at this level will ensure that permitting authorities continue to apply GHG BACT review to the largest and most prevalent GHG emission units in the power plant sector as part of ''anyway sources'' permitting actions.

A 75,000 tpy CO_2e level also does not overlook other significant units. In our review of GHG permitting at a variety of ''anyway sources'' besides power plants, we found that GHG emissions for units subject to GHG BACT review were generally well above the 75,000 tpy CO_2e threshold. This is because of the greater level of GHG emissions associated with large fossil-fuel fired combustion units, such as turbines and boilers. The addition of these units was typically the triggering event that caused the need for a PSD permit for pollutants other than GHGs. It was also evident from the review that most newly constructed facilities (*i.e.,* ''greenfield facilities'' as opposed to modifications of existing major sources) that obtain ''anyway source'' PSD permits will generally have GHG emissions well in excess of a 75,000 tpy CO_2e threshold based on the cumulative, facility-wide total GHG emissions from all emission points in the facility fence line.

As part of this same analysis, we also performed a more detailed review on a sample subset of 55 individual ''anyway source'' permits that included GHG BACT limits and represented PSD permits for different source category types. Key findings from these sample permit reviews are summarized here with more details of the review included in the docket for this proposed rulemaking.[59] The source category types represented by these 55 permits included the following: Power plants; chemicals production facilities; oil and gas industry sources; metals and mineral production facilities; pulp and paper production facilities; ethanol production plants; and a municipal waste combustion facility.

We found that the construction projects covered by these PSD permits included at least one, and in most cases multiple, large combustion units, such as large fossil fuel-fired turbines, boilers, process heaters, or furnaces, along with associated stationary IC engines for some facilities (generally as backup emergency generators or for associated equipment such as pumps and compressors). The GHG emission levels associated with these sample PSD projects were consistently over 100,000 tpy CO_2e, with many facilities, particularly greenfield facilities, reporting much higher levels. The principal fuels used in the combustion units were natural gas for boilers, furnaces, and turbines and diesel or natural gas for large stationary IC engines. There were limited cases of biomass fuel used, principally in the pulp and paper sector. The emissions from these larger combustion units were in most cases the principal cause for these projects requiring PSD review for both non-GHG pollutants and GHGs. Over 90 percent of the permitted activities within the sample of reviewed permits involved combustion units of some type, primarily fossil fuel-fired boilers, turbines, or stationary IC engines.

Some permits for these combustion unit projects also included ancillary, non-combustion related sources of GHGs for which GHG BACT review was conducted. These sources consisted principally of fugitive emission releases of CH_4 from natural gas delivery, processing or storage units, and SF_6 releases from circuit breaker equipment associated with power plants.[60] There were isolated examples of other non-combustion related sources at two chemical production facilities: GHG emissions from a nitric acid production process and CO_2 from a CO_2 liquefaction process. These processes were both large GHG-emitting processes, emitting more than 90,000 tpy CO_2e.

b. RBLC Permitting Information

For this analysis, we reviewed information on PSD permits contained in the RBLC to understand the types of non-GHG emission sources that were subject to BACT review for other pollutants besides GHG but that may also be important from a GHG emission perspective. Since the *UARG* decision limited the scope of the PSD permitting program to ''anyway sources,'' it is important to understand the types of sources that are typically part of ''anyway sources'' PSD permitted projects and their potential to emit GHGs. This analysis differed from our review of historical GHG permitting data since the RBLC dataset also contains PSD permits that did not contain GHG BACT limits, and thus we could identify if there were other GHG emissions sources that could potentially be subject to GHG BACT review at permitting threshold levels below 75,000 tpy CO_2e. A detailed report of this analysis is included in the docket for this rulemaking.[61]

[56] ''A Summary Analysis of the GHG Permitting Experience between 2011 and 2014.'' Prepared by EPA Staff, March 2015.

[57] As discussed previously in Section V.D.1, the ''anyway source'' permits with GHG BACT limits all involved energy-intensive industries, emitting significant amounts of CO_2 from the burning of fossil fuels in various types of combustion units.

[58] 2013 GHGRP Overview Report, *http://www.epa.gov/sites/production/files/2015-07/documents/ghgrp-overview-2013.pdf.*

[59] ''A Summary Analysis of the GHG Permitting Experience between 2011 and 2014.'' Prepared by EPA staff, March 2015.

[60] ''A Summary Analysis of the GHG Permitting Experience between 2011 and 2014.'' Prepared by EPA staff, March 2015.

[61] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

We began our review of ''anyway source'' PSD permits by assessing the types of emission units and sources that triggered PSD actions for pollutants other than GHGs. We then identified which of the units would most likely emit GHGs. We reviewed detailed process level information from over 100 ''anyway source'' PSD permits issued in the last 4 years for source categories likely to have some amount of GHG emissions.[62]

We examined individual source category projects as represented in the RBLC dataset to see if there was evidence of any consistency in the type and/or size of combustion units across key source categories and the extent to which they appear to be the primary emissions unit that is installed or modified and triggers PSD for pollutants other than GHGs. To get a representative sample across different source categories, we reviewed permits from a variety of industrial classifications, including potentially important GHG-emitting categories such as metals production, chemical manufacturing, petroleum refineries, the oil and gas industry, pulp and paper industries, and waste industries.[63] We did not include power plants in the RBLC sample set we reviewed because we knew with a high level of certainty that the PSD permitted projects for these facilities principally involved very large combustion units, such as large gas turbines, with GHG levels well in excess of the current 75,000 tpy CO_2e threshold. Therefore, these permits would not provide any additional insight into the characterization of sources that obtained permits because of pollutants other than GHGs for purposes of evaluating a possible GHG SER option.

Across the sampled industry categories, we found that ''anyway sources'' triggered PSD for conventional pollutants primarily because of the addition or modification of combustion units, such as turbines, boilers, process heaters, furnaces, and stationary IC engines. For most facilities, combustion units or associated combustion unit-related emissions (*e.g.,* flares, exhaust gas treatment systems) constituted the majority of the overall processes for which BACT limits were required for pollutants other than GHGs at any given facility. Most of the larger combustion units covered by PSD permits were fueled principally by either natural gas or process-related gas for industries (such as petroleum refineries) where such gas is generated. Some permits also included smaller, stationary engines (typically emergency generators or fire pumps) principally fueled by either diesel or natural gas.

From a sample of about 400 PSD permits contained in the RBLC dataset for the years 2011 to 2014, we identified only 20 PSD permits for modification projects[64] from the RBLC data set that included combustion units whose cumulative GHG emissions would likely not exceed 75,000 tpy CO_2e based on their fuel input data. Although we recognize that the RBLC dataset does not reflect a complete dataset of permitting actions due to its voluntary participation and under-reporting, we reasonably expect, based on the overall characteristics of the other PSD permits we reviewed and the type of GHG source categories affected under PSD, that there are a relatively low number of ''anyway source'' PSD projects with GHG emissions likely to be less than 75,000 tpy CO_2e.

We also found that where non-combustion processes were covered by a PSD permit, the emissions from these processes principally consisted of PM-related fugitive emissions, such as dust from material handling or roads. There were also some specific industries, such as oil and gas processing plants, refineries, chemical production plants and landfills, where VOC emissions, often fugitive in nature, from piping, pumps and storage tanks, were subject to BACT requirements. However, in most of these cases there were large combustion units included in the PSD-permitted project that appear to be the key source of the emissions of a pollutant other than GHGs that exceed the applicable pollutant significance level, and thus drive the requirement for a PSD permit.[65]

Working from our preliminary finding above regarding non-combustion sources, we took a closer look at the extent to which combustion units were the main component of PSD projects related to a particular source category that has significant non-combustion GHG emissions, namely, facilities in the oil and gas sector with CH_4 emissions. The oil and gas industry is well represented in PSD permitting, with the third highest count of permits between 2011 and 2014, and is also the second largest emitting industrial sector for non-combustion related CH_4 emissions.[66] We were particularly interested in understanding the contribution of combustion units in triggering PSD ''anyway'' at oil and gas sector facilities, and how this might influence GHG permitting at a proposed GHG SER level.

We found that, for projects subject to PSD in the oil and gas industry, combustion units still dominate the GHG emission profile. We examined a sample of 16 PSD permits issued between 2011 and 2015 associated with the oil and gas sector to determine whether PSD permits in the industry are principally and routinely required due to projects involving combustion units or if they are sometimes triggered by non-combustion emissions units alone, and whether such non-combustion units might also be sources of GHG emissions. A detailed summary of this review of oil and gas sector PSD permits is provided in the docket for this proposed rulemaking, from which the following key findings are taken.[67] In all the PSD permits that we evaluated for this oil and gas sector review, combustion sources were the primary driver of PSD applicability for the permitted new source or major modification. Based on available emissions data within the permits, we did not find a PSD permit that did not cover combustion units as the primary emitters of PSD pollutants, including GHGs. Of the 13 permits for which GHG emissions were provided or could be readily calculated, 12 of the projects involved GHG emissions greater than 75,000 tpy CO_2e, with four of these over 500,000 tpy CO_2e. The one project with less than 75,000 tpy CO_2e was a modification project to increase flaring as a BACT control strategy for VOCs. Of the 10 permit actions with adequate data to estimate GHG emissions on a unit basis, combustion emissions accounted for more than 70 percent of GHG emissions in all cases, more than 80 percent in 8 of the 10 cases, and more than 90 percent in 5 of the 10 cases.

[62] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

[63] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

[64] ''List of Permits Identified in RACT/BACT/LAER Clearinghouse that Likely Have Combustion-Related Emissions that are less than 75,000 tpy CO_2e''. Prepared by EPA Staff, October 2015.

[65] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

[66] ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2013,'' Table ES–2. Document No. EPA 430–R–15–004. April 15, 2015. *http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html.*

[67] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

3. GHG Emissions Levels for Combustion Units

Once we had an understanding of the characteristics of ''anyway source'' permitting actions specially, the prevalence of combustion units as the primary GHG-emitting sources in these PSD permits based on the permitting review described in Section V.D.2 of this preamble, we then focused on identifying the level of GHG emissions associated with the combustion units most likely to be part of future PSD-triggering projects. From our review of ''anyway source'' PSD permits, we found that most of the projects involved some combination of turbines, boilers, process heaters/furnaces, and stationary IC engines.[68] Most of the units were either natural gas or diesel-fired, with a smaller number of biomass-fueled units. Natural gas-fired units predominated in the larger combustion categories of turbines and boilers. This finding is consistent with the projections from the EPA's Boiler maximum achievable control technology (MACT), which shows over 94 percent of projected industrial boilers and process heaters to be natural gas-fired units.[69]

In order to estimate the level of GHG emissions that correlated with the type and size of combustion units that are most likely to trigger PSD for ''anyway sources,'' we needed to equate GHG emissions with those from an appropriate non-GHG pollutant SER that would trigger PSD applicability. From our review of permit data, we identified that the combustion units most often occurring in ''anyway sources'' PSD permits were commonly triggering PSD for emissions of NO_X. We determined that the use of the NO_X SER would be a reasonable and appropriate value to use as the basis for estimating equivalent GHG emissions associated with these ''anyway source'' combustion units. A full description of this analysis is provided in the docket for this rulemaking.[70]

The basic premise of this analysis was to identify a theoretical minimum GHG emissions level that equates to the existing NO_X SER level (*i.e.,* 40 tpy) for different combustion unit types. We could then consider the merits, in the context of meeting the *de minimis* principles, of aligning GHG BACT review on similar-sized combustion unit projects that would be otherwise requesting PSD review for non-GHG pollutants. From a theoretical standpoint alone, such an alignment would optimize the emissions-reduction benefits available through the BACT review process with a marginal increase in permitting burden program-wide for both permitting authorities and sources (the incremental increase in burden from the BACT review for an additional pollutant).

We identified NO_X as the most appropriate surrogate ''anyway'' pollutant with which to compare the GHG emissions level. NO_X is commonly emitted in significant quantities from the types of combustion units that are expected to be covered in most of the future PSD permits. These are new electricity generation, large natural gas and diesel-fired turbines, boilers, process heaters, furnaces, and IC engines. We did not consider coal-fired units in designing the surrogate analysis because projections of future boiler and process heater units from the EPA's Boiler MACT (78 FR 7138, January 31, 2013) and EGU NSPS (80 FR 64510, October 23, 2015) rulemakings show little, if any, new coal-fired capacity as part of projected new construction.[71]

We investigated the possibility of using alternative surrogate pollutants for performing the equivalency analysis but found little value in pursuing these other options. For various reasons, these other pollutants did not correlate well with estimating equivalent GHG emissions from the combustion unit sources that represent the largest proportion of the sources that have been permitted for GHG. For example, CO is not a good surrogate since its emissions are typically inversely related to the amount of CO_2 emitted from combustion, the former representing more incomplete combustion conditions and the latter more complete combustion. Also, since the CO SER level is relatively high compared to other pollutants (100 tpy), equating CO_2 emissions to CO levels would result in a GHG SER level well above 100,000 tpy, which would not adequately capture significant projects that are otherwise subject to permitting for other non-GHG combustion pollutants based on our knowledge of GHG permitting for ''anyway sources'' that occurred under the GHG Tailoring Rule. PM is also a combustion pollutant, but it is emitted in very small quantities from natural gas units and PM often does not trigger PSD review on its own. Therefore, as a surrogate, PM would not adequately capture significant projects involving natural gas fired units, which are anticipated to comprise a large proportion of future PSD permitted units. Volatile organic compounds (VOCs) are emitted from a large variety of processes, many of which do not involve combustion units or have associated CO_2 emissions, and therefore is not well suited as the basis for developing a representative, surrogate GHG level.

Our equivalency analysis used the ratio of the emission factors of GHG to NO_X for each applicable unit type.[72] The ratio was then used to calculate the equivalent emissions of GHG, on a PTE) basis, for a 40 tpy NO_X emission level for each unit type. The GHG-to-NO_X ratio varied based on the unit types, which was expected since the emission factors for NO_X, and to a lesser extent CO_2, vary among the unit types and their control configurations. The underlying emission factors used for the surrogate analysis were selected to best represent the most likely configurations for newly installed units at PSD permitted facilities.

We estimated the following GHG emissions based on our equivalency analysis. For natural gas-fired turbines, the range was 50,346 to 425,655 tpy CO_2e, with an average of 186,537 tpy CO_2e across configurations. For large (greater than 100 MMBtu/hr) natural gas boiler/process heaters/furnaces, the range was 34,302 to 63,188 tpy CO_2e, with an average of 48,504 tpy CO_2e across configurations. For small (less than 100 MMBtu/hr) natural gas boilers/process heaters/furnaces, the range was 48,023 to 150,072 tpy CO_2e, with an average of 98,047 tpy CO_2e across configurations. The resulting equivalency level for GHGs was greater for the smaller boiler category since the ratio of GHG to NO_X in the emission rate was greater; in other words, for the small boiler category, each ton of NO_X emissions correlated with more tons of GHG emissions than for the large boiler category. For biomass boilers, the result was 78,210 tpy CO_2e based on average factor for wood residue, including bark and wet wood. For large (greater than 500 horsepower (HP)) natural gas-fired stationary IC engines, the result was

[68] ''A Summary Review of Recent PSD Permitting Activity for ''Anyway Source'' Categories and the Potential GHG-Emitting Units and Processes within Those Categories.'' Prepared by EPA staff, March 2015.

[69] Memorandum from Eastern Research Group, Inc. to Brian Shrager, EPA, ''Revised New Unit Analysis Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source,'' November 2011.

[70] ''Estimating Equivalent GHG Emissions Levels based on the PSD NO_X SER Value.'' Prepared by EPA staff, September 2015.

[71] Memorandum from Eastern Research Group, Inc. to Brian Shrager, EPA, ''Revised New Unit Analysis Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source,'' November 2011.

[72] Estimating Equivalent GHG Emissions Levels based on the PSD NO_X SER Value.'' Prepared by EPA staff, September 2015.

19,000 tpy CO_2e. For large (greater than 750 HP) diesel-fired stationary IC engines, the result was 17,529 tpy CO_2e. The average result across all ranges and units was 98,333 tpy CO_2e.[73]

It is important to note that the levels of GHG equivalency shown earlier provide an approximate measure of the theoretical minimum level of GHG emissions that could be associated with adding a particular type of combustion unit with emissions that just exceed the NO_X SER level of 40 tpy. This does not necessarily mean that applying BACT for GHGs to projects of a certain size would yield greater than a *de minimis* benefit. This analysis is simply another data point to inform the identification of a SER level for GHGs where the confluence of ''anyway source'' PSD projects and GHG reduction benefits is meaningful. The equivalent GHG emissions level represents emissions from a theoretical project that adds a combustion unit(s) that emits just over 40 tpy NO_X. However, based on what we saw in our review of ''anyway source'' permits described in Section V.D.2 of this preamble, the likelihood of such a project is not high because, in cases where the NO_X emission increase is close to the NO_X SER level, and where it is considered a practical operating condition for the unit involved (such as smaller units), the applicant very often accepts PTE limits to avoid triggering PSD at all.

Also, as we have seen in our review of actual permits, it is more likely that a PSD-permitted project would have NO_X emissions well in excess of the 40 tpy NO_X SER level, due to the addition of multiple combustion units or the sheer size of the unit itself, such as a power plant turbine or steam-generating unit. In these more typical PSD scenarios, GHG emissions would be multiple times higher than the values shown earlier. Although our review of actual samples of PSD permits revealed few cases where projects involving these units would have GHG emissions just above these equivalent NO_X SER equivalent levels, these equivalency levels have value in helping us understand and establish a marker point for the theoretical minimum level of GHG emissions that would be associated with particular unit types. It is also useful to look at the results above in light of the type of unit involved. As shown earlier, stationary IC engines have an equivalent GHG emission ratio below the 30,000 tpy CO_2e level. Most of these IC engines units typically show up in one of two ways in ''anyway source'' PSD permits: (1) As associated equipment (*e.g.,* emergency backup generator or fire pump engine) where there is a large combustion unit such as a turbine or boiler that is principally responsible for triggering the permitting action; or (2) in multiple-unit configuration generator sets (*e.g.,* 10 or more large IC engines linked together for electricity production). Unlike the addition or modification of a large turbine unit where a single unit can trigger a PSD action, it is a much less common scenario where a single IC engine would be the triggering event for a PSD permit since such units generally consume much less fuel and generate much lower emissions, non-GHG or GHG, than larger boiler and turbine units.

Our reviews and analyses to this point have clearly identified the importance of combustion units as both a triggering event for ''anyway source'' permitting actions for conventional pollutants and also as a critical GHG emission component of these projects. The next section in this preamble describes our review of non-combustion related GHG emission sources, and how they may also contribute to GHG emissions for certain PSD projects associated with certain source categories.

4. Non-Combustion Related GHG Emissions

We conducted an additional evaluation to identify any GHG source categories that we might not have identified in our review of permitting activity described in earlier sections of this preamble. We were particularly focused on process-related, GHG-emitting units which could potentially be subject to the GHG BACT requirement at *de minimis* levels below 75,000 tpy CO_2e. Our review of PSD permits issued to date with GHG limits had shown a very small percentage of PSD permits and GHG BACT reviews that have been triggered based principally on non-combustion units or processes. We wanted to better understand the types and sizes of GHG-emitting units and processes that might possibly fall into non-combustion source categories to ensure that we did not miss potential non-trivial reductions at the proposed GHG SER level.

One category we looked at specifically was landfills. Municipal waste landfills are important non-combustion, CH_4-emitting sources, and are the third largest contributing source category to national CH_4 emissions behind enteric fermentation and natural gas systems.[74] A landfill project can trigger PSD applicability as an ''anyway source'' if its increased emissions exceed the PSD SER level of 50 tpy for NMOC, the applicable NSR regulated pollutant for municipal waste landfills. A landfill emitting just over 50 tpy NMOC would emit just over 190,000 tpy of CH_4 on a CO_2e basis, well in excess of the current 75,000 tpy CO_2e GHG permitting level.[75] Thus, there is high confidence that any landfill project exceeding the PSD SER level for NMOC will likely exceed any GHG SER option below this 190,000 tpy CO_2e level.

We analyzed other source categories with significant non-combustion related GHG emissions based on the EPA's national GHG inventory.[76] The inventory included source categories with facilities that had a likelihood of triggering PSD based on our review of past permits. Unlike landfills, these categories do not have a source-specific, regulated NSR pollutant that can be equated with GHG emissions and compared to a GHG SER option. The categories we looked at included cement production, glass production, nitric acid production, electronics manufacturing, petroleum refineries, natural gas systems, underground coal mines and industrial wastewater treatment. For this effort, we analyzed GHG emissions data for these source categories that were submitted under the GHGRP. A technical support document describing the analysis and results is provided in the docket.[77] In the following discussion, we summarize the analysis and some of our key findings.

For this analysis, we characterized GHG emissions at the unit level where available (for some categories only facility level data were available) and compared these emissions to various actual emissions-based thresholds (50,000 tpy CO_2e, 37,500 tpy CO_2e, 25,000 tpy CO_2e, and 12,500 tpy CO_2e) to provide an indication of the magnitude of emissions above each

[73] ''Estimating Equivalent GHG Emissions Levels based on the PSD NO_X SER Value.'' Prepared by EPA staff, September 2015

[74] ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2013,'' Table ES–2. Document No. EPA 430–R–15–004. April 15, 2015. *http://www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html.*

[75] Memorandum from H. Ward, EPA/SPPD, to J. Mangino, EPA/AQPD, re: Methane to NMOC ratio at landfills. June 17, 2014.

[76] ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2013,'' Table ES–2. EPA 430–R–15–004. April 15, 2015. *http://www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html.*

[77] Memorandum from T. Parise and S. Edgerton, EC/R Incorporated, to J. Montanez and J. Mangino, EPA, ''Analysis of Greenhouse Gas Emissions Data Collected Under Selected Subparts of the Greenhouse Gas Reporting Rule,'' September 30, 2015.

threshold in the reporting population. We used actual emissions because that is the form in which emissions data are submitted under the GHGRP. We selected the actuals-based thresholds to represent possible PTE-based levels if one were to assume something less than 100 percent capacity utilization. For example, at a 50 percent utilization rate, a 37,500 tpy CO_2e actuals-based level equates to a 75,000 tpy CO_2e PTE-based level and a 25,000 tpy CO_2e actuals-based level equates to a 50,000 tpy CO_2e PTE-based level. Utilization rates can vary from site to site, and across and within industry types, but we believe the actuals-based thresholds we chose for the analysis provide a good representation of the possible range of equivalent PTE CO_2e emissions levels.

Our non-combustion unit analysis across all the source categories in the analysis showed a consistent profile of a high percentage of GHG emissions associated with a relatively small percentage of high-emitting units and facilities. Also, the variation in the amount of total GHG emissions covered across the analysis thresholds was not great. Across all categories, this varied from 95 percent of GHG emissions at the 12,500 tpy CO_2e actuals-based threshold to 88 percent of GHG emissions at the 50,000 tpy CO_2e actuals-based threshold. We found that for a number of the source categories there are particular subcategories of processes or units that are responsible for a majority of the non-combustion related GHG emissions. Also, within those particular subcategories there tend to be a relatively small percentages of large emitting units that are responsible for most of those emissions. A summary of all the source category analyses is provided in the supporting technical document included in the docket for this rulemaking.[78]

Overall, this analysis gave us an indication of the relative size of emissions from GHG- emitting processes and units in some key non-combustion related GHG source categories. Our analysis showed that, even when not including direct combustion emissions from these sources and isolating only the non-combustion related GHG-emitting units or processes, a high percentage of GHG emissions would be covered at the current GHG permitting threshold level of 75,000 tpy CO_2e on PTE basis. Most PSD projects involving sources in these non-combustion categories, such as refineries and cement production facilities, would also likely include combustion units with substantial associated GHG emissions. This would increase the overall GHG emissions from such projects.

5. Potential BACT Techniques Applicable to GHG Emission Sources

To evaluate the value obtained through the BACT review process, we looked at the emission reduction potential of control techniques that might be considered as BACT for a particular type of unit/process. The following section describes the most common BACT techniques available for reducing GHG emissions from units that have been, and will continue to be, part of ''anyway source'' PSD projects.

Under the CAA and applicable regulations, a PSD permit must contain emissions limitations based on application of BACT for each regulated NSR pollutant. CAA section 165(a)(4); 40 CFR 52.21(j). An analysis of BACT for GHGs should be conducted in the same manner as for any other PSD regulated pollutant. The CAA and corresponding implementing regulations require that a permitting authority conduct a BACT analysis on a case-by-case basis. The permitting authority must evaluate the amount of emissions reductions that each available emissions-reducing technology or technique would achieve, as well as the energy, environmental and economic impacts and other costs associated with each technology or technique. Based on this assessment, the permitting authority must establish a numeric emissions limitation that reflects the maximum degree of reduction achievable for each pollutant subject to BACT through the application of the selected technology or technique. However, if the permitting authority determines that technical or economic limitations on the application of a measurement methodology would make a numerical emissions standard infeasible for one or more pollutants, it may establish design, equipment, work practices or operational standards to satisfy the BACT requirement. 40 CFR 52.21(b)(12).

One overarching challenge to analyzing GHG emissions-reduction potential is the inherent difficulty in predicting the specific makeup of new construction and modification projects that will trigger PSD in general. Another challenge is that the BACT control requirement is determined on a case-by-case basis, based on site-specific factors at the source in question. Thus, even if we could roughly predict what sources are likely to be subject to PSD and required to get a permit, it is still challenging to calculate the emission reductions associated with application of BACT to GHG emissions from a particular source.

The emissions-reduction benefits that may result from the application of BACT can vary widely, depending on the specific configuration of the project and source, and the results of the case-specific BACT review. Thus, the variation in project composition and case-specific BACT review not only affects the ability to generate ''typical'' emissions increases and reductions from BACT, but, in turn, also severely hinders any ability to relate this to health or environmental benefits. Further complicating the ability to quantify the benefit of BACT is that the emission reductions would have to be measured from some alternative baseline, *i.e.,* what the facility would have emitted absent the application of the BACT technique selected through the review process. After predicting the project components subject to BACT review, establishing what the alternative baseline would have been absent application of a BACT technique requires specific information about each facility site, the source's development options and what the potential emissions would have been absent application of BACT. The alternative future baseline scenarios for any given facility can vary based on the planned operations and practices. Thus, it is difficult to project a future project's PTE level with any specificity within or across industries.

In light of these challenges, we focused on the possible GHG control techniques that could apply to GHG-emitting units/processes that other parts of our analysis indicated would most likely be subject to GHG BACT review at ''anyway sources.'' This review informed our consideration of the meaningfulness of the GHG BACT review for units and sources that might be covered at various GHG SER levels.

Recognizing that larger combustion units will likely be the most predominant GHG emission source type at ''anyway source'' PSD projects, one finding from this review was that energy efficiency measures are currently the most common BACT strategy for these units. In addition, we found that larger combustion units provide the best opportunity for achieving GHG reductions through case-by-case BACT review. Sources with small combustion units or other sources of GHGs provide limited opportunities for achieving additional GHG reductions through the BACT review.

[78] Memorandum from T. Parise and S. Edgerton, EC/R Incorporated, to J. Montanez and J. Mangino, EPA, ''Analysis of Greenhouse Gas Emissions Data Collected Under Selected Subparts of the Greenhouse Gas Reporting Rule,'' September 30, 2015.

The sections that follow discuss the most common types of BACT techniques that have been evaluated through GHG BACT review at ''anyway sources'' and implemented by sources that obtained permits. These are not intended to represent every possible category of BACT for GHGs but reflect the techniques most commonly evaluated and applied across a variety of ''anyway sources.'' In specialized cases, there are unique GHG control techniques available for industry-specific processes that emit GHGs, such as those that can be implemented at nitric acid plants to reduce nitrous oxide emissions from the ammonia oxidation step. However, based on our review of permitting data at ''anyway sources'' and considering the nature of units emitting GHGs below 75,000 tons per year, we expect for the near to medium term that energy efficiency measures will continue to be the most predominant GHG BACT mitigation strategy applicable to ''anyway sources'' that increase emissions of GHGs by less than 75,000 tons per year (on a CO_2e basis). Therefore, the emissions-reduction achievable with this technique at sources that have the potential to emit less than 75,000 tons per year was an important consideration in developing our proposed GHG SER.

a. Energy Efficiency Measures

While energy efficiency measures can reduce emissions of all combustion-related pollutants, they are particularly important for GHGs for two reasons: (1) GHG emissions from combustion sources (particularly CO_2) make up a large majority of the GHG inventory from the industrial facilities most often subject to PSD permitting; and (2) the use of add-on controls to reduce GHG emissions is expected, for the foreseeable future, to be a viable BACT option at a only small set of the largest GHG emission sources. To date, most GHG BACT determinations for combustion sources have relied on some combination of energy efficiency measures. Therefore, it is important to consider the implementation, effectiveness and value of energy efficiency measures as applied through the BACT process to combustion sources that may trigger the GHG BACT requirement at different GHG SER option levels. The following is a description of efficiency improvement measures that have been applied to industrial combustion units.

The EPA has identified a number of energy efficiency measures, many of which have been utilized to date to satisfy GHG BACT requirements in actual PSD permits. These procedures include:[79]

- High efficiency burners.
- Combustion and boiler performance optimization.
- Combustion system instrumentation and controls.
- Air preheat and economizers.
- Turbulators for firetube boilers.
- Boiler insulation.
- Minimization of air infiltration.
- Boiler blowdown heat exchanger.
- Condensate return system.
- Refractory material selection.
- Minimization of gas-side heat transfer surface deposits.
- Steam line maintenance.

In many cases, the impacts of these measures were highly site-specific and the benefits varied based on the site-specific configuration and operational conditions of the unit. These measures were typically associated with a GHG emission limit, steam generation rate or required maximum fueling rate for the combustion units involved. For most of these measures, site-specific conditions and economic variables must be addressed to determine whether they would be technically and economically viable. Also, the absolute benefits for any given facility or project undergoing PSD BACT review will depend on the relative improvement over some baseline unit efficiency that might have been used absent the GHG BACT review process.

To give some perspective on the potential benefits of these measures, a new natural gas-fired industrial boiler unit will generally have a baseline thermal efficiency in the 82 to 85 percent range.[80] Implementing a mix of the additional measures above, it is possible to obtain thermal efficiencies close to 90 percent.[81] Thus, looking at the difference between the baseline efficiency of a new boiler unit and a maximum efficiency around 90 percent, we can identify a maximum GHG reduction potential of approximately 7 percent.

In evaluating the value of BACT review, it is also helpful to look at the type and size of combustion unit involved. Industrial boilers, process heaters and furnaces of the size typically seen as part of ''anyway source'' projects (*e.g.,* greater than 50 MMBtu/hr heat input rating) are not generally purchased as an ''off-the-shelf'' item. These units can be site-designed in a way that enables consideration and incorporation of a combination of the measures shown earlier. The BACT review is particularly valuable for these types of units as it is based on case-by-case review of technology implementation and cost considerations. Manufacturers have models that they can construct based on the specifications provided by a facility design engineer. To achieve the desired performance, the engineer will specify the desired design output capacity, steam pressure and/or temperature requirements, and emission thresholds that the boiler unit must meet. The design engineer can then provide the project-specific boiler specifications to the boiler manufacturer who will then apply the correctly sized boiler components to its boiler plan and engineered specifications before running a computer model to estimate the resulting operational characteristics, including thermal efficiency and emissions of the resulting boiler.[82]

Smaller combustion units, such as smaller industrial and commercial size boilers and stationary IC engines, are typically purchased ''off the shelf'' and meet manufacturer's efficiency standards. Minimum efficiency requirements for these boilers are mandated to manufacturers by the federal government (U.S. Department of Energy (DOE) and the EPA), and some states have minimum efficiency requirements for boilers that are allowed to be sold in the market. Stationary IC engines that are part of ''anyway source'' PSD projects typically have to meet NSPS requirements for non-GHG pollutants, which in many cases form the basis for the BACT requirement for those, resulting in purchase decisions that include newer, highly-efficient engines that are low-emitters for all combustion pollutants, including GHGs. The range in performance efficiency across manufacturers for these new engines is typically within a couple of percentage points.

Beyond small differences in efficiencies between manufacturers and model types, the ability to achieve

[79] ''Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Industrial, Commercial, and Institutional Boilers,'' Office of Air Quality Planning and Standards, EPA. October 2010. *http://www.epa.gov/nsr/ghgdocs/iciboilers.pdf.*

[80] ''Evaluating Efficiency and Compliance Options for Large Industrial Boilers in California's Changing Local and State Regulatory Environment,'' 2009 ACEEE Summer Study on Energy Efficiency in Industry.

[81] ''Climate Leaders GHG Offset Protocol: Industrial Boiler Efficiency (Industrial Boiler Applications),'' EPA, Climate Protection Partnerships Division, August 2008, Version 1.

[82] ''Boiler Efficiency Projects-Development of Issues Papers for GHG Reduction Project Types: Boiler Efficiency Projects,'' Prepared for the California Climate Action Registry, January 7, 2009. *http://www.climateactionreserve.org/wp-content/uploads/2009/03/future-protocol-development_boiler-efficiency.pdf.*

additional GHG reductions at these smaller ''off-the-shelf'' type units, whether they are small boilers or IC engines, is difficult for a couple of reasons. First, implementing a number of the efficiency measures described previously requires site-specific design and construction criteria, more typically associated with larger scale projects where these measures can be part of unit design and manufacture. Second, ''off-the-shelf'' units typically cannot be substantially modified or tampered with in order to be guaranteed to meet their certified performance standards. Many of the energy efficiency measures described previously involve significant additions and/or modifications to the basic unit, which also may not be technically or economically viable for smaller unit applications.

b. Carbon Capture and Storage

For the purposes of the initial step of a BACT analysis for GHGs, the EPA classifies CCS as an add-on pollution control technology that is ''available'' for facilities emitting CO_2 in large amounts, including fossil fuel-fired power plants and industrial facilities with high-purity CO_2 streams (*e.g.,* hydrogen production, ammonia production, natural gas processing, ethanol production, ethylene oxide production, cement production and iron and steel manufacturing).[83] CCS is a promising technology with the potential for substantially reducing CO_2 emissions. In October 2015, EPA issued a final NSPS[84] for new fossil-fueled power plants. The EPA found that a highly efficient supercritical boiler implementing partial CCS is the Best System of Emission Reduction (BSER) for newly constructed steam generating units.[85] The final NSPS requires that newly constructed steam generating EGUs meet an emission standard consistent with the implementation of a CCS system capturing less than 30 percent of the CO_2 emissions from the plant.[86] This level of control is referred to as ''partial CCS.''[87] For units subject to this standard, this NSPS standard sets the minimum requirements for a BACT emission limit. 42 U.S.C. 7479(3) (''In no event shall application of [BACT] result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 . . .''). However, a PSD BACT analysis is a case-by-case analysis that considers several factors before determining the ''maximum degree of reduction'' that is achievable for a particular source. In the context of some PSD permit applications, such as those that predate the October 2015 NSPS or those for other types of sources, CCS has not been selected as BACT because it was not found to be technically feasible or the costs of CCS have made the application of the technology economically unachievable.[88] CCS is most likely to be a viable BACT candidate for projects involving very large CO_2 emission sources that already trigger GHG BACT review at the current 75,000 tpy CO_2e GHG permitting level. CCS technologies may not be technically feasible or economically achievable for lower emitting stationary sources—*i.e.,* those below the 75,000 tpy CO_2e GHG threshold—and for sources that emit CO_2 in a dilute emission stream.

c. Gas Recovery and Utilization

The collection and combustion or utilization of either industrial process waste gas or biogas, both streams which can contain CH_4, is a GHG BACT control technique that has been required as BACT in PSD permits addressing GHG emissions at oil and gas production facilities, refineries, landfills, and chemical plants. Flares are commonly used to control VOC emissions as part of ''anyway source'' PSD permits for projects that include a process that produces the waste gas emissions that must be controlled. Combustion of the waste gas stream avoids simply venting the VOC emissions to the atmosphere, and as described later in this preamble can also have a beneficial impact on the CO_2e emissions profile for the sources. Flares are used extensively to dispose of: (1) Purged and wasted products from refineries, (2) unrecoverable gases emerging with oil from oil wells, (3) vented gases from blast furnaces, (4) unused gases from coke ovens, and (5) gaseous wastes from chemical industries. *Id.* From our review of ''anyway source'' PSD permitting activity for these types of industries, these waste gas streams are usually coincidental to a larger project component driving the PSD applicability for the project. As an example, for an iron and steel facility, the addition of a blast furnace would likely trigger applicability for PSD for a number of criteria pollutants, and also have significant GHG emissions in terms of direct combustion related CO_2 emissions (large blast furnace units typically will exceed 75,000 tpy CO_2e emissions). Associated with this furnace unit, however, are likely to be off-gas streams, possibly containing CH_4 gas, which also then become subject to BACT review as part of the overall project.

A common method for minimizing emissions from flares is through good combustion practices. When these waste gas streams are combusted in either a flare or a thermal oxidizer, CH_4 in the waste gas stream is converted to CO_2, typically at efficiency levels greater than 96.5 percent.[89] Since CO_2 is a GHG with less radiative force than CH_4, this technique produces a lower overall GHG emissions increase on a CO_2e basis. Assuming a combustion efficiency of 96.5 percent and CH_4 being the principal GHG of concern in the waste gas stream, the combustion process can result in reductions of CO_2e emissions of approximately 86 percent (assumes a GWP value of 25 for CH_4).

Utilization of process waste gas, which often can contain CH_4, for on-site energy or off-site sale and use can provide additional GHG benefits beyond simply flaring. Like flaring, the collection and utilization of the waste gas can serve as a BACT control technique that effectively converts CH_4 to CO_2 through a combustion unit with the net benefits realized on a CO_2e emissions basis. In addition, utilization of the gas has the potential to avoid additional GHG emissions associated with supplemental on-site fossil-fuel usage.

For example, at sites such as natural gas processing plants, refineries, or at

[83] ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–457/B–11–001, p. 32, March 2011.

[84] Final Rulemaking titled ''Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units'' (80 FR 64513, October 23, 2015).

[85] For newly constructed intermediate and baseload stationary combustion turbines, the final NSPS requires meeting an emission standard consistent with the performance of modern, efficient Natural Gas Combined Cycle (NGCC) technology.

[86] EPA Fact Sheet on Carbon Dioxide Capture and Sequestration, *http://www3.epa.gov/climatechange/ccs/.*

[87] ''Partial CCS'' is the implementation of CCS technology to capture only a portion of the CO_2 emission from a stationary source—typically some amount less than 90 percent of the CO_2 and often by treating only a portion of the sources emission stream. ''Full CCS'' is the capture of more than 90 percent of the sources CO_2—typically accomplished by treating the sources entire emission stream.

[88] However, this was not always the outcome in PSD permits that pre-date the October 2015 NSPS. For example, in November 2014, the EPA issued a PSD permit for GHGs for the Nuevo Midstream, LLC—Ramsey Gas Plant in Orla, Reeves County, Texas that assumes use of partial CCS as BACT to capture 35 percent of the CO_2 emissions from the Ramsey IV and VI plants amine still vents.

[89] AP–42, Fifth Edition, Volume I, Chapter 13: Miscellaneous Sources, Section 13.5 ''Industrial Flares,'' EPA, April 2015. *http://www.epa.gov/ttn/chief/ap42/ch13/final/C13S05_4-20-15.pdf.*

other facilities where the collected waste gas can be used to fuel on-site equipment or made available for sale or other uses, there may be alternatives to simply flaring the gas. In addition, the on-site use of the collected gas in lieu of additional fossil-fuel use can also lead to a reduction in the facility's GHG emissions, although GHG emissions from any off-site sale and use of the collected gas are completely excluded from the seller facility's calculated GHG emissions.

Another example where gas collection and utilization has applications for GHG BACT is landfills, where large amounts of CH_4 gas generated through waste decomposition can, at properly designed sites, be collected through biogas collection wells and used to run IC engines or microturbines that produce energy for onsite usage or sale to the electric grid. As mentioned earlier in Section V.D.4 of this preamble, landfills that are subject to PSD permitting for their NMOC emissions will likely have CH_4 emissions well in excess of 75,000 tpy CO_2e, such that BACT strategies involving gas utilization and recovery may be found applicable for both non-GHG and GHG emissions from the landfill.

d. Leak Detection and Repair Measures

Leak detection and repair (LDAR) systems have been used as GHG BACT controls for both fugitive CH_4 losses and SF_6 emission losses from electrical equipment. Typically, and as previously described in more detail in the summary of our review of ''anyway source'' permits in Section V.D.2 of this preamble, these fugitive sources were associated with a PSD project that involved a larger stationary source unit or process, such as combustion unit installations at a power plant or a large gas or oil production/process unit that contained associated fugitive release points, such as piping or valves. The GHG reduction potential for LDAR systems can be highly variable depending on the site-specific design and implementation procedures. The EPA has identified VOC applications for LDAR systems that can achieve VOC emissions reductions in the 45 to 70 percent range for various equipment types (since CH_4 would typically be part of the same waste gas stream, these level of reductions in fugitive VOC emissions would be expected for fugitive CH_4 emissions as well).[90] The emission sources for CH_4 where these methods are deployed are generally CH_4 fugitive losses from associated piping and natural gas delivery networks, or equipment leaks at compressor or pumps that move natural gas product. These sources tend to be most commonly encountered at PSD-triggering projects involving the oil and gas sector, primarily in the production, processing and transmission subsectors. However, anywhere combustion units utilize natural gas as fuel, they can also have associated leaks in the piping network associated with the unit configuration. In both these general cases where LDAR has been selected as a BACT for GHG emissions dominated by CH_4, the fugitive CH_4 losses have been ancillary to the main GHG emission points in the project, typically a single or combination of large fossil fuel combustion units. At all of the ''anyway source'' permits we have reviewed that required LDAR as GHG BACT, combustion units triggered the BACT requirement for conventional pollutants as well as GHGs (principally CO_2 from combustion). The fugitive CH_4 losses associated with the combustion unit projects were included in the BACT review for the GHG emissions increases for the project.

Another application of LDAR has been in the power plant sector. In this sector, fugitive leaks of SF_6 gas from ancillary circuit breaker equipment associated with power plant projects have been subject to GHG BACT review where the principle PSD-triggering event involved the installation of power-generating combustion units. SF_6 is used as an electrical insulator and interrupter in equipment that transmits and distributes electricity.[91] Fugitive emissions of SF_6 can escape from gas-insulated substations and switchgear through seals, especially from older equipment. The gas can also be released during equipment manufacturing, installation, servicing and disposal. The EPA estimates that where consistently implemented in the power plant sector, applications of LDAR systems could reduce SF_6 emissions by 20 percent.[92]

6. Costs of GHG BACT Review

We have estimated that it costs an individual source approximately $24,000 to undergo GHG BACT review for a PSD modification project and the associated title V permit revision costs to include those requirements in the facility's title V permit.[93] These costs include preparing the permitting application, supporting analyses and various other aspects of the review and submission of the permit application as it pertains to GHGs. These estimates do not include what can be significant additional costs for the GHG BACT control that is ultimately adopted and implemented by the permitted facility since BACT, and ultimately the costs, can vary from site to site based on site specific factors that are difficult to predict with any specificity or certainty in advance. We also estimate it costs the permitting authority approximately $5,000 for regulatory review and processing costs related to the GHG BACT review for a PSD modification project and the associated title V revisions costs to include those requirements in the facility's title V permit.

E. Proposed GHG SER and Request for Comment

After consideration of several factors, we are proposing to establish a GHG SER of 75,000 tpy CO_2e. Establishing a *de minimis* exemption threshold requires both policy and legal judgments to determine what constitutes a ''gain of trivial value'' and ''pointless expenditure of effort.'' In an effort to identify an appropriate SER for GHGs, we considered the approaches that the EPA has previously used to identify *de minimis* levels for other pollutants in the PSD program, but we have found that a new approach is needed for GHGs. To develop this approach, we have considered the legal basis for establishing *de minimis* exemptions under the D.C. Circuit's *Alabama Power* opinion and the factors the Court called for the agency to consider. These include the context in which a SER for GHGs would apply to determine only whether BACT applies to the pollutant GHGs at a source that triggers PSD based on other pollutant emissions. Other factors we considered are the nature of the pollutant and the dangers caused by increases in that pollutant, the nature and purposes of the regulatory program, the gains achieved from regulating GHG emissions through the PSD program at or below a certain level, and administrative and implementation burdens of regulating at or below such levels. We developed findings relevant to these factors through a four-part technical analysis of GHG-emitting

[90] ''Leak Detection and Repair: A Best Practices Guide.'' EPA–305–D–07–001. EPA Office of Compliance, Office of Enforcement and Compliance Assurance, October 2007.

[91] ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2013,'' Section 4.24. EPA 430–R–15–004. April 15, 2015. *http://www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html.*

[92] SF_6 Emissions Reduction Partnership for Electric Power Systems, *http://www3.epa.gov/highgwp/electricpower-sf6/basic.html.*

[93] Information related to the associated individual and programmatic burden at the proposed GHG SER level is provided in Section VI of this preamble.

sources, PSD permitting information, and GHG emissions reduction strategies likely to be considered in a BACT review for those sources.

Based on all the information obtained from the various data reviews and analyses summarized in Section V.D.1 of this preamble, taking into account the factors mentioned previously, we are proposing a SER of 75,000 tpy CO_2e for GHGs. The following discussion describes how each of the key findings together led to and support our proposed GHG SER value of 75,000 tpy CO_2e.

First, our actual, historical experience of GHG BACT reviews occurring at a 75,000 tpy CO_2e level for sources under Step 1 of the Tailoring Rule provided us valuable insight into the affected sources and value of GHG BACT review at that permitting level. When considered in the context of individual sources and the collective population of sources subject to PSD, the degree of GHG reductions achievable through application of GHG controls to new sources and modifications that increase GHG emissions by more than 75,000 tpy CO_2e is meaningful, and thus has more than ''trivial'' value. The current 75,000 tpy CO_2e threshold has resulted in the PSD BACT requirement applying to GHGs in the vast majority of the actual ''anyway source'' PSD permits covering the type of units for which GHG BACT review would be expected to achieve meaningful emissions reductions. We also found that the types of GHG sources that have been addressed in those GHG BACT reviews represent the most important industry sectors in terms of national GHG emissions contribution. These include source categories such as power plants, refineries, chemical production facilities, and oil and gas production sites. While most of the GHG emissions from these sources, as well as the ''anyway source'' PSD triggering actions, are related to large, fossil-fueled combustion units, our investigation into non-combustion sources also revealed that the most important, non-combustion related GHG-emitting sources, such as landfills, cement plants, refineries, and nitric acid plants, have process emissions well in excess of the 75,000 tpy CO_2e level. In summary, based on information from previous permitting decisions using the 75,000 tpy CO_2e applicability level for GHG BACT review at ''anyway sources,'' we did not see any sources within major GHG source categories that were ''missing'' BACT limits for GHGs in permits issued to ''anyway sources,'' which would have been an indicator that there may be value in applying BACT to GHGs at a lower SER.

In addition to finding broad coverage of sources in the major GHG emissions source categories using a 75,000 tpy CO_2e threshold, we found that the ''anyway source'' permitting experience involving GHG BACT reviews to date since GHGs became subject to PSD has not imposed unreasonable administrative and enforcement burdens. State and local permitting authorities, as well as affected industries, have successfully implemented PSD permitting for GHGs at a 75,000 tpy CO_2e threshold.

Second, our investigation into ''anyway source'' PSD permits that did not go through GHG BACT review under the Tailoring Rule Step 1 permitting level of 75,000 tpy CO_2e revealed only a few cases where a GHG SER level below 75,000 tpy CO_2e may have resulted in additional GHG BACT reviews. Considering the limited additional cases where GHG BACT review could apply at a GHG SER below 75,000 tpy CO_2e and the limited degree of emissions reductions that might be achieved in each case, we propose to conclude that the burdens of subjecting such projects to case-by-case BACT review for GHGs would yield a gain of trivial or no value.

Our review revealed only a handful of PSD modification projects on a yearly basis nationwide that can be expected to increase GHG emissions in the range from 30,000 to 75,000 tpy CO_2e. Based on our review of permitting data at ''anyway sources'' and considering the nature of units emitting GHGs between these values, we expect for the near to medium term that energy efficiency measures will continue to be the most predominant GHG BACT mitigation strategy that could be applicable to sources with the potential to emit between 30,000 and 75,000 tpy CO_2e. At a project scale, if we were to consider a single hypothetical, combustion-related project with a GHG emissions increase of 74,999 tpy CO_2e (just under the 75,000 tpy CO_2e proposed GHG SER level) and a maximum energy efficiency gain through GHG BACT review of 7 percent described above, the maximum marginal difference in GHG emissions that could result from applying BACT to GHGs is approximately 5,500 tpy CO_2e. Given the limited number of projects expected in this 30,000 to 75,000 tpy CO_2e range and the limited amount of emissions reductions that could theoretically be achieved at each source, from a programmatic perspective, there is little to be gained in terms of overall reduction in GHG emissions from applying GHG BACT review at a GHG SER level below 75,000 tpy CO_2e. Thus, we propose to conclude that the burdens of regulation at a GHG SER level between 30,000 and 75,000 tpy CO_2e would yield a gain of trivial or no value from both a programmatic and individual project-level perspective.

For PSD modification projects that increase GHGs by less than 30,000 tpy CO_2e, we found virtually no value in applying the GHG BACT requirement. We found through both our equivalency analysis and permitting reviews that these smaller emitting unit projects will typically not qualify as ''anyway source'' projects by themselves. In addition, we found that many smaller emissions units will often be pulled into the GHG BACT analysis because they are ancillary units to a larger combustion unit that emits well above 75,000 tpy CO_2e; examples include emission units such as flares, thermal oxidizers, emergency generators, and fugitive emission leaks. Since the types of units adding GHGs in amounts less than 30,000 tpy CO_2e would not likely trigger PSD at all or would already be covered because of other changes occurring at the same time, lowering the GHG threshold to 30,000 tpy CO_2e would subject few, if any, additional projects to the GHG BACT requirements. In cases where a project theoretically could increase emissions of a pollutant besides GHGs enough to trigger PSD, the project would involve emission units such as IC engines. There is virtually no value obtained in conducting a GHG BACT review of such a unit. We found that ''off-the-shelf'' combustion units, such as IC engines, are generally meeting manufacturers' performance and efficiency compliance standards established by DOE and the EPA for new units with only marginal variations in efficiency ratings on newly purchased units. Also, we do not expect that GHG BACT review for IC engines would produce any reductions for GHGs beyond that resulting from the NSPS compliance standards that already exist for these new units. Thus, the gain from applying BACT to GHG emissions would yield a gain of virtually no value and be a pointless expenditure of effort. This is even more apparent when considered in light of the administrative burdens of conducting a case-by-case BACT analysis for GHGs at such sources. Thus, the EPA is not considering establishing a GHG SER level below 30,000 tpy CO_2e.

We are soliciting comment on the extent to which our proposed GHG SER level of 75,000 tpy CO_2e reflects a level below which the burdens of applying the BACT requirement to GHGs would ''yield a gain of trivial or no value'' and

thus would be a ''pointless expenditure of effort'' when applied to all of the affected units and sources. We are also soliciting comment on whether a value between 30,000 and 75,000 tpy CO_2e, specifically such as 30,000 tpy or 45,000 tpy CO_2e, would better represent a *de minimis* threshold for applying the BACT requirement to GHGs. We encourage commenters to consider the following in submitting comments. Comments, arguments, and supporting data for a specific GHG SER level other than 75,000 tpy CO_2e should identify a more appropriate level and explain why that specific level would be better. Commenters are encouraged to provide information as to the likely number and type of new or modified emission sources and units that would trigger PSD and be subject to the GHG BACT requirement at the suggested alternative GHG SER level. Comments should also address what source categories would be affected, what types of control technique would be considered in the GHG BACT review, the expected degree of GHG reductions achievable from such control techniques, and the anticipated burden to permitting authorities and sources of conducting a BACT analysis at the specific alternative level.

In soliciting comment for a SER between 30,000 and 75,000 tpy CO_2e, we recognize that sources and others in the public may have access to information that is not available to the Agency and that may inform an appropriate SER level. Therefore, we are specifically soliciting comment on and requesting data for areas in our technical analysis where commenters believe such information will provide support for adjusting our applied assumptions. However, commenters should keep in mind that the universe of future PSD permitting is constrained by the U.S. Supreme Court's decision limiting the program to ''anyway sources'' and modifications at ''anyway sources.'' The GHG BACT requirement is potentially applicable only to sources and modifications that would otherwise trigger PSD requirements based on emissions of pollutants other than GHGs.

We are proposing a GHG SER value based on the GHG metric of CO_2e, representing the single air pollutant defined as the aggregate group of the six well-mixed greenhouse gases (CO_2, N_2O, CH_4, HFCs, PFCs and SF_6). As explained earlier, this aggregate pollutant is measured in terms of ''carbon dioxide equivalent'' or ''CO_2e'' emissions, which is a metric that allows all the compounds comprising GHGs to be evaluated on an equivalent basis despite the fact that the different compounds have different heat-trapping capacities. The GWP that has been determined for each compound reflects its heat-trapping capacity relative to CO_2. The mass of emissions of a constituent compound is multiplied by its GWP to determine the emissions in terms of CO_2e. A source's emissions of all compounds in terms of CO_2e are summed to determine the source's total GHG emissions.[94] This construct differs from other pollutant SERs based solely on a mass basis; however, we believe, as we did in the Tailoring Rule, that the CO_2e metric is consistent with the definition of the pollutant as defined in the Administrator's endangerment and contribution findings regarding GHGs (74 FR 66496) and that by incorporating the GWP values, best addresses the relevant environmental endpoint, which is the radiative forcing of the GHGs emitted. We also see no requirement for using a mass-based calculation method for the GHG SER, such as we determined necessary in the Tailoring Rule. The determination that a mass-based calculation method was a necessary first step under the Tailoring rule was due to the statutory 100 and 250 tpy levels in the statutory definition of ''major emitting facility.'' [95] The SERs are based on EPA's inherent authority to identify a *de minimis* level of GHG emissions for purposes of determination applicability of the statutory BACT provisions of the CAA. These provisions in the Act do not include a mass-based emissions applicability threshold. In addition, the emissions thresholds in the definition of major stationary source that influenced our reasoning in the Tailoring rule are no longer applicable to GHGs in light of the U.S. Supreme Court's decision in *UARG.*

In addition to consistency with the Administrator's endangerment and contribution findings, there are programmatic and policy advantages to using the ''sum-of-six'' construct based on CO_2e for purposes of the GHG SER BACT review. One significant advantage to this construct is that it allows more flexibility to sources for designing and implementing control strategies that maximize reductions across multiple GHGs. From a programmatic standpoint, the CO_2e metric facilitates permitting authorities' review and consideration of the combined effect of the six individual GHGs when sources emit any one or combination of the individual gases. Also, given that Congress built in considerations of energy, environmental, and economic impacts into the BACT requirement, we think that allowing consideration of those factors across six gases will result in decisions that more appropriately account for those impacts at the source. In summary, we see no statutory requirement or programmatic advantages for considering a GHG SER value that incorporates a mass-based component; however, we welcome comments on whether such a need exists and how such a component would function for GHG BACT applicability purposes.

Lastly, we are also requesting any specific comments related to the administrative and enforcement burdens associated with implementing GHG BACT review at the proposed GHG SER level (75,000 tpy CO_2e), or at a suggested alternative GHG SER level. Due to the relatively short history of applying the BACT requirement to GHGs (as compared to PSD permitting overall), the limited experience in applying BACT to GHGs permitting in some sectors, and the overall uncertainties in predicting exact levels of future PSD activity, we solicit any comments pertaining specifically to the administrative and programmatic burdens associated with the proposed GHG SER and applying the BACT review process to GHGs emitted at that level or at a suggested alternative level. We also solicit comments from all parties, including the regulated community and permitting authorities, as well as commenters supporting an alternative threshold, as to the administrative and enforcement burdens of establishing a *de minimis* threshold at the suggested alternative level.

VI. What would be the economic impacts of the proposed rule?

The main focus of the Economic Impact Analysis (EIA) is the cost savings to permitting authorities and affected sources due to ''anyway sources'' that are below the proposed *de minimis* GHG SER not having to go through GHG BACT review. If not for provisions we are proposing to remove in this proposal and that currently remain in the EPA's definition of ''subject to regulation'' at this time, under the present definition of ''significant'' in the PSD regulations, *any* GHG emissions increase would require a newly constructed major source of another regulated NSR pollutant, or a major modification at an existing facility significantly increasing another pollutant, to undergo PSD GHG

[94] *See* the accompanying proposed regulatory text to this preamble at 40 CFR 51.666 (b)(31) and 40 CFR 52.21(b)(32) for further details on the calculation of CO_2e emissions.

[95] *See* 75 FR 31531 for background on why this step was needed in Tailoring Rule.

BACT review.[96] Therefore, the EIA includes estimated costs relative to a ''no-action'' scenario where the current functioning GHG permitting level of 75,000 tpy CO_2e would no longer be applicable and *any* increase in GHG emissions at sources otherwise subject to PSD would trigger the requirement for a GHG BACT analysis. The proposed rule would remove the requirement of conducting the GHG BACT review, as well as the need to include the requirements resulting from this GHG BACT review in a source's title V permit, for sources with GHG emissions increases less than the proposed GHG SER. A summary of the avoided costs relative to the ''no-action'' scenario for both PSD and title V programs based on the proposed 75,000 tpy CO_2e GHG SER is described in the following paragraphs. Details related to the EIA are documented in the report titled ''Economic Impact Analysis for Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate for Greenhouse Gas Emissions Under the Prevention of Significant Deterioration Program: Proposed Rule.'' This report is available in the rulemaking docket.

For affected sources, the avoided permitting cost or savings for PSD permits is approximately $23,532 per permit (in 2014 dollars). Total annual avoided cost program-wide is under $870,000 for sources that would not have to go through GHG BACT review. State, local and tribal permitting authorities are estimated to expend $4,400 per permit to conduct a GHG BACT review in the context of reviewing a PSD permit application for a source with GHG emissions in the applicable range. Thus, annual savings for permitting authorities program-wide are less than $165,000 at a 75,000 tpy CO_2e GHG SER.

We anticipate sources subject to title V will experience avoided regulatory costs because they will not have to add requirements to their title V permit resulting from a GHG BACT review. Avoided cost is estimated at approximately $2,470 per permit for addressing GHG requirements in a new permit, and $520 per permit for revising an existing permit to include requirements related to a GHG BACT limit. Total program-wide savings for title V permitting related to the proposed GHG SER of 75,000 tpy CO_2e is less than $20,000 dollars per year for sources. Regulatory cost avoided relative to no GHG SER for state, local, and tribal permitting authorities is estimated at $2,632 per permit for adding GHG requirements to a new permit, and $504 per permit for revisions to existing permits. At the proposed GHG SER of 75,000 tpy CO_2e, title V program-wide avoided costs for permitting authorities totals approximately $20,000 per year.

Total annual regulatory cost avoided relative to no GHG SER for sources for both PSD and title V programs together amounts to less than $890,000 at the proposed 75,000 tpy CO_2e GHG SER level. Total annual avoided costs for permitting authorities for both PSD and title V programs together is expected to be less than $185,000 at the proposed 75,000 tpy CO_2e GHG SER level. This rulemaking does not impose economic impacts on any sources or permitting authorities, but should instead be viewed as leading to savings for ''anyway sources'' and permitting authorities. Because no businesses or governmental entities are expected to incur positive costs as a result of this rule, there is not a significant impact on a substantial number of small entities. Because the savings are small and spread among many sources, the market impacts of this rule will be minimal.

VII. How should state, local and tribal authorities adopt the regulatory revisions included in this action?

Consistent with the PSD regulations for SIP-approved programs at 40 CFR 51.166 and the title V regulations for title V program approvals at 40 CFR part 70, the EPA expects that many state, local and tribal permitting authorities will amend their respective PSD and title V permitting regulations and seek revisions of their SIPs, TIPs or title V program approvals, as applicable, to incorporate (once finalized) the regulatory changes consistent with those contained in this proposal.

For PSD, 40 CFR part 51.166(a)(6)(i) states that ''any state required to revise its implementation plan by reason of an amendment to section [51.166]. . . shall adopt and submit such plan revision to the Administrator for approval no later than three years after such amendment is published in the **Federal Register**.'' Therefore, any implementation plan that defines a source or modification as major based solely on GHGs emissions will require a revision to conform to the amendments to 40 CFR part 51.166 proposed in this rule. However, states may elect not to incorporate a significant emissions rate for GHGs into their program if they wish to apply BACT to GHGs at sources emitting or increasing this pollutant by any amount.

We request comment on what we described in our Preliminary Views Memo as the ''most efficient and least burdensome way to accomplish such revisions to state, [local], or tribal programs'' to meet the SIP or TIP submittal requirements, as applicable.[97] Furthermore, we ask for comments on whether the Administrator should shorten the 3-year time period required under 40 CFR part 51.166(a)(6) (and section 110(a)(1) of the CAA, to the extent applicable), for each state, or local permitting authority to revise its SIP or TIP (or make a new submission).

For purposes of the title V program, 40 CFR part 70.4(a) states in relevant part that: ''If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such a period as authorized by the Administrator.'' Since we believe that the changes being proposed, once finalized, may require changes to many EPA-approved state title V programs, we also ask for comments on the most efficient way to accomplish those title V program revisions and what time period would be appropriate for those revisions.

Furthermore, SIP revisions for the PSD program and revisions to title V programs that still include the Step 2 provisions may be needed if any permitting authorities prefer to retain under state law the construction or operating permit requirements equivalent to the PSD and title V permitting requirements for Step 2 sources that are no longer approvable parts of a PSD or title V program under federal law. In the Preliminary View Memo, we stated that ''we do not read the [*UARG* v *EPA*] U.S. Supreme Court decision to preclude states from retaining permitting requirements for sources of GHG emissions that apply independently under state law even when those requirements are no longer required under federal law'' [98] and that

[96] Definition of ''significant,'' 40 CFR 51.166(b)(23)(ii) and 40 CFR 52.21(b)(23)(ii).

[97] Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA,* Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. EPA, to Regional Administrators, p. 5, July 24, 2014.

[98] Next Steps and Preliminary Views on the Application of Clean Air Act (CAA) Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA,* Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and

Continued

''similar to state-law construction permitting requirements, the [*UARG* v *EPA*] U.S. Supreme Court decision does not preclude states from continuing to require that certain types of sources obtain operating permits meeting requirements that apply independently under state law.'' [99] Therefore, state, local, or tribal programs wishing to retain construction or operating permit requirements equivalent to the PSD and title V permitting requirements for Step 2 sources as a matter of state, local or tribal law should consult with the EPA Regional offices on how best to retain those requirements as appropriate, while excluding them from the EPA-approved SIPs, TIPs or title V programs.[100]

In cases where state, tribal or local air pollution control agencies incorporate the federal regulations by reference or do not have an approved SIP or TIP for the PSD program or a title V program approval for the title V permitting requirements, the federal PSD program at 40 CFR 52.21 and the title V program at 40 CFR part 71 apply, respectively. Therefore, the EPA anticipates that the revisions included in this proposal will likely apply automatically to these programs once finalized.

VIII. Environmental Justice Considerations

This action proposes certain revisions to the PSD and title V GHG permitting regulations in response to the June 23, 2014, *UARG* v. *EPA* U.S. Supreme Court decision and the April 10, 2015, Amended Judgment by the D.C. Circuit in *Coalition for Responsible Regulation* v. *EPA.* To comport with these decisions, the proposed revisions would ensure that neither PSD nor title V rules require a source to obtain a permit solely because the source emits or has the PTE GHGs above the applicable thresholds. It also establishes a SER for GHGs that would serve to determine when a source otherwise subject to PSD would be required to conduct a BACT analysis for GHGs. Therefore, this proposed action itself does not compel any specific changes to our permitting public participation requirements nor does it finalize a particular permit action that may affect the fair treatment and meaningful involvement of all people. Rather, it ensures that the *Coalition* Amended Judgment is implemented and makes clear in the EPA's PSD regulations that sources are no longer required to submit a PSD permit application if GHGs are the only pollutant that the sources emits above the applicable major source thresholds or that will increase in major amounts due to a modification of an existing major sources. Similarly, this proposed rule clarifies in the EPA's title V regulations that a source is not required to apply for title V permit solely because it emits or has the PTE GHGs above the major source threshold.

IX. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an EIA of the potential costs and benefits associated with this action, which is discussed in Section VI of this preamble. This analysis, ''Economic Impact Analysis for the Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate for Greenhouse Gas Emissions under the Prevention of Significant Deterioration Program; Proposed Rule,'' is available in the rulemaking docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0003 for the PSD program and OMB control numbers 2060–0243 and 2060–0336 for the title V part 70 and part 71 programs, respectively.

This action does not impose an information collection burden because it does not impose a new or revised information collection burden for stationary sources of air pollution. Instead, the regulatory revisions reduce the number of sources that may be subject to the PSD and title V program due to the sources' GHG emissions. Specifically, this proposed action revises several regulatory provisions under the federal and state-specific PSD and title V regulations and establishes a GHG SER for the PSD program.

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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule relieves regulatory burden because it reduces the number of sources that may be subject to the PSD and title V program due to the sources' GHG emissions. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated 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, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The EPA expects that many state, local and tribal permitting authorities will amend their respective PSD and title V permitting regulations and seek revisions of their SIPs, TIPs or title V program approvals, as applicable, to incorporate, once finalized, the regulatory changes consistent with those in this proposed action. This will result in a small increase in burden to these entities. However, as discussed in Section VI of this preamble, this proposed action is expected to result in cost savings and an administrative burden reduction for permitting authorities. We have therefore concluded that there are no unfunded mandates greater than $100 million or any significant or unique effect on 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

Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. EPA, to Regional Administrators, p. 4, July 24, 2014.

[99] *Id.* at 5.

[100] As noted previously, while the *UARG* decision and the Amended Judgment determined that the EPA may no longer require a source to obtain a title V permit solely because it emits or has the potential to emit GHGs above major source thresholds, the agency does not read the *UARG* decision or the Amended Judgment to affect other grounds on which a title V permit may be required or the applicable requirements that must be addressed in title V permits. Thus, as explained previously, the EPA's proposed revisions are not intended to change the existing title V requirements in that regard and the EPA would not expect proposed revisions to the EPA-approved programs to change those requirements, either.

distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. The proposed rule would not impose substantial direct compliance costs on Indian tribal governments nor preempt tribal law. There are no tribal agencies currently implementing the PSD program under a tribal implementation plan under 40 CFR part 51.166 or delegation of the federal PSD program at 40 CFR part 52.21. Only two tribes are implementing the title V program, one through the approval of its title V program under 40 CFR part 70 and one through a delegation agreement under 40 CFR part 71. In addition and as explained previously, this proposed action relieves regulatory burden because it reduces the number of sources that may be subject to the PSD and title V program due to the sources' GHG emissions. Specifically, this action revises several regulatory provisions under the federal and state-specific PSD and title V regulations and establishes a GHG SER for the PSD program. If the current PSD GHG permitting level of 75,000 tpy CO_2e were to not be applicable, as described in the Preliminary Views Memo, any increase in GHG emissions at sources otherwise subject to PSD would trigger the requirement for a GHG BACT analysis and thus increase the permitting costs and burden for both permittees (including entities in tribal areas) and permitting authorities (including any tribal agencies). Tribal programs may need to make minor changes to their title V program approvals and their implementing regulations, as applicable, to incorporate, once finalized, the regulatory changes being proposed in this action. Nevertheless, we expect the burden of undertaking those revisions to be minimal as compared to the burden of applying and reviewing the permits for GHG-emitting sources that would otherwise be subject to title V program without the regulatory revisions included in this proposed action. Thus, Executive Order 13175 does not apply to this action.

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 action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because to the extent that this action would affect PSD and title V permit applicants in the energy supply, distribution or use sectors, it would reduce the permitting burden for such sectors.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in Section VIII of this preamble titled, ''Environmental Justice Considerations'' for this action.

K. Determination Under CAA Section 307(d)

Pursuant to CAA 307(d)(1)(J) and 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(J) provides that the provisions of section 307(d) apply to promulgation or revision of regulations under part C of title I of the CAA (relating to PSD and protection of visibility), and section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to such other actions as the Administrator may determine.

X. Statutory Authority

The statutory authority for this action is 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Greenhouse gases, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

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

40 CFR Part 60

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

40 CFR Part 70

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

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: August 26, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Review of New Sources and Modifications

■ 2. Section 51.166 is amended by:
■ a. Revising paragraphs (b)(1)(i)(*a*) and (*b*);
■ b. Revising paragraph (b)(2)(i);
■ c. Revising paragraph (b)(23)(i);
■ d. Adding paragraph (b)(31); and
■ e. Revising paragraph (b)(48).

The revisions and addition read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant (except the pollutant greenhouse gases as defined in paragraph (b)(31) of this section): Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(*b*) Notwithstanding the stationary source size specified in paragraph (b)(1)(i)(*a*) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant (except the pollutant greenhouse gases as defined in paragraph (b)(31) of this section); or

* * * * *

(2) * * *

(i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in: A significant emissions increase (as defined in paragraph (b)(39) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(49) of this section) other than the pollutant greenhouse gases (as defined in paragraph (b)(31) of this section); and a significant net emissions increase of that regulated NSR pollutant from the major stationary source.

* * * * *

(23) * * *

(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (b)(49) of this section
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Greenhouse gases: 75,000 tpy CO_2e
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

* * * * *

(31) *Greenhouse gases (GHGs)* means the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. To represent an amount of GHGs emitted, the term tpy *CO_2 equivalent emissions* (CO_2e) shall be used and computed as follows:

(a) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(b) Sum the resultant value for each gas to compute a tpy CO_2e.

* * * * *

(48) *Subject to regulation* means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in paragraph (b)(31) of this section.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 4. Section 52.21 is amended by:
■ a. Revising paragraphs (b)(1)(i)(*a*) and (*b*);
■ b. Revising paragraph (b)(2)(i);
■ c. Revising paragraph (b)(23)(i);
■ d. Adding paragraph (b)(32);
■ e. Revising paragraph (b)(49);
■ f. Revising paragraph (aa)(1);
■ g. Revising paragraphs (aa)(2)(i) and (iii);
■ h. Removing paragraph (aa)(2)(iv)(*c*);
■ i. Revising paragraphs (aa)(2)(v), (viii) through (xi);
■ j. Removing paragraphs (aa)(2)(xii)through (xv);
■ k. Revising paragraph (aa)(3) introductory text;
■ l. Removing paragraph (aa)(3)(iv);
■ m. Revising paragraph (aa)(4)(i) introductory text;
■ n. Revising paragraphs (aa)(4)(i)(*a*), (*d*) and (*g*);
■ o. Revising paragraph (aa)(5);
■ p. Revising paragraph (aa)(6)(i);
■ q. Removing paragraph (aa)(6)(iii);
■ r. Revising paragraph (aa)(7) introductory text;
■ s. Revising paragraphs (aa)(7)(i), (iii), (v), (vi) and (vii);
■ t. Removing paragraph (aa)(7)(xi);
■ u. Revising paragraph (aa)(8)(ii)(*b*)(*2*);
■ v. Revising paragraph (aa)(9)(i)(*a*);
■ w. Revising paragraphs (aa)(9)(iv) and (v);
■ x. Revising paragraphs (aa)(10)(i) and (ii);

■ y. Revising paragraphs (aa)(10)(iv)(*c*)(*1*) and (*2*);
■ z. Revising paragraph (aa)(11)(i) introductory text;
■ aa. Revising paragraphs (aa)(11)(i)(*a*) and (*b*);
■ bb. Revising paragraph (aa)(12)(i)(*a*);
■ cc. Revising paragraphs (aa)(14)(i)(*b*) and (*d*); and
■ dd. Revising paragraph (aa)(14)(ii) introductory text.

The revisions and addition read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant (except the pollutant greenhouse gases as defined in paragraph (b)(32) of this section): Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(*b*) Notwithstanding the stationary source size specified in paragraph (b)(1)(i)(*a*) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant (except the pollutant greenhouse gases as defined in paragraph (b)(32) of this section); or

* * * * *

(2) * * *

(i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in: A significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section) other than the pollutant greenhouse gases (as defined in paragraph (b)(32) of this section); and a significant net emissions increase of that regulated NSR pollutant from the major stationary source.

* * * * *

(23) * * *

(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (b)(50) of this section
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Greenhouse gases: 75,000 tpy CO_2e
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

* * * * *

(32) *Greenhouse gases (GHGs)* means the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. To represent an amount of GHGs emitted, the term tpy *CO_2 equivalent emissions* (CO_2e) shall be used and computed as follows:

(a) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(b) Sum the resultant value for each gas to compute a tpy CO_2e.

* * * * *

(49) *Subject to regulation* means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in paragraph (b)(32) of this section.

* * * * *

(aa) * * *

(1) * * *

(i) The Administrator may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term ''PAL'' shall mean ''actuals PAL'' throughout paragraph (aa) of this section.

(ii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:

(*a*) Is not a major modification for the PAL pollutant;

(*b*) Does not have to be approved through the PSD program; and

(*c*) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(iii) Except as provided under paragraph (aa)(1)(ii)(*c*) of this section, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice

requirements that were established prior to the effective date of the PAL.

(2) * * *

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant.

* * * * *

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower.

* * * * *

(v) *Plantwide applicability limitation (PAL)* means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG emission limitation, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.

* * * * *

(viii) *PAL major modification* means, notwithstanding paragraphs (b)(2) and (b)(3) of this section (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) *PAL permit* means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source.

(x) *PAL pollutant* means the pollutant for which a PAL is established at a major stationary source.

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section.

(3) *Permit application requirements.* As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Administrator for approval:

* * * * *

(4) * * *

(i) The Administrator is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(*a*) through (*g*) of this section are met.

(*a*) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

* * * * *

(*d*) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

* * * * *

(*g*) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

* * * * *

(5) *Public participation requirements for PALs.* PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.

(6) * * *

(i) Except as provided in paragraph (aa)(6)(ii) and (iii) of this section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) in tons per year (or tons per year CO_2e for a GHG PAL) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

* * * * *

(7) *Contents of the PAL permit.* The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (x) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year, or in tons per year CO_2e for a GHG PAL.

* * * * *

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

* * * * *

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (aa)(9) of this section.

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based

on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.

* * * * *

(8) * * *

(ii) * * *

(*b*) * * *

(*2*) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

* * * * *

(9) * * *

(i) * * *

(*a*) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

* * * * *

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(*c*) of this section.

(10) * * *

(i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Administrator.

(ii) *Application deadline.* A major stationary source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

* * * * *

(iv) * * *

(*c*) * * *

(*1*) If the potential to emit of the major stationary source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and

(*2*) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (aa)(11) of this section (increasing a PAL).

* * * * *

(11) * * *

(i) The Administrator may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (aa)(11)(i)(*a*) through (*d*) of this section.

(*a*) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(*b*) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

* * * * *

(12) * * *

(i) * * *

(*a*) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or, in CO_2e per unit of time for a GHG PAL. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

* * * * *

(14) * * *

(i) * * *

(*b*) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

* * * * *

(*d*) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

* * * * *

(ii) *Deviation report.* The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

* * * * *

Subpart Y—Minnesota

§ 52.1233 [Amended]

■ 5. Section 52.1233(b) is removed.

* * * * *

Subpart SS—Texas

§ 52.2305 [Amended]

■ 6. Section 52.2305 is removed and reserved.

* * * * *

Subpart YY—Wisconsin

§ 52.2590 [Amended]

■ 7. Section 52.2590 is removed and reserved.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 8. The authority citation for part 60 continues to read as follows:

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

Subpart OOOOa-—Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015

§ 60.5360a [Amended]

■ 9. Section 60.5360a is amended by removing and reserving paragraph (b).

Subpart TTTT—Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units

§ 60.5515 [Amended]

■ 10. Section 60.5515 is amended by removing and reserving paragraph (b).

Subpart UUUU—Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units

§ 60.5705 [Amended]

■ 11. Section 60.5705 is amended by removing and reserving paragraph (b).

PART 70— STATE OPERATING PERMIT PROGRAMS

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

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

■ 16. Section 70.2 is amended by:

■ a. Adding in alphabetical order a definition for ''Greenhouse gases;''

■ b. Revising the introductory text paragraph (2) for the definition of ''Major source;'' and

■ c. Revising the definition of ''Subject to regulation''.

The revisions and addition read as follows:

§ 70.2 Definitions.

* * * * *

Greenhouse gases (GHGs) means the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To represent an amount of GHGs emitted, the term tpy *CO_2 equivalent emissions* (CO_2e) shall be used and computed as follows:

(1) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(2) Sum the resultant value for each gas to compute a tpy CO_2e.

Major source means * * *

(1) * * *

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation except the pollutant greenhouse gases as defined in this section. This definition of major stationary source includes any major source of fugitive emissions of any such pollutant (except the pollutant greenhouse gases as defined in this section), as determined by rule by the Administrator. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

* * * * *

Subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in this section.

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

■ 17. Appendix A to Part 70 is amended by:

■ a. Removing paragraph (d) under Alabama;

■ b. Removing paragraph (jj) under California;

■ c. Removing paragraph (c) under Colorado;

■ d. Removing paragraph (d) under District of Columbia;

■ e. Removing paragraph (c) under Georgia;

■ f. Removing paragraph (d) under Hawaii;

■ g. Removing paragraph (c) under Illinois;

■ h. Removing and reserving paragraph (m) under Iowa;

■ i. Removing and reserving paragraph (e) under Kansas;

■ j. Removing paragraph (c) under Louisiana;

■ k. Removing paragraph (c) under Maine;

■ l. Removing paragraph (d) under Maryland;

■ m. Removing paragraph (d) under Minnesota;

■ n. Removing paragraph (c) under Mississippi;

■ o. Removing and reserving paragraph (x) under Missouri;

■ p. Removing and reserving paragraph (k) under Nebraska, City of Omaha; Lincoln Lancaster County Health Department;

■ q. Removing paragraph (d) under Nevada;

■ r. Removing paragraph (c) under New Hampshire;

■ s. Removing paragraph (e) under New York;

■ t. Removing paragraph (d) under Ohio;

■ u. Removing paragraph (c) under Oklahoma;

■ v. Removing and reserving paragraph (c) under Pennsylvania;

■ w. Removing paragraph (c) under Rhode Island;

■ x. Removing paragraph (c) under South Carolina;

■ y. Removing paragraph (c) under South Dakota;

■ z. Removing paragraph (f) under Tennessee;

■ aa. Removing paragraph (c) under Utah;

■ bb. Removing paragraph (c) under Vermont;

■ cc. Removing paragraph (c) under Virgin Islands;

■ dd. Removing paragraph (c) under Virginia;

■ ee. Removing paragraph (j) under Washington;

■ ff. Removing paragraph (f) under West Virginia; and

■ gg. Removing paragraph (c) under Wisconsin.

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

■ 19. Section 71.2 is amended by:
■ a. Adding in alphabetical order a definition for ''Greenhouse gases;''
■ b. Revising the introductory text paragraph (2) for the definition of ''Major source;'' and
■ c. Revising the definition of ''Subject to regulation''.

The revisions and addition read as follows:

§ 71.2 Definitions.

* * * * *

Greenhouse gases (GHGs) means the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. To represent an amount of GHGs emitted, the term tpy *CO_2 equivalent emissions (*CO_2e*)* shall be used and computed as follows:

(1) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of this chapter—Global Warming Potentials.

(2) Sum the resultant value for each gas to compute a tpy CO_2e.

* * * * *

Major source means * * *

(1) * * *

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation except the pollutant greenhouse gases as defined in this section. This definition of major stationary source includes any major source of fugitive emissions of any such pollutant (except the pollutant greenhouse gases as defined in this section), as determined by rule by the Administrator. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

* * * * *

Subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in this section.

* * * * *

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Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

Setting and Adjusting Patent Fees During Fiscal Year 2017; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

[Docket No. PTO–P–2015–0056]

RIN 0651–AD02

Setting and Adjusting Patent Fees During Fiscal Year 2017

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or adjust patent fees as authorized by the Leahy-Smith America Invents Act (Act or AIA). The USPTO is a business-like operation where external factors affect the productivity of the workforce and the demand for patent products and services. The proposed fee adjustments are needed to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of patent operations (based on current projections), while maintaining momentum towards achieving strategic goals. This rulemaking represents the second iteration of patent fee rulemaking by the USPTO to set fees under the authority of the AIA; the first AIA patent fee setting rule was published in January 2013. This current rulemaking is a result of the USPTO assessing its costs and fees, as is consistent with federal fee setting standards. Following a biennial review of fees, costs, and revenues that began in 2015, the Office concluded that further targeted fee adjustments were necessary to continue funding patent operations, enhance patent quality, and continue to work toward patent pendency goals, strengthen the Office's information technology (IT) capability and infrastructure, and achieve operating reserve targets. Further, in several instances, the fee change proposals offered during the biennial fee review process were enhanced by the availability of cost and workload data (*e.g.,* the number of requests for a service) that was not available in 2013. As a result, the 205 proposed fee adjustments outlined in this proposed rule align directly with the Office's strategic goals and four key fee setting policy factors, discussed in detail in Part V.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before December 2, 2016 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *fee.setting@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop—Office of the Chief Financial Officer, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Brendan Hourigan.'' Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Federal eRulemaking Portal Web site for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet, which allows the Office to more easily share comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in portable document format or a word processing format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection via the Office's Internet Web site (*http://www.uspto.gov*) and at *http://www.regulations.gov.* Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director of the Office of the Planning and Budget, by telephone at (571) 272–8966; or Dianne Buie, Office of Planning and Budget, by telephone at (571) 272–6301.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Action

The Office proposes this rule under section 10 of the AIA (Section 10), which authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC) and Congressional oversight.

Parallel Rulemaking. In tandem with this notice of proposed rulemaking (NPRM) for patent related fees, the Office is undertaking a separate fee rulemaking action that proposes to adjust trademark related fees titled Trademark Adjustment Fees (RIN: 0651–AD08), published on May 27, 2016 (81 FR 33619) and available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

B. Summary of Provisions Impacted by This Action

The fee schedule in this rulemaking will recover the aggregate estimated costs of patent operations while achieving the Office's strategic goals as detailed in the *USPTO 2014–2018 Strategic Plan* (Strategic Plan) that is available at *http://www.uspto.gov/about/stratplan/USPTO_2014-2018_Strategic_Plan.pdf,* as amended by Appendix III of the Budget, available at *http://www.uspto.gov/sites/default/files/documents/fy17pbr.pdf.* The Strategic Plan defines the USPTO's mission, vision, and long-term goals and presents the actions the Office will take to realize those goals. This fee setting rule supports the patent-related strategic goals to optimize patent quality and timeliness, which includes improving patent quality, reducing the backlog of unexamined applications and decreasing patent application pendency, and facilitating processing at the Patent Trial and Appeal Board (PTAB); and increasing international efforts to improve intellectual property policy, protection and enforcement. This proposed rule also supports the management goal to achieve organizational excellence, which includes leveraging IT investments and securing sustainable funding. The Office intends to issue a final rule on fee changes in FY 2017 after receipt and analysis of public comments.

During a formal process closely tied to the annual budget process, the USPTO management and leadership teams reviewed and analyzed individual fee changes and new fee proposals to assess their alignment with the Office's strategic goals and fee structure philosophy, both of which aim to

provide sufficient financial resources to facilitate the effective administration of the USPTO. Specifically, the Office assessed how well each proposal aligned with four key fee setting policy factors: Foster innovation, align fees with the full cost of products and services, set fees to facilitate the effective administration of the patent and trademark systems, and offer application processing options for applicants.

In this rulemaking, the Office proposes to set or adjust 205 patent fees for large, small and micro entities (any reference herein to ''large entity'' includes all entities other than those that have established entitlement to either a small or micro entity fee discount). The fees for small and micro entity rates are tiered with small entities at a 50 percent discount and micro entities at a 75 percent discount. Small entity fee eligibility is based on the size or certain non-profit status of the applicant's business. Micro entity fee eligibility is described in Section 10(g) of the Act. There are also 42 new fees being introduced or replacing one of the 14 fees that are being discontinued.

In summary, the routine fees to obtain a patent (*i.e.,* filing, search, examination, and issue fees) will increase slightly under this NPRM relative to the current fee schedule. Applicants who meet the definition for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for a discount under Section 10(b). Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale section of Supplementary Information in this rulemaking and in the ''*Table of Patent Fees—Current, Proposed and Unit Cost*'' (hereinafter ''*Table of Patent Fees*'') available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

It is important to recognize the progress the Office has made since the first Section 10 patent fee setting effort in order to better understand the fee adjustments the Office is proposing in this iteration. The USPTO first used the authority provided in Section 10 to set and adjust patent fees based on the market factors at the time. That initial effort, which began in September 2011, aimed to provide sufficient revenue to recover the cost of patent operations, including improving patent quality, reducing the patent application backlog, decreasing patent application pendency, upgrading the patent business IT capability and infrastructure, and implementing a sustainable funding model. After two public hearings and a public comment period, the final rule was published in the **Federal Register** on January 18, 2013 (78 FR 4212), with most fee changes effective on March 18, 2013, and the remainder effective on January 1, 2014.

The Office has made considerable progress in reducing backlog and pendency: First action pendency went from 21.9 months in FY 2012 to 17.3 months in FY 2015; total average pendency was reduced from 32.4 months in FY 2012 to 26.6 months in FY 2015; and the patent application backlog was reduced from 608,283 in FY 2012 to 553,221 at the end of FY 2015. The USPTO was also able to complete the opening of three additional regional offices in Denver, Colorado; San Jose (Silicon Valley), California; and Dallas, Texas. With a regional office already in Detroit, and USPTO headquarters in the Washington DC metro area, the Office is better equipped to build and maintain a flexible, diverse, and engaged workforce that is prepared to support backlog reduction and pendency goals while better serving the intellectual property community across the nation.

Similarly, the Office continues its efforts toward enhancing patent quality. As a result of the increased revenue from the inaugural AIA patent fee setting, the Office is better positioned to increase its quality focus because of significant reductions in the patent application backlog and pendency, improved patent operations and procedures, and more secure funding. High-quality patents enable certainty and clarity of rights, which fuels innovation and reduces needless litigation. The Office's commitment to a renewed and enhanced focus on patent quality centers on three pillars: (1) Excellence in work products; (2) excellence in measuring patent quality; and (3) excellence in customer service. The three quality pillars are high priorities throughout the Office, in addition to the existing quality initiatives set forth by the USPTO-led White House Executive Actions on High-Tech Patent Issues (*http://www.uspto.gov/patent/initiatives/uspto-led-executive-actions-high-tech-patent-issues*). The Office is strengthening work products, processes, services, and how it measures patent quality at all stages of the patent process. The recently implemented Enhanced Patent Quality Initiative (EPQI) aims to ensure that the Office continues issuing high-quality patents well into the future.

Stakeholder engagement is a critical component of the EPQI. Following a request for public comments on a set of potential quality proposals, the Office hosted a ''Quality Summit'' with the public to discuss the outlined proposals. By engaging the public on this topic, the Office received more than 1,200 comments on a wide array of possible patent quality initiatives and received even more feedback from both patent examiners and external stakeholders during the summit. Already the Office has created 11 programs under the umbrella of the EPQI in areas including pre-examination and search enhancement, prosecution enhancement, and evaluation enhancement. The Office held a patent quality community symposium in April 2016 featuring interactive segments and implementation updates on the EPQI. The goal of the symposium was to update the public on the USPTO's progress on the 11 programs to improve clarity of the prosecution record, enhance examiner training, improve applicant-examiner interactions, and redefine ways to capture and measure data about quality. The symposium featured lectures on these topics, an interactive workshop demonstration on how the Master Review Form will be applied (*see http://www.uspto.gov/blog/director/entry/improvements_in_measuring_patent_quality*), and a panel discussion with experienced patent practitioners about ways applicants can contribute to the Agency's efforts. The proposed fees will provide sufficient resources to permit the Office to maintain momentum for developing a new paradigm of patent quality at the USPTO.

Likewise, since the last patent fee setting effort, the USPTO has made significant progress on IT tools, like the Patents End-to-End (PE2E) suite, a solution that will enable a new way of processing patent applications using a single software platform to manage examination activities and integrate with existing systems via user-oriented tools that help examiners process applications and support analytics and automated processing. See Part III of this rulemaking for more information on how PE2E will transform the Office. Other IT efforts are also underway to repair or replace the USPTO's aging infrastructure. The Office is also working to ensure optimal IT service delivery to all users in PTAB, including continued development and deployment of the PTAB-End-to-End (PTAB E2E) IT capabilities, which will expand the use of intelligent data to support appeal decisions and process *inter partes* review (IPR) proceedings, post-grant review (PGR) proceedings, covered business method review

(CBMR) proceedings, and derivation (DER) proceedings.

The PTAB will benefit greatly from enhanced system tools even as the organization has significantly strengthened capacity in recent years. A major component of the overall patent process is the work carried out by the PTAB. The PTAB received more than 4,700 petitions for AIA trial proceedings since 2012 and has met every deadline set by Congress for such trials. In the last iteration of patent fee setting, the Office had to estimate both demand (*e.g.,* workload) and cost with little data available for the IPRs, PGRs, and CBMRs. Now, with three years of historical cost data, the Office has better insights into the full cost of services and can better estimate demand, which enables the USPTO to align fees more appropriately. This proposed rulemaking will help the PTAB continue to maintain the appropriate level of judicial and administrative resources to continue to provide high quality and timely decisions for AIA trials, reexamination appeals, and *ex parte* appeals. The USPTO's goal is to meet the statutory timeliness requirements for decisions in AIA proceedings and in appeals from re-examination proceedings. While no statutory timeliness requirement exists for appeals in regular *ex parte* applications, the Office is committed to reducing the inventory of appeals by hiring to the extent possible, clearing the oldest cases, and reassigning judges according to greatest need. The proposal includes an increase to the major PTAB fees including Filing a Notice of Appeal, Forwarding an Appeal to the Board, IPR, PGR, and CBMR fees.

Lastly, the USPTO has made significant progress towards financial sustainability as a result of the initial AIA fee setting effort, including building towards a three-month optimal operating reserve for patents. As initially presented in the 2013 patent fee setting rule, funding an operating reserve as a part of the Office's regular budgetary requirements aligns with the USPTO's strategic priority to sustain long-term operational goals and prevent the USPTO from having to make short-term crisis-based spending changes that affect the delivery of the USPTO's performance commitments. For instance, the USPTO was able to continue operations during the October 2013 government-wide shut down by using available operating reserves carried over from FY 2013. More recently, the operating reserve allowed the Office to maintain progress on IT investments when patent filings (and subsequently revenue) decreased in FY 2015. In order to continue to provide effective service, the Office must proactively manage fiscal risks. The Office acutely recognizes that fees cannot simply increase for every improvement the Office deems desirable. Instead, for this rulemaking effort, the Office focused on prioritizing spending and gradually building the operating reserve in order to build resiliency against financial shocks. At optimal levels, the reserve will allow the Office to operate for three months in the event of interruptions in the ability to access collected fees such as during a government shutdown or during a period of unanticipated reductions in revenue or increases in operating expenses, such as during a domestic or global economic crisis, or major departures from the estimated number of patent applications received.

In conclusion, the USPTO has made significant strides in realizing the goals set forth in 2011, in part due to the AIA authority to set fees. In order to continue building on the progress made over the last several years, and consistent with the USPTO's biennial fee review policy, the USPTO proposes the fee schedule detailed herein to continue quality initiatives, maintain progress toward backlog and pendency reduction, continue IT improvements for both Patents and PTAB, and promote the sound fiscal management of the Office while answering stakeholder calls to continue to improve service. The fees proposed in this rulemaking intend to make the Office well positioned to deliver on known commitments, and address unknown risks in the future.

C. Summary of Costs and Benefits of This Action

The proposed rule is significant and results in a need for a Regulatory Impact Analysis (RIA) under Executive Order 12866 Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). The Office prepared an RIA to analyze the costs and benefits of the NPRM over a five-year period, FY 2017–FY 2021. The RIA includes a comparison of the proposed fee schedule to the current fee schedule (baseline) and to two other alternatives. The costs and benefits that the Office identifies and analyzes in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The Office did not identify any monetized costs and benefits of the proposed rulemaking, but found that the proposed rulemaking had qualitative benefits exceeding its qualitative costs.

The qualitative costs and benefits that the RIA assesses are: (1) Fee schedule design—a measure of how well the fee schedule aligns to the Office key fee setting policy factors; (2) securing aggregate revenue to cover aggregate cost—a measure of whether the alternative provides adequate revenue to support the core mission and strategic priorities described in the NPRM and FY 2017 Budget; and (3) aggregate increased user fee payments—a measure of the opportunity cost associated with paying additional fees to the Office. For these three costs and benefits, the fee schedule proposed in this NPRM offers the highest net benefits. As described throughout this document, the proposed fee schedule maintains the existing balance of below-cost entry fees (*e.g.,* filing, search, and examination) and above cost maintenance fees as one approach to foster innovation. Further, as detailed in Part V, the proposed fee changes are targeted in support of one or more fee setting policy factors. Lastly, the proposed rule secures the aggregate revenue needed to achieve the strategic priorities encompassed in the rulemaking goals and strategies (*see* Part III). In summary, the benefits of the proposed alternative clearly outweigh those of the baseline and the other alternatives considered in the RIA. Table 1 summarizes the RIA results.

TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2017–FY 2021

Qualitative Costs and Benefits	
Costs	
Aggregate Increase in User Fee Payments.	Moderate.
Benefits	Total.
Secure Aggregate Revenue to Cover Aggregate Costs.	Significant.
Fee Schedule Design	Significant.
Net Benefit	Significant.

Additional details describing the costs and benefits are available in the RIA at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the Director of the Office to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed by, or materials furnished by, the Office. Fees

under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. *See* 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under Section 10 at, below, or above their respective cost. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the Official Gazette of the Patent and Trademark Office at least 45 days before the final fees become effective. Section 10(i) terminates the Director's authority to set or adjust any fee under Section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under Section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

C. Micro Entity Fee Reduction

Section 10(g) of the AIA amended chapter 11 of title 35, U.S.C., to add section 123 concerning micro entities. The Act provides that the Office must reduce by 75 percent the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. Micro entity fees were implemented through the previous patent fee rule, and the Office will maintain this 75 percent micro entity discount for the appropriate fees and proposes to implement micro entity fees for additional services as appropriate.

D. Patent Public Advisory Committee Role

The Secretary of Commerce established the PPAC under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on October 20, 2015, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC held a public hearing in Alexandria, Virginia, on November 19, 2015. Transcripts of the hearing are available for review at *http://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20151119.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting Web site, *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on February 29, 2016, and can be found online at *http://www.uspto.gov/sites/default/files/documents/PPAC_Fee%20_Setting_Report_2016%20%28Final%29.pdf.* The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Before the final rule is issued, the public will have a 60-day period during which to provide comments to be considered by the USPTO.

III. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The overall strategy of this proposed rulemaking is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate cost to maintain USPTO operations and accomplish the USPTO's strategic goals in accordance with the authority granted to the USPTO by AIA Section 10. A similar strategy guided the initial AIA patent fee setting in 2013. The overriding principles behind this strategy are to operate within a sustainable funding model to avoid disruptions caused by fluctuations in financial operations, and to continue making strategic improvements, such as progress on patent quality initiatives, continued reduction of the patent application backlog and pendency, and modernization of IT systems.

In addition to the overriding principles outlined above, as discussed earlier in this document, the Office also assesses alignment with the key fee setting policy factors. Each factor promotes a particular aspect of the U.S. patent system. Fostering innovation is an important policy factor to ensure that access to the U.S. patent system is without significant barriers to entry, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. Aligning fees with the full cost of products and services recognizes that as a fully fee-funded entity, the Office must account for all of its costs even as it elects to set some fees below, at, or above cost. This factor also recognizes that some applicants may use particular services in a much more costly manner than other applicants (*e.g.,* patent applications cost more to process when more claims are filed). Facilitating effective administration of the patent system is important to influence efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent. Finally, the Office recognizes that patent prosecution is not a one-size-fits-all process and therefore, where feasible, the Office endeavors to fulfill its fourth policy factor of offering patent processing options to applicants.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the Office reviewed in developing the proposed patent fee schedule. Specific considerations are: (1) Historical costs of patent operations and investments to date in meeting the Office's strategic goals; (2) projected costs to meet the Office's operational needs and strategic goals; and (3) sustainable funding. Additionally, the Office carefully considered the comments, advice, and recommendations offered by the PPAC on the Office's initial fee setting proposal. Collectively, these considerations inform the Office's chosen rulemaking strategy.

(1) *Historical Cost.* To ascertain how to best align fees with the full cost of products and services, the Office considers Activity Based Information.

Using historical cost data and forecasted application demands, the Office can align fees to the costs of specific patent products and services. The Office has made significant progress towards its strategic goals for patent quality, backlog, pendency, and IT system modernization for several years now. For more information about the Office's performance record and progress towards its strategic goals, see the *FY 2015 Performance and Accountability Report,* available at *http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf.* Each of the Office's goals is directly aligned to the cost of delivering patent services. The document entitled *USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Activity Based Information and Patent Fee Unit Expense Methodology,* available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* provides detail on the Office's costing methodology in addition to the last three years of historical cost data. Part IV of this rulemaking details the Office's methodology for establishing fees. Finally, Part V describes the reasoning for setting some fees at cost, below cost, or above cost such that the Office recovers the aggregate cost of providing services through fees.

(2) *Projected Costs.* The costs projected to meet the Office's strategic goals can be found in the FY 2017 President's Budget, which provides additional detail about the following performance and modernization efforts, among others: (a) Quality, backlog, and pendency and (b) modernized IT systems.

(a) Quality, Backlog, and Pendency. The Office developed the strategic goal of optimizing patent quality and timeliness in response to feedback from the intellectual property community and in recognition that a sound, efficient, and effective intellectual property system is essential for technological innovation and for patent holders to reap the benefits of patent protection. In addition to timeliness of patent protection, the quality of application review is critical to the value of an issued patent. Issuance of quality patents provides certainty in the market and allows businesses and innovators to make informed and timely decisions on product and service development. Under the proposed action, the Office will continue to improve patent quality through the three quality pillars identified in Part I.

In addition to quality, the USPTO continues to focus on backlog and pendency reduction. First action pendency went from 21.9 months in FY 2012 to 17.3 months in FY 2015, total average pendency was reduced from 32.4 months in FY 2012 to 26.6 months in FY 2015, and the patent application backlog was reduced from 608,283 in FY 2012 to 553,221 at the end of FY 2015. This proposed rulemaking will produce revenues adequate to continue the USPTO's progress towards attaining its strategic goals for patent backlog and pendency.

Similarly, the PTAB manages pendency and inventory for appeals and trials. This proposed rulemaking will help the PTAB to maintain the appropriate level of judicial, legal, and administrative staff needed to provide high quality and timely decisions for AIA trials, reexamination appeals, and *ex parte* appeals.

(b) Information Technology. Revenue generated from the proposed fee structure will enable the USPTO to continue modernizing its IT architecture and systems. Some current systems remain obsolete and difficult to maintain, leaving the USPTO vulnerable to potential disruptions in patent operations. However, the Office's efforts on PE2E, the large-scale patent IT improvement program, have already delivered value to examiners and customers alike. One of the PE2E releases included an automated method to convert millions of image-based patent application papers into a fully automated extensible markup language (XML), so that images can be tagged with keywords to facilitate searching during the patent examination process. PE2E relies on flexible, scalable, modern technology that is optimized to eliminate repetitive tasks and support analytics and automated processing. Likewise, eCommerce Modernization (''eMod'') will improve the electronic patent application process by improving user interfaces, increasing functionality, and updating infrastructure—all aimed at enriching the user experience via more efficient system integration and expanding system usefulness. Modern IT tools benefit both USPTO employees and stakeholders by facilitating the effective administration of the patent system through effective application processing, better examination quality, and the ability to provide greater services via a nationwide workforce.

(3) *Sustainable Funding.* A major component of sustainable funding is the creation of a viable patent operating reserve that allows for effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes. As a fee-funded agency, spending levels and revenue streams create volatility in patent operations and threaten the Office's ability to meet its designated performance levels (*e.g.,* quality, backlog, and pendency).

The USPTO's annual budget delineates prospective spending levels (aggregate costs) to execute core mission activities and strategic initiatives. In the FY 2017 President's Budget, the USPTO estimated that its aggregate patent operating costs for FY 2017, including administrative costs, would be $2.930 billion. After evaluating relevant risk factors, the Office determined that a minimum balance of $300 million in the operating reserve was adequate for FY 2016 and FY 2017, which is below the optimal balance of three months operating expenses, or about $730 million. Based on the proposed fee increase contained in the FY 2017 President's Budget, the spending requirement would be offset by projected fee collections and other income of $3.005 billion and a deposit of $75 million to the patent operating reserve, leaving a $385 million balance in the patent operating reserve, or $85 million more than the desired minimum of $300 million for FY 2017. Because the FY 2017 President's Budget was submitted prior to the USPTO making final decisions on the proposed fee adjustments, the operating reserve estimate in this NPRM differs from the estimate included in the Budget. Given that the Office reduced several fees from the initial proposal in response to comments from the PPAC and the public, the aggregate revenue collected from the proposed fee schedule is lower. In FY 2017, the proposed fees and other income are projected to collect $2.969 billion, with $39 million deposited in the operating reserve, resulting in a balance of $349 million at the end of the fiscal year, which is slightly more than the minimal level of $300 million for FY 2017. An optimal reserve balance of three months of operating expenses is projected to be $789 million in FY 2019. With the proposed fee increases, the Office projects the actual balance will reach $639 million at the end of FY 2019. Without the proposed fee changes, the Office projects that end of year FY 2019 operating reserve balance would fall below the minimum threshold of $300 million to approximately $264 million. With the proposed fee schedule, the Office projects to first reach the optimal operating reserve balance by the end of FY 2020, and FY 2021 would be the first year in which the optimal operating reserve balance would be in place at the beginning of the fiscal year. The FY 2021 optimal reserve balance is projected to be $818

million, and the projected reserve level entering the fiscal year is $861 million.

The USPTO will continue to assess the patent operating reserve balance against its target balance annually, and at least every two years, the Office will evaluate whether the target balance continues to be sufficient to provide the funding stability needed by the Office. Per the Office's operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by 10 percent for two consecutive years, the Office will consider fee reductions. Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure the USPTO uses patent fees prudently.

(4) *Comments, Advice, and Recommendations from the Patent Public Advisory Committee.* In the report prepared in accordance with AIA fee setting authority, the PPAC expressed general support for an increase in fees to sustain quality and fund a sufficient operating reserve for the Office. Specifically, the report stated, ''The PPAC agrees that the Office should set fees to establish an adequate revenue stream over a sustained period to fund the people and infrastructure essential for a high quality, low pendency examination process, and to fund its operating reserve.'' However, the PPAC expressed concerns over some of the individual fee adjustments and their potential impacts on patent applicants and holders. To address these concerns and still generate the necessary aggregate revenue to meet the Office's goals, the PPAC suggested several alternative fee adjustment approaches. The USPTO has reviewed the report and has amended the initial fee proposal in an effort to address these concerns, where possible, so as to remain consistent with the rulemaking goals. The USPTO has also included additional information in this NPRM to further address some of the PPAC's concerns.

The PPAC expressed general support for the stated goals and an increase in patent fees but proposed alternative approaches for certain fee adjustments. The report suggested that the USPTO could save money by improving quality and processes to maximize efficiency, thereby offsetting some fee increases. In general, the PPAC urged the Office to provide more detail and justification for some of the fee adjustments, including greater transparency in the allocation of costs and historical aspects of costs, better explanations for why certain fees increased and to what purposes the additional revenue would be used, and any practical implications of not changing the current fee structure. This Part and Part V: Individual Fee Rationale offer this additional information.

The PPAC expressed a lack of support for the proposal to increase Request for Continued Examination (RCE) fees. The advisory body questioned whether the fees are warranted and suggests instead that the USPTO consider ways to reduce the need for RCEs. In response to this concern, the USPTO proposes a reduction to the fee increases for both a first RCE and a second and subsequent RCE. The revised proposals include moderate increases that bring the fee rates closer to the cost of processing an RCE, as calculated using the most recently available cost data (FY 2015). Specifically, the first RCE fee rate is now proposed to increase from $1,200 to $1,300 for large entities, a $100 increase (8 percent). The initial proposal included a $300 increase for this fee. The FY 2015 full cost to examine a first RCE was $2,187. When factoring small and micro entity rates, first RCE fees collected 48.8 percent of the examination cost in FY 2015. The second and subsequent RCE fee rate is now proposed to increase from $1,700 to $1,900 for large entities, a $200 increase (12 percent). The initial proposal included a $300 increase for this fee. The FY 2015 full cost to examine a second and subsequent RCE was $1,540. When factoring small and micro entity rates, second and subsequent RCE fees collected 100 percent of the examination cost in FY 2015. At an aggregate level, first and second and subsequent RCE fees collected 62.5 percent of the examination costs for FY 2015. In order to approach cost recovery and limit the increase to the first RCE fee rate, the Office proposes a slightly larger increase for the second and subsequent RCE fee rate. Had this fee structure been in place in FY 2015, the Office would have recovered 68.6 percent of RCE costs as opposed to the 62.5 percent that was experienced. While this proposed fee structure will not achieve full cost recovery for RCEs, it will bring collections closer to cost and therefore reduce the subsidy for RCE filings currently provided by other patent fees. In addition to the proposed fee adjustments, the USPTO is committed to focusing on initiatives that will reduce the need for RCEs. Examples of initiatives the Office has already implemented to reduce the need for RCEs include the Quick Path Information Disclosure Statement (QPIDS) pilot program (*http://www.uspto.gov/patent/initiatives/quick-path-information-disclosure-statement-qpids*) and the After Final Consideration Pilot Program 2.0 (AFCP 2.0) (*http://www.uspto.gov/patent/initiatives/after-final-consideration-pilot-20*). Additionally, the Enhanced Patent Quality Initiative (*http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-0*) will be evaluating and strengthening work products, processes, and services at all stages of the patent process and may contribute to reducing the need for RCEs.

The report noted opposition to the proposed increases for excess claim fees. The PPAC recommends a refund system in which excess claim fees are returned when claims are cancelled in response to a restriction requirement. Under this proposal, an applicant would only incur fees for the claims that are actually examined, not just filed. The USPTO appreciates the PPAC's suggestion and has committed to undertaking a study to determine the feasibility of such a refund program, and at present the Office is proposing the increase for excess claim fees.

Regarding the proposed change to the Information Disclosure Statement (IDS) model, the PPAC expressed concern about the negative effects of eliminating the certification requirement (under 37 CFR 1.97 (e)) and noted that the fee increase may discourage applicants from filing promptly when new prior art is discovered. In response to PPAC and public comments, the USPTO eliminated the proposed changes to IDS practice and instead is proposing a moderate increase to the IDS submission fee rate.

The report stated that the substantial increase to the notice of appeal and appeal forwarding fees would likely result in discouraging patent holders' invocation of appeal procedures, which are frequently used out of necessity rather than choice. In response, the Office notes that even with the proposed increases to the fees, the true cost of *ex parte* appeals is being significantly subsidized. That is, in FY 2015, *ex parte* appeal fees covered approximately 58 percent of the cost per appeal. The proposed fee increase will bring *ex parte* appeal fees up to cover approximately 72 percent of the cost per appeal. Since the implementation of the January 2013 Setting and Adjusting Patent Fees Final Rule, the increased *ex parte* appeal fees have enabled the PTAB to hire more judges. The PTAB has made great strides in reducing its appeals inventory, which reached over 27,000 (in 2012), to under 19,000 (in April 2016). The proposed increase in fees will help the Board further reduce

the appeals inventory and improve pendency for appeals and trials. The PTAB is also working to reduce inventory with the implementation of the following two pilot programs: (i) Expedited Patent Appeal Pilot (EPAP) (*see http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/expedited-patent-appeal-pilot*) and (ii) Small Entity Pilot Program (*see http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/uspto-announces-streamlined-expedited*).

The PPAC report specifically expressed support for proposed fee adjustments for the IPR, PGR, and CBMR so that the PTAB has adequate resources to accomplish the mission of the AIA. However, the PPAC questioned the distribution of the fees between pre- and post-institution. The Office appreciates the observation and is currently assessing the matter.

The PPAC suggested that it would be sensible for the USPTO to subdivide the AIA trial fees more finely (''pay as you go''). As the AIA review processes mature and become more certain, it may be appropriate to study the impact and feasibility of this proposal. Developing an understanding of the reasons driving settlements at various times in these proceedings will inform decision makers as to how and when to best structure fees. Because fees are intended to recapture aggregate agency patent costs over time, structuring of the fees will still require recapture of all costs unless the costs of the review proceedings are subsidized by other patent related revenue. The Office agrees with the PPAC's characterization that the proceedings still contain significant uncertainties. Once the USPTO has had further experience with the proceedings to derive conclusions about settlement and other behaviors, the USPTO will reexamine the appropriateness of this proposal.

Additionally, the PPAC suggested that the Office consider adopting a scaled petition fee schedule based on the petitioner's annual revenue. However, the authority to discount fees or to charge additional fees for certain petitioners under the USPTO's rulemaking authority is limited by the AIA to providing discounts to the six categories under section 10(b). As the administrative trial fees are outside of the six categories, the trial fees are not eligible for discounts.

The report proposed a refund system for disciplinary proceeding fees associated with the Office of Enrollment and Discipline (OED). While the PPAC recognizes the importance of having an effective process for ensuring compliance with the rules governing the Patent Bar, the advisory body also recognizes that some practitioners may be fully exonerated upon final determination. The Office would like to clarify that pursuant to 37 CFR 11.60(d)(2), the OED Director is currently authorized to recover expenses from a disciplined practitioner who seeks reinstatement. The purpose of listing this fee in 37 CFR 1.21 is simply to establish a new fee code by which to account for the receipt of these reimbursements. The fee is only imposed on practitioners who seek reinstatement after having been suspended or excluded. Thus, there should be no concern that a practitioner would be subject to this fee if he or she has been investigated and cleared or has been disciplined but not suspended or excluded.

The PPAC also suggested that the proposed increases to design fees were excessive. In response, the USPTO has reduced the proposed increase to the design issue fee by $200 for large entities from the level that the Office initially proposed. The proposed large entity design issue fee rate is now $800 as opposed to $1,000. The minimum required fees to obtain a design patent (file/search/examination and issue) are proposed to increase slightly beyond cost recovery for large entities ($1,760 versus $1,596) to subsidize the substantial number (almost half in FY 2015) of small and micro entity applicants who pay lower fees despite similar costs to the Office. Further, design patentees do not pay maintenance fees, so there is no back-end subsidy to support below-cost front-end fees. Overall, design fees are still proposed at rates that are below the Office's aggregate processing costs even if the large entity design fee rates are slightly above cost. Therefore, even with the proposed fee increases, design application processing costs will continue to be subsidized by non-design specific fee revenues. The Office believes these proposed moderate fee increases in filing, search, examination, and issue are appropriately aligned to costs and the policy consideration to foster innovation.

In the case of sequence listing fees, the report sought more information on the proposed fees to clarify the need for the increase. The level of effort associated with the handling of extremely lengthy sequence listings (hereafter referred to as mega-sequence listings) is significant because the Office's systems require extra storage and special handling for sequence listing files beyond 300 Megabytes (MB). Actual cost data is not available since these are newly proposed fees. However, based on historical data, on average, less than 10 applications per year contained sequence data that reached the 300 MB file levels of the proposed new fees. Based on previously filed applications with lengthy sequence listings, the Office determined that some applications disclosed sequence data that met the length thresholds for being included in the sequence listing, but that was neither invented by the applicants nor claimed. These sequence listings often included sequences that were available in the prior art, were not essential material, and could have been described instead, for example, by name and a publication or accession reference. Claims in such applications were frequently directed to the manipulation of sequence data rather than the substance of the sequences themselves. Submission of a mega-sequence listing in these applications would not have been necessary to complete the application if applicants limited the number of sequences that were described in such a way as to be required in a sequence listing. The proposed fee should encourage applicants to draft their specifications such that sequence data that is not essential material is not required to be included in a sequence listing, which should reduce the need for mega-sequence listings. A reduced number of mega-sequence listings will benefit the Office and the public by reducing large submissions of unnecessary sequences and, consequently, the search system load. The PPAC also requested additional information regarding the proposed fee for the late filing of sequence listings in international applications. This fee is being established pursuant to PCT Rule 13ter.1(c) and is similar in nature and proposed fee rate to fees charged by other international IP offices. Additional information regarding the authority and purpose of this rulemaking is available at *http://www.wipo.int/pct/en/texts/rules/r13ter.htm.*

The PPAC also requested additional information regarding copy fees, in particular those that appeared to be ''very high charges.'' Currently the fee schedule includes a catch-all fee of ''Computer Records'' priced ''at cost.'' The Office proposes to replace this fee code with five fees that encompass work currently performed and charged to this code. The five fee codes proposed to replace the ''Computer Records'' fee are: Copy of Patent Grant Single-Page TIFF Images (52 week subscription); Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication

Single-Page TIFF Images, or Patent Application Publication Full-Text W/ Embedded Images (52 week subscription); Copy of Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc) Products; Copy of U.S. Patent Custom Data Extracts; and Copy of Selected Technology Reports, Miscellaneous Technology Areas. The proposed fee codes explicitly state the service and fee to provide customers with clearer information to aid decision making.

These specific fees recover the USPTO's aggregate costs for processing, validating, packaging, and shipment of these products to customers worldwide. For the copy of Patent Grant Single-Page TIFF Images (52 week subscription) (which the Office proposes to set at $10,400), for example if a customer orders this service, each week the Office will expedite to him or her a package that contains, at a minimum, one Blu-ray and one DVD optical disc bearing the patent grant data for each Tuesday in the calendar year via United Parcel Service. The fee rate covers the cost of producing and delivering these items for each of the 52 weeks of the year. For the other three services proposed at $5,200, the expedited weekly packages (one for each Tuesday or Thursday in the calendar year) typically contain either a single Blu-ray or DVD optical disc. As an alternative to requesting and paying for these weekly services, the USPTO has provided customers the ability to download this information at no cost since June 2010. This information is currently provided in the following locations: Bulk Data Storage System (BDSS) available at *https://bulkdata.uspto.gov* since October 2015 and Reed Tech Public Data Dissemination (PDD) available at *http://patents.reedtech.com* since June 2013.

The USPTO left maintenance fees untouched in the initial proposal. The PPAC report noted that this was an ''attractive feature to many stakeholders given their already high level, especially at the third stage.'' The PPAC also commented that there may be an opportunity to decrease the third stage fee and raise the maintenance fees at the first two stages or second maintenance fee only as a means to increase revenue. The USPTO appreciated the input and will continue to closely monitor renewal rates to determine if and when a change to the maintenance fee rates is warranted.

In summary, the USPTO appreciates the PPAC's overall support for an increase in patent fees to meet sufficient funding levels. After careful consideration of the comments, concerns, and suggestions provided in the report, and keeping in mind the goals of this rulemaking, the USPTO elected to reduce several of the fee increases initially proposed to the PPAC. The newly proposed fee structure will result in lower aggregate revenue than that initially proposed to the PPAC. Nevertheless, the fee structure proposed herein will ultimately allow the USPTO to continue on its path towards achieving the goals and objectives laid out in the Strategic Plan. The Office looks forward to receiving additional comments on this revised proposal during the public comment period.

C. Summary of Rationale and Purpose of the Proposed Rulemaking

The Office estimates that the proposed patent fee schedule will produce aggregate revenues to recover the aggregate costs of the USPTO, including for the implementation of its strategic and management goals, objectives, and initiatives in FY 2017 and beyond. Using the strategic goals (optimizing patent quality and timeliness and providing domestic and global leadership to improve intellectual property policy, protection, and enforcement worldwide) and the management goal of organizational excellence as a foundation, the proposed rule would provide sufficient aggregate revenue to recover the aggregate cost of patent operations, including improving patent quality, reducing the patent application backlog, decreasing patent application pendency, upgrading the patent business IT capability and infrastructure, and implementing a sustainable funding model.

IV. Fee Setting Methodology

The Office carried out three primary steps in developing the proposed fees:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate cost over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate cost over the five-year period, while furthering key policy factors.

These three steps are iterative and interrelated. The following is a description of how the USPTO carries out these three steps.

Step 1: Determine Prospective Aggregate Costs

Calculating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The Budget is a five-year plan (that the Office prepares annually) for carrying out base programs and new initiatives to implement the strategic goals and objectives.

The first activity performed to determine prospective aggregate cost is to project the level of demand for patent products and services. Demand for products and services depend on many factors, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating cost, a primary production workload driver is the number of patent application filings (*i.e.,* incoming work to the Office). The Office looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), the leading indicator to incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*) and is forecasted each February by the Office of Management and Budget (OMB) (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives and each January by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found at pages 143 and 144 of the FY 2017 President's Budget (Congressional Justification). The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The Office uses a patent pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at *http://www.uspto.gov/patents/stats/patent_pend_model.jsp.*

The second activity is to calculate the aggregate costs to execute the requirements. In developing its Budget, the Office first looks at the cost of status quo operations (the base requirements). The base requirements are adjusted for

anticipated pay raises and inflationary increases for the budget year and four out years (detailed calculations and assumptions for this adjustment can be found in the FY 2017 President's Budget). The Office then estimates the prospective cost for expected changes in production workload and new initiatives over the same period of time (refer to ''Program Changes by Sub-Program'' sections of the Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. Finally, the Office estimates its three-month target operating reserve level based on this aggregate cost calculation for the year to determine if operating reserve adjustments are necessary.

The FY 2017 President's Budget identifies that, during FY 2017, patent operations will cost $2.928 billion (*see* page 146 of the Budget), including $2.009 billion for patent examination activities; $162 million for IT systems, support, and infrastructure contributing to patent operations; $93 million for activities related to patent appeals and the AIA *inter partes* dispute actions; $27 million for activities related to intellectual property protection, policy, and enforcement; and $637 million for general support costs necessary for patent operations (*e.g.,* rent, utilities, legal, financial, human resources, other administrative services, and Office-wide IT infrastructure and IT support costs). In addition, the Office transfers $2 million to the DOC Inspector General for audit support. The Office also estimates collecting $28 million in other income associated with recoveries and reimbursable agreements (offsets to spending) and depositing $75 million during FY 2017 toward the cost of building the patent operating reserve to sustain operations.

Because the FY 2017 President's Budget was submitted prior to the USPTO making final decisions on the proposed fee adjustments, the operating reserve estimate in this NPRM is therefore different than the estimate included in the Budget. A detailed description of the operating requirements and related aggregate cost is located in the Budget. Table 2 below provides key underlying production workload projections and assumptions from the Budget used to calculate aggregate cost. Table 3 presents the total budgetary requirements (prospective aggregate cost) for FY 2017 through FY 2021 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2017–FY 2021

Utility, plant, and reissue (UPR)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Applications *	594,900	606,800	625,000	650,000	676,000
Growth Rate	1.5%	2.0%	3.0%	4.0%	4.0%
Production Units	616,200	624,900	628,700	629,300	628,500
Unexamined Patent Application Backlog	434,700	397,400	374,000	374,700	401,600
Examination Capacity **	8,087	8,022	7,937	7,832	7,777
Performance Measures (UPR)					
Avg. First Action Pendency (Months)	13.7	12.2	10.9	10.3	10.2
Avg. Total Pendency (Months)	22.9	22.1	20.6	19.5	19.1

* In this table, the patent application filing data includes requests for continued examination (RCEs).
** In this table, Examination Capacity is the UPR Examiners On-Board at End-of-Year, as described in the FY 2017 President's Budget.

TABLE 3—PLANNED OPERATING REQUIREMENTS—FY 2017–FY 2021

Patent aggregate cost estimate	Dollars in millions				
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Patent Planned Operating Requirements	2,930	3,114	3,157	3,208	3,272
Less: Planned Patent Fee Collections	2,951	3,260	3,265	3,412	3,599
Less: Other Income	18	18	18	18	18
To (−)/From (+) Operating Reserve	39	164	127	222	344
EOY Operating Reserve Balance	349	513	639	861	1,206

Step 2: Calculate Prospective Aggregate Revenue

As described in ''*Step 1,*'' the USPTO's FY 2017 requirements in the FY 2017 President's Budget include the aggregate prospective cost of planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the Office to realize its strategic goals and objectives for the next five years. The aggregate prospective cost becomes the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to calculate or determine prospective fee workload (*e.g.,* number of applications and requests for services and products), growth, and resulting fee workload volumes (quantities) for the five-year planning horizon. Economic activity is an important consideration when developing workload and revenue forecasts for the USPTO's products and services because economic conditions affect patenting activity, as most recently exhibited in the recession of 2009 when incoming workloads and renewal rates declined.

The Office considers economic activity when developing fee workloads and aggregate revenue forecasts for its products and services. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity and is anticipated to grow approximately two percent for FY 2017 based on OMB and CBO estimates.

These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of intellectual property portfolios,

which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this action measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (*i.e.,* demand is *inelastic* or the elasticity measure is less than one in absolute value), a fees increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (*i.e.,* demand is *elastic* or the elasticity measure is greater than one in absolute value), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. Additional detail about the Office's elasticity estimates is available in ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Description of Elasticity Estimates,*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Aggregate Revenue Estimate Ranges

When estimating aggregate revenue, the USPTO prepares a high and a low range of fee collection estimates. This range accounts for the inherent uncertainty, sensitivity, and volatility of predicting fluctuations in the economy and market environment; interpreting policy and process efficiencies; and developing fee workload and fee collection estimates from assumptions. The Office estimates a range for all its major workload categories including application filings, extensions of time, PTAB fees, maintenance fees, PCT filings, and trademark filings. Additional detail about the Office's aggregate revenue, including projected workloads by fee, is available in ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Aggregate Revenue Estimates Alternative 1: Proposed Alternative*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Summary

Patent fees are collected for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from maintenance fees, which subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs, such as additional examining staff and overtime. The resulting reduction in production activities creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (*see* Table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator for workload of patent issue fees), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fees up or down based on cost and policy decisions (*see Step 3: Set Specific Fee Amounts*), estimates the effective dates of new fee rates, and then multiplies the resulting fees by appropriate workload volumes to calculate a revenue estimate for each fee. To calculate the aggregate revenue, the Office assumes that all proposed fee rates will become effective on April 1, 2017. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 3).

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs for a given year during the budget formulation process, the Office sets specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during that time frame. Calculating individual fees is an iterative process that encompasses many variables. One variable that the USPTO considers to inform fee setting is the historical cost estimates associated with individual fees. The Office's Activity-Based Information (ABI) provides historical cost for an organization's activities and outputs by individual fee using the activity-based costing (ABC) methodology. ABC is commonly used for fee setting throughout the Federal Government. Additional information about the methodology, including the cost components related to respective fees, is available in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Activity-Based Information and Patent Fee Unit Expense Methodology*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The USPTO provides data for FY 2013–FY 2015 because the Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

V. Individual Fee Rationale

The Office projects that the aggregate revenue generated from the proposed patent fees will recover the prospective aggregate cost of its patent operations including contributions to the operating reserve per the strategic goal of implementing a sustainable funding model. As detailed previously, the PPAC supports this approach, stating that it ''agrees that the Office should set its fees to establish an adequate revenue stream over a sustained period to fund the people and infrastructure essential for a high quality, low pendency examination process, and to fund its operating reserve.'' It is important to recognize that each individual proposed fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in Part III: Rulemaking Goals and Strategies, some of the proposed fees are set at, above, and below their unit costs to balance several key fee setting policy factors: *Fostering innovation, facilitating effective administration of the patent system,* and *offering patent processing options to applicants.* For example, many of the initial filing fees are intentionally set below unit cost in order to foster innovation by removing barriers to entry for innovators. To balance the aggregate

revenue loss of fees set *below cost,* other fees must be set *above cost* in areas where it is less likely to reduce inventorship (*e.g.,* maintenance). The Office applied a similar rationale to set and adjust patent fees in the 2013 final rule, the initial patent fee setting rulemaking using AIA authority. 78 FR 4212 (January 18, 2013).

For some fees proposed in this NPRM, the USPTO does not typically maintain individual historical cost data for the service provided, such as maintenance fees. Instead, the Office evaluates the policy factors described in Part III to inform fee setting. By setting fees at particular levels, the USPTO aims to: (1) Foster an environment where examiners can provide and applicants can receive prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

The rationale for the proposed changes are grouped into three major categories, discussed below: (A) Fees where large entity amounts stayed the same or did *not* change by greater than plus or minus 10 percent or 20 dollars; (B) fees where large entity amounts changed from the current amount by greater than plus or minus 10 percent and 20 dollars; and (C) fees that are discontinued or replaced. The purpose of the categorization is to identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small and micro entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half or one quarter of the large entity change. Therefore, the only time there will be a small or micro entity fee change that meets the greater than plus or minus 10 percent or 20 dollars criteria without a similar change for the large entity fee will be for those instances when the Office is introducing new small and micro entity fees where there was previously only a large entity fee. These types of changes are discussed separately.

The *Table of Patent Fees* includes the current and proposed fees for large, small, and micro entities as well as unit costs for the last three fiscal years. Part IV: Discussion of Specific Rules contains a complete listing of fees that are set or adjusted in the proposed patent fee schedule.

A. Fees With Proposed Changes Less Than Plus or Minus 10 Percent or 20 Dollars

The Office proposes to adjust slightly (*i.e.,* less than plus or minus 10 percent or 20 dollars) several fees not discussed in sections B or C below. The *Table of Patent Fees* demarcates which fees meet the dollar change and percent change thresholds and are included for discussion in Part V. Proposed fees are rounded to the nearest five dollars by applying standard arithmetic rules. For fees that have small and micro entity fee reductions, the large entity fee will be rounded to the nearest 20 dollars by applying standard arithmetic rules. The resulting proposed fee amounts will be convenient to patent users and permit the Office to set small and micro entity fees at whole dollar amounts when applying the applicable fee reduction. The slight increase in these fees helps the Office to recover higher costs of performing such services due to increased aggregate cost of doing business. The proposed fee adjustments in this category are listed in the *Table of Patent Fees.*

B. Fees With Proposed Changes of Greater Than Plus or Minus 10 Percent and 20 Dollars

For those fees that are proposed to change by greater than plus or minus 10 percent and 20 dollars, the individual fee rationale discussion is divided into three categories, including: (1) New and significant fees; (2) patent enrollment fees; and (3) fees adjusted and amended to include discounts for small and micro entities.

New and significant fees are further divided into subcategories according to the function of the fees, including: (a) Mega-sequence listing filing; (b) design and plant search, examination, and issue; (c) request for continued examination (RCE); (d) information disclosure statements; (e) certificate of correction; (f) request for *ex parte* reexamination; (g) appeals; (h) AIA trials; (i) PCT- International Stage; and (j) reissue patent maintenance rules.

As discussed above, for purposes of comparing amounts in the individual fee rationale discussion, the Office has included the current fees as the baseline to calculate the dollar change and percent change for proposed fees.

(1) New and Significant Fees

The following fees fall under the category of new and significant. A discussion of the rationale for each fee follows.

(a) Mega-Sequence Listing Filing

TABLE 4—MEGA-SEQUENCE LISTING FILING—FEE CHANGES AND UNIT COST

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Submission of sequence listings of 300MB to 800MB	new	$1,000 ($500) [$250]	+$1,000 (+$500) [+$250]	n/a (n/a) [n/a]	n/a
Submission of sequence listings of more than 800 MB	new	$10,000 ($5,000) [$2,500]	+$10,000 (+$5,000) [+$2,500]	n/a (n/a) [n/a]	n/a

The Office proposes two new fees to manage handling of sequence listings of 300 MB or more. Pricing for this fee is divided into two tiers with Tier 1 for file sizes 300MB to 800MB and Tier 2 for file sizes greater than 800MB.

The level of effort associated with the handling of mega-sequence listings is significant, because the Office's systems require extra storage and special handling for files beyond 300 MB. The Office has not yet collected actual cost data for sequence listings with file sizes of 300 MB or greater. However, based on

historical data, on average, less than 10 applications per year contained sequence listing files greater than 300MB. Based on previously filed applications with lengthy sequence listings, the Office determined that some applications disclosed sequence data that met the length thresholds for being included in the sequence listing but that was neither invented by the applicants nor claimed. Mega-sequence listings, in particular, often included sequences that were available in the prior art, were not essential material, and could have been described instead, for example, by name and a publication or accession reference. Further, claims accompanying such applications were frequently directed to the manipulation of sequence data rather than the substance of the sequences themselves. Submission of a mega-sequence listing in these applications would not have been necessary to complete the application if applicants limited the number of sequences that were described in such a way as to be required in a sequence listing. The proposed fee should encourage applicants to draft their specifications such that sequence data that is not essential material is not required to be included in a sequence listing. A reduced number of mega-sequence listings will benefit the Office and the public by reducing the strain on Office resources, thus facilitating the effective administration of the patent system.

(b) Design and Plant Search, Examination, and Issue

TABLE 5—DESIGN AND PLANT SEARCH, EXAMINATION, AND ISSUE FEES—FEE CHANGES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Design Search Fee	$120 ($60) [$30]	$160 ($80) [$40]	+$40 (+$20) [+$10]	+33% (+33%) [+33%]	$397
Plant Search Fee	$380 ($190) [$95]	$420 ($210) [$105]	+$40 (+$20) [+$10]	+11% (+11%) [+11%]	$1,773
Design Examination Fee	$460 ($230) [$115]	$600 ($300) [$150]	+$140 (+$70) [+$35]	+30% (+30%) [+30%]	$608
Design Issue Fee	$560 ($280) [$140]	$800 ($400) [$200]	+$240 (+$120) [+$60]	+43% (+43%) [+43%]	$314
Plant Issue Fee	$760 ($380) [$190]	$1,000 ($500) [$250]	+$240 (+$120) [+$60]	+32% (+32%) [+32%]	$314

Design and plant patents are unlike utility patents in that they do not pay maintenance fees after the patent has been granted. Under the current utility fee structure, entry costs (filing, search, and examination fees) are intentionally set below the full cost of performing this service as a means to foster innovation. Then, the full cost of examination is recovered through the payment of issue and maintenance fees. Given the lack of maintenance fees and the fact that the majority of design applicants are small and micro entities who are eligible to pay reduced fees, the Office currently does not recover the costs to examine design and plant patent applications solely from design and plant application fees. Instead, these costs are being subsidized by other application types (*e.g.,* utility) and processes. The proposed fees would better align the fees with costs by bringing both application types closer to aggregate cost recovery while maintaining some subsidization. In an effort to limit cost-based entry barriers for these application types, the Office proposes the largest increase, in terms of dollars, for the issue fee.

(c) Request for Continued Examination (RCE)—First and Second and Subsequent Request

TABLE 6—REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Request for Continued Examination (RCE)—1st Request (*see* 37 CFR 1.114)	$1,200 ($600) [$300]	$1,300 ($650) [$325]	+$100 (+$50) [+$25]	+8% (+8%) [+8%]	$2,187
Request for Continued Examination (RCE)—2nd and Subsequent Request (*see* 37 CFR 1.114)	$1,700 ($850) [$425]	$1,900 ($950) [$475]	+$200 (+$100) [+$50]	+12% (+12%) [+12%]	$1,540

The proposed moderate increases to RCE fees directly support the fee setting policy factor to align fees with costs. The Office's proposed increase would more closely align the fee rates with the cost of processing RCEs, as calculated using the most recently available cost data (FY 2015). Specifically, the Office proposes to increase the first RCE fee rate from $1,200 to $1,300 for large entities, a $100 increase (8 percent). The FY 2015 cost to examine a first RCE was $2,187. When factoring in filings by small and micro entities, first RCE fees collected 48.8 percent of their aggregate examination costs in FY 2015. When discussing RCEs, it is helpful to recognize the impact of small entity discounts on the Office's costs. Specifically, while small and micro entity fee rates are reduced by 50 percent and 75 percent respectively, the cost of processing these actions is not reduced accordingly.

The Office proposes to increase the second and subsequent RCE fee rate from $1,700 to $1,900 for large entities, a $200 increase (12 percent). The FY 2015 cost to examine a second and subsequent RCE was $1,540. When factoring filings by small and micro entities, second and subsequent RCE fees fully collected the complete examination cost in FY 2015. When combined, first and second and subsequent RCE fees collected 62.5 percent of the examination costs. In order to approach cost recovery and limit the increase to the first RCE fee rate, the Office proposes a slightly larger increase for the second and subsequent RCE fee rate. Had this fee structure been in place in FY 2015, the Office would have recovered 68.6 percent of RCE costs as opposed to the 62.5 percent that was realized. In FY 2015, the Office collected fees for 112,634 first RCEs and for 57,931 second and subsequent RCEs.

While this fee structure will not achieve full cost recovery for RCEs, it will bring collections closer to cost and therefore reduce the subsidy for RCE filings currently provided by other patent fees. In addition to the fee adjustments, the USPTO is committed to focusing on initiatives that will reduce the need for RCEs. Examples of initiatives the Office has already implemented to reduce the need for RCEs include the QPIDS pilot program (*http://www.uspto.gov/patent/initiatives/quick-path-information-disclosure-statement-qpids*) and the AFCP 2.0 (*http://www.uspto.gov/patent/initiatives/after-final-consideration-pilot-20*). Additionally, the recently announced Enhanced Patent Quality Initiative (*http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-0*) will be evaluating and strengthening work products, processes, and services at all stages of the patent process.

(d) Information Disclosure Statements (IDS)

TABLE 7—IDS—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Submission of an Information Disclosure Statement	$180 ($90) [$45]	$240 ($120) [$60]	+$60 (+$30) [+$15]	+33% (+33%) [+33%]	n/a

The Office proposed new procedural rules and fee rates for the Information Disclosure Statement practices in its initial proposal to PPAC. Based on the feedback received, the Office determined not to move forward with the changes to the IDS procedural rules. Instead, the Office proposes to increase the submission fee from $180 to $240. The Office proposes the adjustment in an effort to optimally set the fee to encourage early submission of an IDS when possible. However, based on stakeholder feedback offered in response to the Office's initial patent fee setting proposal, the Office aims to keep the fee rate low enough to encourage timely filings during the time period (and under the conditions) when the fee would be required.

(e) Certificate of Correction Fees

TABLE 8—CERTIFICATE OF CORRECTION FEES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Certificate of Correction	$100	$150	+$50	+50%	$93

The Office proposes to increase the fee for a certificate of correction by $50 to $150. The Office proposes the adjustment in an effort to encourage applicants to submit accurate information initially, while at the same time not increasing the rate too much above unit cost recovery to discourage disclosure of needed corrections when an error has been identified. Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the USPTO, appears in a patent and a showing has been made that such mistake occurred in good faith, the Director may, upon payment of this fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination.

(f) Request for Ex Parte Reexamination Fees

TABLE 9—REQUEST FOR EX PARTE REEXAMINATION FEES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Ex Parte Reexamination (§ 1.510(a)) Streamlined	new	$6,000 ($3,000) [$1,500]	+$6,000 (+$3,000) [+$1,500]	n/a	n/a

The Office proposes to establish a new fee for smaller, streamlined reexamination filings. The streamlined filings would reduce the cost to the USPTO, allowing the Office to pass on the cost savings to applicants. The proposed fee would apply to *ex parte* reexamination requests having: (i) 40 Pages or less; (ii) lines that are double-spaced or one-and-a-half spaced; (iii) text written in a non-script type font such as Arial, Times New Roman, or Courier; (iv) a font size no smaller than 12 point; (v) margins which conform to the requirements of 37 CFR 1.52(a)(1)(ii); and (vi) sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition. The following parts of an *ex parte* reexamination request are excluded from (i) through (v) above: (a) The copies of every patent or printed publication relied upon in the request pursuant to 37 CFR 1.510(b)(3); (b) the copy of the entire patent for which reexamination is requested pursuant to 37 CFR 1.510(b)(4); and (c) the certifications required pursuant to 37 CFR 1.510(b)(5) and (6). Completed forms such as the Request for *Ex Parte* Reexamination Transmittal Form (PTO/SB/57) or the information disclosure statement form (PTO/SB/08), or their equivalents, will also be excluded from (i) through (v). Claim charts will be considered part of the request and will be included in the page limit. Any paper containing argument directed to the patentability or unpatentability of the claims, such as an affidavit or declaration, will be included in the page limit and subject to the above requirements. If only a portion of the paper contains argument, the entire paper will be included in the page limit. The Office deems conclusions and/or definitions to be argumentative. For example, a request that includes 40 pages of argument and a 41st page that includes conclusions or definitions would be deemed to be a request having greater than 40 pages. A page that consists solely of a signature will not be included in the page limit. The determination of whether a paper contains argument will be within the sole discretion of the Office.

Note that micro entity status is only available to patent owner requesters, not to third party requesters. The change is consistent with the USPTO's fee setting policy factors to align fees to costs, offer additional processing options, and facilitate the effective administration of the patent system, and is also consistent with the requirements of 35 U.S.C. 123.

(g) Appeal Fees

TABLE 10—APPEAL—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Notice of Appeal	$800 ($400) [$200]	$1,000 ($500) [$250]	+$200 (+$100) [+$50]	+25% (+25%) [+25%]	$45
Forwarding an Appeal in an Application or *Ex parte* Reexamination Proceeding to the Board	$2,000 ($1000) [$500]	$2,500 ($1,250) [$625]	+$500 (+$250) [+$125]	+25% (+25%) [+25%]	$4,815

At the current fee rate, the fee paid for an *ex parte* appeal only covers 58 percent of the Office's cost for an appeal. The proposed fee increase will result in *ex parte* appeal fees covering 72 percent of the Office's cost to conduct an *ex parte* appeal.

In the past few years, the Office has made great strides in reducing the backlog and pendency for *ex parte* appeals. Appeal inventory reached over 27,000 (in 2012) and has now fallen to under 19,000 (in April 2016). As of the end of fiscal year 2015, the average pendency for decided *ex parte* appeals was 30 months. The Office aspires to reach an appeals pendency goal of 12 months by the end of FY 2018 and to further reduce the existing inventory. As mentioned in Part III, the PTAB is working to reduce inventory via two pilot programs, EPAP and the Small Entity Pilot Program. The proposal would allow the Office to better align fees to costs by reducing the gap between the amount paid by an appellant and the fully burdened cost of reviewing appeals by the Board. The additional revenue supports continued improvements to pendency and inventory via enhanced technology.

(h) AIA Trials

TABLE 11—AIA TRIALS—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Inter Partes Review Request Fee—Up to 20 Claims	$9,000	$14,000	+$5,000	+56	$22,165
Inter Partes Review Post-Institution Fee—Up to 15 Claims	$14,000	$16,500	+$2,500	+18	$12,674
Inter Partes Review Request of Each Claim in Excess of 20	$200	$300	+$100	+50	n/a
Inter Partes Post-Institution Request of Each Claim in Excess of 15	$400	$600	+$200	+50	n/a
Post-Grant or Covered Business Method Review Request Fee—Up to 20 Claims	$12,000	$16,000	+$4,000	+33	$16,213
Post-Grant or Covered Business Method Review Post-Institution Fee—Up to 15 Claims	$18,000	$22,000	+$4,000	+22	$23,060
Post-Grant or Covered Business Method Review Request of Each Claim in Excess of 20	$250	$375	+$125	+50	n/a
Post-Grant or Covered Business Method Review Post-Institution Request of Each Claim in Excess of 15	$550	$825	+$275	+50	n/a

The AIA established two new trial proceedings: *Inter partes* review and post-grant review. *Inter partes* review is a trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent only on a ground that could be raised under 35 U.S.C. 102 or 103, and only on the basis of prior art consisting of patents or printed publications. The *inter partes* review process begins with a third party filing a petition. An *inter partes* review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged. If the proceeding is instituted and not dismissed, a final determination by the Board will be issued within one year (extendable for good cause by six months). The Office proposes to increase all four separate fees for *inter partes* review, which are due upon the filing of a petition. The USPTO will refund the post-institution fee if the IPR proceeding is not instituted by the PTAB.

Post-grant review is a trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) and (b)(3) in effect on September 16, 2012. The post-grant review process begins when a third party files a petition within nine months of the grant of the patent. A post-grant review may be instituted upon a showing that it is more likely than not that at least one challenged claim is unpatentable or that the petition raises an unsettled legal question that is important to other patents or patent applications. If the trial is instituted and not dismissed, the Board will issue a final determination within one year of institution. This period can be extended for good cause for up to six months from the date of one year after instituting the review.

In FY 2015, the PTAB received over 1,900 AIA trial filings and the Office expects that number to grow in the coming fiscal years. In order to keep up with demand and continue to provide high quality decisions within the statutory time limits, the Office needs to close the gap between the cost and the fees for performing these services. When the fees for these services were initially set, the Office had to estimate what the costs would be without the benefit of historical cost information. Now that the trials have been in place for three fiscal years, the Office has actual historical cost data available to more accurately set these fees and recover costs.

(i) Patent Cooperation Treaty (PCT)—International Stage

TABLE 12—PATENT COOPERATION TREATY (PCT)—INTERNATIONAL STAGE—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Late Furnishing Fee for Providing a Sequence Listing in Response to an Invitation Under PCT Rule 13*ter*.	new	$300 ($150) [$75]	+$300 (+$150) [+$75]	n/a	n/a

The Office proposes a new fee to encourage timely filing of sequence listings in international applications as another way to facilitate the effective administration of the patent system. When an applicant does not provide a sequence listing in searchable format with the international application or provides a defective sequence listing, the United States, acting as International Searching Authority (ISA/US) or as International Preliminary Examining Authority (IPEA/US), must issue an invitation to the applicant to provide the missing or corrected sequence listing. This additional process creates a delay in the issuance of the International Search Report (ISR) or

International Preliminary Report on Patentability (Chapter II). The most recent data shows that the ISA/US issues ISRs within 16 months of the priority date for 75 percent of all international applications searched by the ISA/US. However, when the ISA/US issues an invitation to provide a sequence listing, the ISA/US issues ISRs within 16 months in only 28 percent of those international applications. The time limit for issuance of the ISR under PCT Rule 42 in most circumstances is 16 months from the priority date. This new fee will help compensate the Office for the extra work associated with issuing the invitation and handling the response, while better positioning the Office to meet applicable treaty timeframes. The fee is similar in size and scope to fees charged by other international intellectual property offices.

(j) Maintenance Fee Payments—Reissue Patent Rules

For each issued patent, the Office may grant one or more reissue patents. However, current practice dictates that only one maintenance fee is required for all of the possible reissue patents granted from a single patent. This proposed change of practice would require payment of maintenance fees for each reissue patent, instead of a single maintenance fee payment for the group of reissue patents. The large majority of reissue patents are granted after the first stage maintenance fee payment has already been paid on the initial patent. Over the last six years, approximately 150 reissue patents per year would have been subject to additional fees due to this proposed rule change. This is a significantly higher level than the Office experienced prior to FY 2010. For example, between FY 2003 and FY 2009, the average was 27 per year. The Office expects this change in practice to encourage patent owners to prioritize which reissue patents they want to maintain. If an owner wishes to maintain all reissue patents in force, he or she may do so by paying the appropriate maintenance fees. For reissue patents that are not maintained, subject matter previously covered by the patent would become available in the public domain to improve upon and further foster innovation.

(2) Office of Enrollment and Discipline Fees and Patent Enrollment Fees

The following proposed fee adjustments are comprised of Office of Enrollment and Discipline (OED) fees and other patent enrollment fees. In addition to the proposed fee rate changes, there are five new fees being proposed in this section. The purpose of amending the fees in this section is to better align fees with actual costs. During the previous patent fee setting effort, historical cost information for these activities was not available. Since then, the Office has developed cost information to more appropriately propose fee adjustments. No enrollment or disciplinary fees have been increased since 2008, and only two fees were adjusted that year. All other enrollment and disciplinary fees were last changed much earlier, specifically, between 1991 and 2004. In fact, one OED fee has been unchanged since 1982. As time passes, the difference between the fee charged by the Office and the cost to the Office to perform the service increases, resulting in greater subsidies by other patent fees. The increases to these fees will help to close the gap between the fee charged and the cost to perform the service. A discussion of the rationale for each fee change follows.

TABLE 13—OED AND PATENT ENROLLMENT—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Application Fee (Non-Refundable)	$40	$100	+$60	+150%	$225
On Registration to Practice Under § 11.6	$100	$200	+$100	+100%	$493
Certificate of Good Standing as an Attorney or Agent, Standard	$10	$40	+$30	+300%	$39
Certificate of Good Standing as an Attorney or Agent, Suitable for Framing	$20	$50	+$30	+150%	$49
Review of Decision by the Director of Enrollment and Discipline Under § 11.2(c)	$130	$400	+$270	+208%	$2,044
Review of Decision of the Director of Enrollment and Discipline Under § 11.2(d)	$130	$400	+$270	+208%	$1,827
Administrative Reinstatement Fee	$100	$200	+$100	+100%	$940
On Grant of Limited Recognition Under § 11.9(b)	$100	$200	+$100	+100%	$493
For USPTO-Assisted Recovery of ID or Reset of Password for the Office of Enrollment and Discipline Information System	new	$70	+$70	n/a	n/a
For USPTO-Assisted Change of Address Within the Office of Enrollment and Discipline Information System	new	$70	+$70	n/a	n/a
For USPTO-Administered Review of Registration Examination	new	$450	+$450	n/a	$515

The Office proposes to increase the application fee for admission to the examination for registration to practice from $40 to $100, about half of the historical cost of this service.

The fee for registration to practice or for a grant of limited recognition under § 11.9(b) or (c) is currently set at $100, and both transactions have the same fee code. The Office proposes to separate the fee for Registration to Practice from the fee for Grant of Limited Recognition and increase the fee for each to $200, which is still below the historical cost of performing these services. The Office proposes eliminating the reference to § 11.9(c) in the current provision. The Office does not presently impose a fee for an unregistered individual to

prosecute an international patent application in the manner described in § 11.9(c). The Office proposes to use the existing fee code for Registration to Practice fees and create a new fee code for Grant of Limited Registration.

The Office is proposing an increase to the fee for the delivery of a certificate of good standing. A practitioner may also request a certificate of good standing as an attorney or agent that has been authentically signed by the Director of OED and crafted for framing. The Office proposes to increase the fee for both of these services to cost recovery, $40 and $50, respectively.

The Office proposes to increase the fees for petitions to the OED Director regarding enrollment or recognition. However, the proposed fees are still significantly below cost recovery. Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee, proposed at $400.

The Office proposes to adjust the fees for a review of OED Director's decision regarding enrollment or recognition. A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee, proposed at $400. This fee is being increased, but is still set significantly below cost recovery.

The Office proposes to set the fee for administrative reinstatement at $200. Reinstatement fees are imposed on practitioners seeking to be reinstated to active status. Raising the fee, while still set far below cost recovery, will help close the gap between the fee and the cost for performing this service.

The Office proposes to create and set the fee for USPTO-assisted reset of user IDs and passwords for an OED Information System—Customer Interface (OEDIS–CI) account at $70. The enhancement of the OEDIS–CI was implemented in FY 2015. With this enhancement, customers are now able to perform this process on-line as a self-service option free of charge. The proposed fee would only be charged if it was requested that the USPTO perform this task instead of the self-service option.

The Office proposes to create and set the fee for USPTO-assisted roster maintenance (change of address) in an OEDIS–CI account at $70. With the OEDIS–CI enhancement, customers are now able to perform this process on-line as a self-service method free of charge. The proposed fee would only be charged if it was requested that the USPTO perform this task instead of the self-service option.

The Office proposes to set the fee for a registration examination review session at $450. Setting this fee at cost recovery relieves the administrative and cost burden of providing the review sessions. A private commercial entity currently provides this service to the public at a lower cost than the USPTO. The availability of the private-sector option has reduced demand for the USPTO-provided sessions and therefore increased the cost per registrant of USPTO-provided sessions.

The Office proposes to set the fee for changing a practitioner's registration status from agent to attorney. The Office currently charges $100 for this service. As proposed, the fee would remain unchanged; however, 37 CFR 1.21(a)(2)(iii) would specifically provide for this fee.

(3) Fees Amended To Include Discounts for Small and Micro Entities

Within this section, where new micro entity fees are proposed, it is expected that an applicant or patent holder would have paid the current small entity fee (or large entity in the event there is not a small entity fee) and dollar and percent changes are calculated from the current small entity fee amount (or large entity fee, where applicable). The following table lists fees where new small and/or micro entities are provided. Providing these fee reductions for small and micro entity innovators will continue the Office's efforts to foster innovation across all patent system users.

TABLE 14—AMENDED FEES TO INCLUDE DISCOUNTS FOR SMALL AND MICRO ENTITIES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$121
Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$244
Petition for the Delayed Submission of a Priority or Benefit Claim	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$244
Petition to Excuse Applicant's Failure to Act Within Prescribed Time Limits in an International Design Application	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	n/a
Petition to Convert an International Design Application to a Design Application Under 35 U.S.C. Chapter 16	$180 ($180) [$180]	$180 ($90) [$45]	$0 (−$90) [−$135]	0% (−50%) [−75%]	n/a

TABLE 14—AMENDED FEES TO INCLUDE DISCOUNTS FOR SMALL AND MICRO ENTITIES—FEE CHANGES AND UNIT COSTS—Continued

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Hague International Design Application Fees—Transmittal Fee	$120 ($120) [$120]	$120 ($60) [$30]	$0 (−$60) [−$90]	0% −50% −75%	n/a

C. Discontinued or Replaced Fees

This section describes fees that are being discontinued and replaced with new fees. The purpose of this action is to simplify the fee schedule, more clearly inform customers of costs upfront, and align with the Office's new financial software for which fixed fee rates, not variable (*e.g.,* at cost) are preferred. This section also includes fees that are being discontinued because of disuse. The Office does not capture historical cost information for these proposed discontinued or new fees.

(a) Discontinued and Replaced

TABLE 15—DISCONTINUED FEES WITH NEW FEE REPLACEMENTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Copy of Patent-Related File Wrapper and Contents of 400 or Fewer Pages, if Provided on Paper	$200	discontinue	−$200	n/a	n/a
Additional Fee for Each Additional 100 Pages of Patent-Related File Wrapper and (Paper) Contents, or Portion Thereof	$40	discontinue	−$40	n/a	n/a
Copy Patent File Wrapper, Paper Medium, Any Number of Sheets	new	$280	+$280	n/a	n/a
Copy of Patent-Related File Wrapper and Contents if Provided on a Physical Electronic Medium as Specified in 1.19(b)(1)(ii)	$55	discontinue	−$55	n/a	n/a
Copy of Patent-Related File Wrapper and Contents if Provided Electronically	$55	discontinue	−$55	n/a	n/a
Additional Fee for Each Continuing Physical Electronic Medium in Single Order of 1.19(b)(1)(ii)(B)	$15	discontinue	−$15	n/a	n/a
Copy Patent File Wrapper, Electronic Medium, Any Size or Provided Electronically	new	$55	+$55	n/a	n/a
Computer Records	at cost	discontinue	at cost	n/a	n/a
Copy of Patent Grant Single-Page TIFF Images (52 week subscription)	new	$10,400	+$10,400	n/a	n/a
Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription)	new	$5,200	+$5,200	n/a	n/a
Copy of PTMT Patent Bibliographic Extract and Other DVD (Optical Disc) Products	new	$50	+$50	n/a	n/a
Copy of U.S. Patent Custom Data Extracts	new	$100	+$100	n/a	n/a
Copy of Selected Technology Reports, Miscellaneous Technology Areas	new	$30	+$30	n/a	n/a
Labor Charges for Services, per Hour or Fraction Thereof	$40	discontinue	−$40	n/a	n/a
Additional Fee for Overnight Delivery	new	$40	+$40	n/a	n/a
Additional Fee for Expedited Service	new	$160	+$160	n/a	n/a

There are currently pairs of fees for copying patent-related file wrappers: A base fee and an excess fee. For both paper copies and electronic copies, these pairs are replaced with a single fee irrespective of size. A single fee will allow customers to more easily budget and plan expenses for this service.

The catch-all fee of ''Computer Records'' currently priced ''at cost'' is being replaced by five fees that encompass the work currently performed using this code: Copy of Patent Grant Single-Page TIFF Images (52 week subscription); Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription); Copy of

Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc); Copy of U.S. Patent Custom Data Extracts; and Copy of Selected Technology Reports, Miscellaneous Technology Areas. Explicitly stating the service and fee at the start will provide customers clearer information to aid decision making.

These specific fees recover the USPTO's costs for processing, validating, packaging, and shipping of these products to customers worldwide. For the copy of Patent Grant Single-Page TIFF Images, when a customer orders this service, the customer is sent expedited weekly packages (one for each Tuesday in the Calendar Year) via United Parcel Service. Each package contains at a minimum one Blu-ray and one DVD optical disc. For the other three services listed for $5,200, the expedited weekly packages (one for each Tuesday or Thursday in the Calendar Year) typically contain either a single Blu-ray or DVD optical disc. As an alternative to requesting and paying for these services, the USPTO has provided customers the ability to download this information at no cost since June 2010. This information is currently provided in the two locations referenced earlier, BDSS and PDD since October 2015 and June 2013 respectively.

Similar to the single fee for copying Patent-Related File Wrappers, the ''Labor Charge'' per hour with its variable charges is replaced with a single fee for ''Expedited Service.'' Following the same theme, shorter than standard shipping is currently billed under a catch-all code but will now be replaced with a set fee for ''Overnight Delivery.''

(b) Discontinued

TABLE 16—DISCONTINUED FEES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Self-Service Copy Charge, per Page	$0.25	discontinue	−$0.25	n/a	n/a
Establish Deposit Account	$10	discontinue	−$10	n/a	n/a
Uncertified Statement Re: Status of Maintenance Fee Payments	$10	discontinue	−$10	n/a	n/a
Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits.	at cost	discontinue	at cost	n/a	n/a
Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk or Other Electronic Form (*e.g.,* Compact Disks Stored in Artifact Folder), Other Than as Available in 1.19(b)(1); First Physical Electronic Medium in a Single Order	$55	discontinue	−$55	n/a	n/a
Additional Fee for Each Continuing Copy of Patent-Related File Wrapper Contents as Specified in 1.19(b)(2)(i)(A)	$15	discontinue	−$15	n/a	n/a
Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk, or Other Electronic Form, Other Than as Available in 1.19(b)(1); if Provided Electronically Other Than on a Physical Electronic Medium, per Order	$55	discontinue	−$55	n/a	n/a

To comply with Presidential Executive Order 13681, Improving the Security of Consumer Financial Transactions, current self-service copiers will be discontinued and the USPTO will enter into a ''No Cost'' contract with a vendor who will keep all payments collected in exchange for providing this service.

The USPTO's new Financial Manager system allows users to create their own deposit accounts so the Office proposes to retire the ''Establish Deposit Account'' fee. The fee associated with ''Uncertified Statement Re Status of Maintenance Fee Payments'' is discontinued due to lack of use. Customers have had the ability to do this online for more than 10 years. The fee associated with ''Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits'' is also discontinued due to lack of use.

The remaining fees pertaining to Patent-Related File Wrapper copies have never been used since their inception many years ago and therefore are being discontinued.

VI. Discussion of Specific Rules

The following section shows the CFR proposed fee amendments. The List of Subjects includes all proposed fee amendments, all proposed fee discontinuations, and all proposed changes to the CFR text.

Title 37 of the Code of Federal Regulations, Parts 1 and 41, are proposed to be amended as follows:

Section 1.16: Section 1.16 is amended by revising paragraphs (a) through (f) and (h) through (r) to set forth the application filing, excess claims, search, and examination fees for patent applications filed as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.16 are shown in Table 17.

TABLE 17—CFR SECTION 1.16 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.16(a)	1011/2011/3011	Basic Filing Fee—Utility	280	140	70	300	150	75
1.16(a)	4011	Basic Filing Fee—Utility (electronic filing for small entities).	n/a	70	n/a	n/a	75	n/a
1.16(b)	1012/2012/3012	Basic Filing Fee—Design	180	90	45	200	100	50
1.16(b)	1017/2017/3017	Basic Filing Fee—Design (CPA)	180	90	45	200	100	50
1.16(c)	1013/2013/3013	Basic Filing Fee—Plant	180	90	45	200	100	50
1.16(d)	1005/2005/3005	Provisional Application Filing Fee	260	130	65	280	140	70
1.16(e)	1014/2014/3014	Basic Filing Fee—Reissue	280	140	70	300	150	75
1.16(e)	1019/2019/3019	Basic Filing Fee—Reissue (CPA)	280	140	70	300	150	75
1.16(f)	1051/2051/3051	Surcharge—Late Filing Fee, Search Fee, Examination Fee, Inventor's Oath or Declaration, or Application Filed Without at Least One Claim or by Reference.	140	70	35	160	80	40
1.16(h)	1201/2201/3201	Independent Claims in Excess of Three.	420	210	105	460	230	115
1.16(h)	1204/2204/3204	Reissue Independent Claims in Excess of Three.	420	210	105	460	230	115
1.16(i)	1202/2202/3202	Claims in Excess of 20	80	40	20	100	50	25
1.16(i)	1205/2205/3205	Reissue Claims in Excess of 20	80	40	20	100	50	25
1.16(j)	1203/2203/3203	Multiple Dependent Claim	780	390	195	820	410	205
1.16(k)	1111/2111/3111	Utility Search Fee	600	300	150	660	330	165
1.16(l)	1112/2112/3112	Design Search Fee	120	60	30	160	80	40
1.16(m)	1113/2113/3113	Plant Search Fee	380	190	95	420	210	105
1.16(n)	1114/2114/3114	Reissue Search Fee	600	300	150	660	330	165
1.16(o)	1311/2311/3311	Utility Examination Fee	720	360	180	760	380	190
1.16(p)	1312/2312/3312	Design Examination Fee	460	230	115	600	300	150
1.16(q)	1313/2313/3313	Plant Examination Fee	580	290	145	620	310	155
1.16(r)	1314/2314/3314	Reissue Examination Fee	2,160	1,080	540	2,200	1,100	550

Section 1.17: Section 1.17 is amended by revising paragraphs (e), (m), (p), and (t) to set forth the application processing fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.17 are shown in Table 18.

TABLE 18—CFR SECTION 1.17 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(e)	1801/2801/3801	Request for Continued Examination (RCE) (1st request) (*see* 37 CFR 1.114).	1,200	600	300	1,300	650	325
1.17(e)	1820/2820/3820	Request for Continued Examination (RCE) (2nd and subsequent request).	1,700	850	425	1,900	950	475
1.17(m)	1453/2453/3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding.	1,700	850	850	2,000	1,000	500
1.17(m)	1454/2454/3454	Petition for the Delayed Submission of a Priority or Benefit Claim.	1,700	850	850	2,000	1,000	500
1.17(m)	1784/2784/3784	Petition to Excuse Applicant's Failure to Act Within Prescribed Time Limits in an International Design Application.	1,700	850	850	2,000	1,000	500
1.17(m)	1558/2558/3558	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force.	1,700	850	850	2,000	1,000	500
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement.	180	90	45	240	120	60
1.17(t)	1783/2783/3783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16.	180	180	180	180	90	45

Section 1.18: Section 1.18 is amended by revising paragraphs (a)(1), (b)(1), and (c)(1) to set forth the patent issue fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.18 are shown in Table 19.

Section 1.18(b)(3) is proposed to be amended to provide that the issue fee for issuing an international design application designating the United States, where the issue fee is paid through the International Bureau, is the amount established in Swiss currency pursuant to Hague Agreement Rule 28 as of the date of mailing of the notice of allowance (§ 1.311). The proposed amendment would facilitate processing of the issue fee by the International Bureau and would maintain parity in the treatment of the amount of the issue fee due whether paid directly to the USPTO or through the International Bureau in the event the issue fee changes after the mailing of the notice of allowance.

TABLE 19—CFR SECTION 1.18 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.18(a)(1)	1501/2501/3501	Utility Issue Fee	960	480	240	1,000	500	250
1.18(a)(1)	1511/2511/3511	Reissue Issue Fee	960	480	240	1,000	500	250
1.18(b)(1)	1502/2502/3502	Design Issue Fee	560	280	140	800	400	200
1.18(c)(1)	1503/2503/3503	Plant Issue Fee	760	380	190	1,000	500	250

Section 1.19: Section 1.19 is amended by revising paragraphs (b)(1), (b)(2), and (b)(4); removing and reserving (b)(2), (e), and (g); and adding (i) through (m) to set forth the patent document supply fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.19 are shown in Table 20.

TABLE 20—CFR SECTION 1.19 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.19(b)(1)(i)(A) and (ii)(A).	8007	Copy of Patent Application as Filed	20	20	20	35	35	35
1.19(b)(1)(i)(B)		Copy of Patent File Wrapper, Paper Medium, Any Number of Sheets.	n/a	n/a	n/a	280	280	280
1.19(b)(1)(ii)(B)		Copy Patent File Wrapper, Electronic Medium, Any Size or Provided Electronically.	n/a	n/a	n/a	55	55	55
1.19(b)(4)	8014	For Assignment Records, Abstract of Title and Certification, per Patent.	25	25	25	35	35	35
1.19(i)		Copy of Patent Grant Single-Page TIFF Images (52 week subscription).	n/a	n/a	n/a	10,400	10,400	10,400
1.19(j)		Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription).	n/a	n/a	n/a	5,200	5,200	5,200
1.19(k)		Copy of PTMT Patent Bibliographic Extract and Other DVD (Optical Disc) Products.	n/a	n/a	n/a	50	50	50
1.19(l)		Copy of U.S. Patent Custom Data Extracts.	n/a	n/a	n/a	100	100	100
1.19(m)		Copy of Selected Technology Reports, Miscellaneous Technology Areas.	n/a	n/a	n/a	30	30	30

Section 1.20: Section 1.20 is amended by revising paragraphs (a), (b), (c)(1) through (4), and (e) through (g) to set forth the reexamination excess claims fees, disclaimer fees, and maintenance fees as authorized under Section 10 of the Act and to provide a new fee for streamlined requests for reexamination. The changes to the fee amounts indicated in § 1.20 are shown in Table 21.

TABLE 21—CFR SECTION 1.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(a)	1811	Certificate of Correction	100	100	100	150	150	150
1.20(b)	1816	Processing Fee for Correcting Inventorship in a Patent.	130	130	130	150	150	150
1.20(c)(1)		*Ex Parte* Reexamination (§ 1.510(a)) Streamlined.	n/a	n/a	n/a	6,000	3,000	1,500

TABLE 21—CFR SECTION 1.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(c)(2)	1812/2812/3812	*Ex Parte* Reexamination (§ 1.510(a)) Non-Streamlined.	12,000	6,000	3,000	12,000	6,000	3,000
1.20(c)(3)	1821/2821/3821	Reexamination Independent Claims in Excess of Three and also in Excess of the Number of Such Claims in the Patent Under Reexamination.	420	210	105	460	230	115
1.20(c)(4)	1822/2822/3822	Reexamination Claims in Excess of 20 and Also in Excess of the Number of Claims in the Patent Under Reexamination.	80	40	20	100	50	25

Section 1.21: Section 1.21 is amended by revising paragraphs (a), (h)(2), and (i); removing and reserving paragraphs (g) and (j); and adding paragraphs (o), (p), and (q) to set forth miscellaneous fees and charges as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.21 are shown in Table 22.

TABLE 22—CFR SECTION 1.21 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(1)(i)	9001	Application Fee (non-refundable)	40	40	40	100	100	100
1.21(a)(1)(ii)(A)	9010	For Test Administration by Commercial Entity.	200	200	200	200	200	200
1.21(a)(1)(ii)(B)	9011	For Test Administration by the USPTO.	450	450	450	450	450	450
1.21(a)(1)(iii)		For USPTO-Administered Review of Registration Examination.	n/a	n/a	n/a	450	450	450
1.21(a)(2)(i)	9003	On Registration to Practice Under § 11.6.	100	100	100	200	200	200
1.21(a)(2)(ii)		On Grant of Limited Recognition under § 11.9(b).	n/a	n/a	n/a	200	200	200
1.21(a)(2)(iii)	9025	On change of registration from agent to attorney.	100	100	100	100	100	100
1.21(a)(4)(i)	9005	Certificate of Good Standing as an Attorney or Agent, Standard.	10	10	10	40	40	40
1.21(a)(4)(ii)	9006	Certificate of Good Standing as an Attorney or Agent, Suitable for Framing.	20	20	20	50	50	50
1.21(a)(5)(i)	9012	Review of Decision by the Director of Enrollment and Discipline under § 11.2(c).	130	130	130	400	400	400
1.21(a)(5)(ii)	9013	Review of Decision of the Director of Enrollment and Discipline under § 11.2(d).	130	130	130	400	400	400
1.21(a)(6)(i)		For USPTO-Assisted Recovery of ID or Reset of Password for the Office of Enrollment and Discipline Information System.	n/a	n/a	n/a	70	70	70
1.21(a)(6)(ii)		For USPTO-Assisted Change of Address Within the Office of Enrollment and Discipline Information System.	n/a	n/a	n/a	70	70	70
1.21(a)(9)(ii)	9004	Administrative Reinstatement Fee	100	100	100	200	200	200
1.21(a)(10)	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.	1,600	1,600	1,600	1,600	1,600	1,600
1.21(h)(2)	8021	Recording Each Patent Assignment, Agreement or Other Paper, per Property if not Submitted Electronically.	40	40	40	50	50	50
1.21(o)(1)		Submission of sequence listings ranging in size of 300MB to 800MB.	n/a	n/a	n/a	1,000	1,000	1,000
1.21(o)(2)		Submission of sequence listings exceeding 800MB.	n/a	n/a	n/a	10,000	10,000	10,000
1.21(p)		Additional Fee for Overnight Delivery.	n/a	n/a	n/a	40	40	40
1.21(q)		Additional Fee for Expedited Service.	n/a	n/a	n/a	160	160	160

Section 1.445: Section 1.445 is amended by adding paragraph (a)(5) to set a processing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.* The changes to the fee amounts indicated in § 1.445 are shown in Table 23.

TABLE 23—CFR SECTION 1.445(a)(5) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.445(a)(5)		Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.*	n/a	n/a	n/a	300	150	75

Section 1.482: Section 1.482 is revised by changing the title and adding paragraph (c) to set a processing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.* The changes to the fee amounts indicated in § 1.482 are shown in Table 24.

TABLE 24—CFR SECTION 1.482(c) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.482(c)		Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.*	n/a	n/a	n/a	300	150	75

Section 1.492: Section 1.492 is amended by revising (a) through (f) to set forth the application filing, excess claims, search, and examination fees for international patent applications entering the national stage as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 25.

TABLE 25—CFR SECTION 1.492 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.492(a)	1631/2631/3631	Basic PCT National Stage Fee	280	140	70	300	150	75
1.492(b)(2)	1641/2641/3641	PCT National Stage Search Fee—U.S. was the ISA.	120	60	30	140	70	35
1.492(b)(3)	1642/2642/3642	PCT National Stage Search Fee—Search Report Prepared and Provided to USPTO.	480	240	120	520	260	130
1.492(b)(4)	1632/2632/3632	PCT National Stage Search Fee—All Other Situations.	600	300	150	660	330	165
1.492(c)(2)	1633/2633/3633	National Stage Examination Fee—All Other Situations.	720	360	180	760	380	190
1.492(d)	1614/2614/3614	PCT National Stage Claims—Extra Independent (over three).	420	210	105	460	230	115
1.492(e)	1615/2615/3615	PCT National Stage Claims—Extra Total (over 20).	80	40	20	100	50	25
1.492(f)	1616/2616/3616	PCT National Stage Claims—Multiple Dependent.	780	390	195	820	410	205

Section 1.1031: Section 1.1031 is amended by revising paragraph (a) to set forth the international design application transmittal fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.031 are shown in Table 26.

Section 1.1031 is also proposed to be amended by adding paragraph (f) concerning the designation fee for the United States. As § 1.1031 concerns international design application fees, the Office believes it appropriate to include a provision therein regarding the U.S. designation fee. The proposed amendment is consistent with the U.S. designation fee currently in effect. See ''Individual Fees under the Hague Agreement,'' available on the WIPO Web site at *http://www.wipo.int/hague/en/fees/individ-fee.html,* and § 1.18(b).

TABLE 26—CFR SECTION 1.1031(a) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.1031(a)	1781/2781/3781	International Design Application Transmittal Fee.	120	120	120	120	60	30

Section 41.20: Section 41.20 is amended by revising paragraph (b)(1) and (b)(4) to set forth the appeal fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 27.

TABLE 27—CFR SECTION 41.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
41.20(b)(1)	1401/2401/3401	Notice of Appeal	800	400	200	1,000	500	250
41.20(b)(4)	1413/2413/3413	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board.	2,000	1,000	500	2,500	1,250	625

Section 42.15: Section 42.15 is amended by revising paragraphs (a) and (b) to set forth the *inter partes* review and post-grant review or covered business method patent review of patent fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 42.15 are shown in Table 28.

TABLE 28—CFR SECTION 42.15 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
42.15(a)(1)	1406	*Inter Partes* Review Request Fee	9,000	9,000	9,000	14,000	14,000	14,000
42.15(a)(2)	1414	*Inter Partes* Review Post-Institution Fee.	14,000	14,000	14,000	16,500	16,500	16,500
42.15(a)(3)	1407	In Addition to the *Inter Partes* Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	200	200	200	300	300	300
42.15(a) (4)	1415	In addition to the *Inter Partes* Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	400	400	400	600	600	600
42.15(b)(1)	1408	Post-Grant or Covered Business Method Patent Review Request Fee.	12,000	12,000	12,000	16,000	16,000	16,000
42.15(b)(2)	1416	Post-Grant or Covered Business Method Patent Review Post-Institution Fee.	18,000	18,000	18,000	22,000	22,000	22,000
42.15(b)(3)	1409	In Addition to the Post-Grant or Covered Business Method Patent Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	250	250	250	375	375	375
42.15(b)(4)	1417	In Addition to the Post-Grant or Covered Business Method Patent Review Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	550	550	550	825	825	825

VII. Rulemaking Considerations

A. America Invents Act

This rulemaking proposes to set and adjust fees under section 10(a) of the AIA. Section 10(a) of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under Title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10, and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits

resulting from the proposed change. For such rulemakings, the AIA requires that the Office provide a public comment period of not less than 45 days.

The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations. When proposing fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on October 20, 2015, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC held a public hearing in Alexandria, Virginia, on November 19, 2015. Transcripts of the hearing are available for review at *http://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20151119.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting Web site, *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on February 29, 2016, and can be found online at *http://www.uspto.gov/sites/default/files/documents/PPAC_Fee%20_Setting_Report_2016%20%28Final%29.pdf.* The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Before the final rule is issued, the public will have at least a 45-day period during which to provide comments to be considered by the USPTO.

B. Regulatory Flexibility Act

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to examine the impact on small entities of the Office's proposed rule implementing changes to patent fees. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant impact on a substantial number of small entities. 5 U.S.C. 603, 605. Given that the proposed fee schedule is projected to result in $710.8 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2017 to FY 2021, the Office acknowledges that the fee adjustments proposed will impact all entities seeking patent protection and could have a significant impact on small and micro entities. The $710.8 million in additional aggregate revenue results from an additional $73.2 million in FY 2017, $150.0 million in FY 2018, $155.7 million in FY 2019, $162.4 million in FY 2020, and $169.5 million in FY 2021.

While the Office welcomes all comments on this IRFA, it particularly seeks comments describing the type and extent of the impact of the proposed patent fees on commenters' specific businesses. In describing the impact, the Office requests biographic detail about the impacted businesses or concerns, including the size, average annual revenue, past patent activity (*e.g.,* applications submitted, contested cases pursued, maintenance fees paid, patents abandoned, etc.), and planned patent activity of the impacted business or concern, where feasible. The Office will use this information to further assess the impact of the proposed rule on small entities. Where possible, comments should also describe any recommended alternative methods of setting and adjusting patent fees that would further reduce the impact on small entities.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

Section 10 of the Act authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the Office. Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent fees. The proposed fee schedule will recover the aggregate cost of patent operations while facilitating the effective administration of the U.S. patent system. The reasons why the rulemaking is being considered are further discussed in section 6.i below and elsewhere in this IRFA and the NPRM.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to implement the fee setting provisions of Section 10 of the Act by setting or adjusting patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating the effective administration of the U.S. patent system. Since its inception, the Act strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting and adjusting fees under the Act, the Office seeks to secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including revenue needed to achieve strategic and operational goals. Additional information on the Office's strategic goals may be found in the Strategic Plan available at *http://www.uspto.gov/sites/default/files/documents/USPTO_2014-2018_Strategic_Plan.pdf.* Additional information on the Office's goals and operating requirements may be found in the ''*USPTO FY 2017 President's Budget,*'' available at *http://www.uspto.gov/sites/default/files/documents/fy17pbr.pdf.* The legal basis for the proposed rule is Section 10 of the Act.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The Office's alternate small business size standard consists of SBA's previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR 121.802.

Unlike SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105 and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006).

If a patent applicant self-identifies on a patent application as qualifying as a small entity, or provides certification of micro entity status for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Estimate of Number of Small Entities Affected

The changes in the proposed rule will apply to any entity, including small and micro entities, which pays any patent fee set forth in the NPRM. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 29 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 29—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *

	FY 2015 **	FY 2014	FY 2013	FY 2012	FY 2011	Average ***
Utility						
All	578,321	579,782	564,007	530,915	504,663	551,538
Small	142,845	133,930	136,490	132,198	127,175	134,528
% Small	24.7	23.1	24.2	24.9	25.2	24.4
Micro	28,916	18,553	7,896	N/A	N/A	18,455
% Micro	5.0	3.2	1.4	N/A	N/A	3.2
Reissue						
All	887	1,208	1,074	1,212	1,158	1,108
Small	200	280	229	278	240	245
% Small	22.6	23.2	21.3	22.9	20.7	22.1
Micro	10	24	9	N/A	N/A	14
% Micro	1.1	2.0	0.8	N/A	N/A	1.3
Plant						
All	1,119	1,124	1,318	1,181	1,103	1,169
Small	673	581	655	576	257	548
% Small	60.1	51.7	49.7	48.8	23.3	46.7
Micro	4	22	3	N/A	N/A	10
% Micro	0.4	2.0	0.2	N/A	N/A	0.9
Design						
All	36,889	36,216	35,065	32,258	30,247	34,135
Small	14,645	14,740	15,814	15,806	14,700	15,141
% Small	39.7	40.7	45.1	49.0	48.6	44.6
Micro	3,910	3,622	1,683	N/A	N/A	3,072
% Micro	10.6	10.0	4.8	N/A	N/A	8.5

* The patent application filing data in this table includes RCEs.
** FY 2015 application filing data are preliminary and will be finalized in the FY 2016 Performance and Accountability Report (PAR).
*** The micro entity average is from FY 2013 to FY 2015. All other averages are for all time periods shown.

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types in order to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 29. The Office estimates that small entity filing rates will continue for the next five years at these average historic rates.

The Office forecasts the number of projected patent applications (*i.e.,* workload) for the next five years using

a combination of historical data, economic analysis, and subject matter expertise. The Office estimates that utility, plant, and reissue (UPR) patent application filings will grow by 1.5 percent in FY 2017, 2.0 percent in FY 2018, 3.0 percent in FY 2019, and 4.0 percent in FY 2020 and FY 2021. The Office forecasts design patent applications independently of UPR applications because they exhibit different behavior.

Using the estimated filings for the next five years, and the average historic rates of small entity filings, Table 30 presents the Office's estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

The Office has undertaken an elasticity analysis to examine if fee adjustments may impact small entities and, in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive patent applicants and patentees are to fee changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzed elasticity at the overall filing level across all patent applicants regardless of entity size and determined that, as none of the proposed fee changes are large enough to create a sizable change in demand for products and services, elasticity impacts are negligible and therefore not included in this iteration of fee adjustments. Additional information about elasticity estimates is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Description of Elasticity Estimates.*''

TABLE 30—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2017–FY 2021

	FY 2017 (Current)	FY 2018	FY 2019	FY 2020	FY 2021
Utility: All	592,844	604,711	622,874	647,833	673,788
Reissue: All	1,048	1,105	1,166	1,229	1,296
Plant: All	1,008	984	960	938	915
Design: All	41,191	43,614	46,183	48,905	51,791
Total: All	636,091	650,414	671,183	698,905	727,791

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and Type of Professional Skills Necessary for Preparation of the Report or Record

If implemented, this rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this proposal. This action proposes only to adjust patent fees and not to set procedures for asserting small entity status or certifying micro entity status, as previously discussed.

The full proposed fee schedule (*see* Part VI: Discussion of Specific Rules) is set forth in this NPRM. The proposed fee schedule sets or adjusts 205 patent fees in total. This includes 14 fees that will be discontinued and 42 new fees.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examining and granting patents. It is solely responsible for issuing rules to comply with Section 10 of the AIA. No other Federal, state, or local entity has jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the PCT). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

6. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered several alternative approaches to the proposal, discussed below, including full cost recovery for individual services, an across the board adjustment to fees, and the baseline (status quo). The discussion here begins with a description of the proposal selected for this rulemaking.

i. Alternative 1: Proposed Alternative—Set and Adjust Patent Fees

The alternative proposed herein secures the Office's required revenue to cover its aggregate costs, while progressing towards the strategic goals of quality enhancements and patent application backlog and pendency optimization that will benefit all applicants, including small and micro entities, without undue burden to patent applicants and holders, barriers to entry, or reduced incentives to innovate. This alternative maintains small and micro entity discounts and adds new discounts where applicable. Compared to the current patent fee schedule, small entities will benefit from the establishment of two new small entity fee rates, while micro entities will benefit from the establishment of six new micro entity fee rates for existing services. Given that most micro entities would have paid large or small entity fee rates (depending on what was available), the establishment of micro entity fee rates represents significant savings to these entities. Further, all entities will benefit from the Office's proposal to discontinue 14 fees related to goods and services found to be of limited value based on the ability to obtain these services at zero cost or more efficiently from non-Office sources.

As discussed throughout this document, the fee changes proposed in

this alternative are moderate compared to other alternatives. Given that the proposed fee schedule will result in increased aggregate revenue under this alternative, small and micro entities would pay some higher fees when compared to the current fee schedule (Alternative 4). However, the fees are not as high as those initially proposed to PPAC. In the current fee proposal, the Office decided to slow the growth of the operating reserve and lower key fee amounts in response to comments and feedback the PPAC received from intellectual property stakeholders and other interested members of the public during and following the PPAC fee setting hearings during Fall 2015.

In summary, the fees to obtain a patent will increase slightly. For example, fees for both tiers of RCEs will increase slightly, but still less than those initially proposed to PPAC. Maintenance fee rates will remain unchanged at all three stages; however, all reissue patents will now be subject to maintenance fee payments if the patent owner wishes to maintain them. In an effort to continue reducing the inventory of *ex parte* appeals and help recapture a portion of the cost of providing these services, fees will increase for both Notice of Appeal and Appeal Forwarding. Fees will also increase for *inter partes* reviews based on updated cost data and the need to provide adequate resources to support the Office's ongoing compliance with AIA deadlines for these actions. Similarly, fees for both post-grant reviews and covered-business-method reviews will increase based on FY 2015 cost data and resources needed to sustain compliance with AIA deadlines. Finally, in response to feedback from the PPAC and members of the public, the proposed fee increase for design issues is $240, from $560 to $800. Under the original proposal to the PPAC, the fee would have increased by $440 to $1,000.

Adjusting the patent fee schedule as proposed in this NPRM allows the Office to implement the patent-related strategic goals and objectives documented in the Strategic Plan. Specifically, this fee setting rule supports the patent-related strategic goals to optimize patent quality and timeliness, which includes improving patent quality, reducing the backlog of unexamined applications and decreasing patent application pendency, and facilitating processing at the Patent Trial and Appeal Board (PTAB); and increasing international efforts to improve intellectual property policy, protection, and enforcement. This proposed rule also supports the Strategic Plan's management goal to achieve organizational excellence, which includes leveraging IT investments to better support compact prosecution and securing sustainable funding via a sufficient operating reserve. While all of the other alternatives discussed facilitate progress toward some of the Office's goals, the proposed alternative is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

The proposed fee schedule for this rulemaking, as compared to existing fees (labeled Alternative 1—Proposed Alternative—Set and Adjust Patent Fees) is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.'' Fee changes for small and micro entities are included in the tables. For the comparison between proposed fees and current fees, as noted above, the ''current fees'' column displays the fees that were in effect as of June 2016.

ii. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches. For each alternative considered, the Office calculated proposed fees and proposed revenue derived by each alternative scenario. The proposed fees and their corresponding revenue tables are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* Please note, only the fees outlined in Alternative 1 are proposed in this rulemaking; other scenarios are shown only to demonstrate the Office's analysis of other options.

a. Alternative 2: Unit Cost Recovery

The USPTO considered setting most individual large entity fees at the historical cost of performing the activities related to the particular service in FY 2015. This alternative continues existing and offers new small and micro entity discounts where eligible under AIA authority. Aside from maintenance fees, fees for which there is no FY 2015 cost data would be set at current rates under this alternative. The Office no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible. Thus, for this alternative, maintenance fees are set at levels sufficient to generate enough revenue to cover the Office's anticipated budgetary requirements over the five-year period. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue to the Office. Note, this alternative bases fee rates for FY 2017 through FY 2021 on FY 2015 historical costs. The Office recognizes that this approach does not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years.

It is common practice in the Federal Government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25: *User Charges,* states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign.

However, the Office asserts that Alternative 2 does not align well with the strategic and policy goals of this rulemaking. Both the current and proposed fee schedules are structured to collect more fees at the back-end (*i.e.* issue fees and maintenance fees), where the patent owner has the best information about a patent's value, rather than at the front-end (*i.e.* filing fees, search fees, and examination fees), when applicants are most uncertain about the value of their art, even though the front-end services are costlier to the Office. This alternative presents significant barriers to those seeking patent protection, because if the Office were to immediately shift from the current front-end/back-end balance to a unit cost recovery structure, front-end fees would increase significantly, nearly tripling in some cases (*e.g.,* search fees), even with small and micro entity fee reductions.

The Office has not attempted to estimate the quantitative elasticity impacts for application filings (*e.g.,* filing, search, and examination fees) or maintenance renewals (all stages) due to a lack of historical data that could inform such a significant shift in the Office's fee setting methodology. However, the Office suspects that the high costs of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities and especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all

applications, including those applications for which no claims are allowed. By insisting on unit cost payment at each point in the application process, the Office is effectively charging high fees for every attempted patent, meaning those applicants who have less information about the patentability of their claims may be less likely to pursue initial prosecution (*e.g.,* filing, search, and examination) or subsequent actions to continue prosecution (*e.g.,* RCE). The ultimate effect of these changes in behavior are likely to stifle innovation.

Similarly, the Office suspects that renewal rates could change as well, given significant fee reductions for maintenance fees at each of the three stages. While some innovators and firms may choose to file fewer applications given the higher front-end costs, others, whose claims are allowed or upheld, may seek to fully maximize the benefits of obtaining a patent by keeping those patents in force for longer than they would have previously (*i.e.,* under the status quo). In the aggregate, patents that are maintained beyond their useful life weaken the intellectual property system by slowing the rate of public accessibility and follow-on inventions, which is contrary to the Office's policy factor of fostering innovation. In sum, this alternative is inadequate to accomplish the goals and strategies as stated in Part III of this rulemaking.

The fee schedule for Alternative 2: Unit Cost Recovery is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.*'' For the comparison between proposed (unit cost recovery) fees and current fees, the ''current fees'' column displays the fees that are in effect as of June 2016. This column is used to calculate dollar and percent fee change compared to proposed fees.

b. Alternative 3: Across the Board Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees by applying a one-time 5.0 percent, across the board inflationary increase to the baseline (status quo) beginning in FY 2017. Five percent represents the change in revenue needed to achieve the aggregate revenue needed to cover budgetary requirements.

As estimated by the Congressional Budget Office, projected CPI rates by fiscal year are: 2.17 percent in FY 2017, 2.39 percent in FY 2018, 2.38 percent in FY 2019, and 2.42 percent in both FY 2020 and FY 2021. The Office elected not to apply the estimated cumulative inflationary adjustment (9.96 percent), from FY 2017 through FY 2021, because doing so would result in significantly more fee revenue than needed to meet the Office's core mission and strategic priorities. Under this alternative, nearly every existing fee would be increased and no fees would be discontinued or reduced. Given that all entities (large, small, and micro) would pay unilaterally higher fees, this alternative does not adequately support the Office's policy factor to foster innovation for all.

The fee schedule for Alternative 3: Across the Board Adjustment is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.*'' For the comparison between proposed (across the board) fees and current fees, the ''current fees'' column displays the fees that are in effect as of June 2016.

c. Alternative 4: Baseline (Current Fee Schedule)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would continue the small and micro entity discounts that Congress provided in Section 10 of the Act and maintain fees as of June 2016.

This approach would not provide sufficient aggregate revenue to accomplish the Office's rulemaking goals, as set forth in Part III of this NPRM or the Strategic Plan. IT improvement, progress on backlog and pendency, and other strategic improvement activities would continue, but at a slower rate due to funding limitations. Likewise, without a fee increase, the USPTO would meet slightly less than the minimal operating reserve in FY 2017 through FY 2019 and only slightly more in FY 2020, with an increase in FY 2021.

iii. Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified ''alternatives'' or approaches, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below and describes how this NPRM is adopting these approaches.

Differing Requirements

As discussed above, the changes proposed in this rulemaking would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to pay a 75 percent reduction in patent fees under this proposal and non-micro, small entities would continue to pay 50 percent of the fee.

This rulemaking sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the small entity fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This proposed rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification) and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This proposed rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

This rulemaking does not take any actions beyond setting or adjusting patent fees; therefore, there are no clarifications, consolidations, or simplifications subject to discussion here.

Performance Standards

Performance standards do not apply to the current rulemaking.

Exemption for Small and Micro Entities

The proposed changes here maintain a 50 percent reduction in fees for small entities and a 75 percent reduction in fees for micro entities. The Office considered exempting small and micro entities from paying patent fees, but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities]'' (emphasis added). Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying patent fees.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007). The Office has developed a RIA as required for rulemakings deemed to be significant. The complete RIA is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rule are expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this proposed rule is expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

G. Unfunded Mandates Reform Act of 1995

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

H. Paperwork Reduction Act

This proposed rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rulemaking has been reviewed and previously approved by OMB under control numbers 0651–0016, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0059, 0651–0064, and 0651–0069.

You may send comments regarding the collection of information associated with this rulemaking, including suggestions for reducing the burden, to the Commissioner for Patents, by mail to P.O. Box 1451, Alexandria, VA 22313–1451, attention Dianne Buie; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (RIN 0651–AD02).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

37 CFR Part 42

Trial practice before the Patent Trial and Appeal Board.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by revising paragraphs (a) through (f) and (h) through (r) to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	75.00
By other than a small or micro entity	300.00

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a)) $50.00
By a small entity (§ 1.27(a)) 100.00
By other than a small or micro entity 200.00

(c) Basic fee for filing each application for an original plant patent:

By a micro entity (§ 1.29(a)) $50.00
By a small entity (§ 1.27(a)) 100.00
By other than a small or micro entity 200.00

(d) Basic fee for filing each provisional application:

By a micro entity (§ 1.29(a)) $70.00
By a small entity (§ 1.27(a)) 140.00
By other than a small or micro entity 280.00

(e) Basic fee for filing each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $75.00
By a small entity (§ 1.27(a)) 150.00
By other than a small or micro entity 300.00

(f) Surcharge for filing the basic filing fee, search fee, examination fee, or the inventor's oath or declaration on a date later than the filing date of the application, an application that does not contain at least one claim on the filing date of the application, or an application filed by reference to a previously filed application under § 1.57(a), except provisional applications:

By a micro entity (§ 1.29(a)) $40.00
By a small entity (§ 1.27(a)) 80.00
By other than a small or micro entity 160.00

* * * * *

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29(a)) $115.00
By a small entity (§ 1.27(a)) 230.00
By other than a small or micro entity 460.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a)) $25.00
By a small entity (§ 1.27(a)) 50.00
By other than a small or micro entity 100.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29(a)) $205.00
By a small entity (§ 1.27(a)) 410.00
By other than a small or micro entity 820.00

(k) Search fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a)) $165.00
By a small entity (§ 1.27(a)) 330.00
By other than a small or micro entity 660.00

(l) Search fee for each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a)) $40.00
By a small entity (§ 1.27(a)) 80.00
By other than a small or micro entity 160.00

(m) Search fee for each application for an original plant patent:

By a micro entity (§ 1.29(a)) $105.00
By a small entity (§ 1.27(a)) 210.00
By other than a small or micro entity 420.00

(n) Search fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $165.00
By a small entity (§ 1.27(a)) 330.00
By other than a small or micro entity 660.00

(o) Examination fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a)) $190.00
By a small entity (§ 1.27(a)) 380.00
By other than a small or micro entity 760.00

(p) Examination fee for each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a)) $150.00
By a small entity (§ 1.27(a)) 300.00
By other than a small or micro entity 600.00

(q) Examination fee for each application for an original plant patent:

By a micro entity (§ 1.29(a)) $155.00
By a small entity (§ 1.27(a)) 310.00
By other than a small or micro entity 620.00

(r) Examination fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $550.00
By a small entity (§ 1.27(a)) 1,100.00
By other than a small or micro entity 2,200.00

* * * * *

■ 3. Section 1.17 is amended by revising paragraphs (e), (m), (p) and (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity $325.00
By a small entity (§ 1.27(a) 650.00
By other than a small or micro entity 1,300.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity $475.00
By a small entity (§ 1.27(a) 950.00
By other than a small or micro entity 1,900.00

* * * * *

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c), 1.55(e), 1.78(b), 1.78(c), 1.78(e), 1.137, 1.378, and 1.452)), or for filing a petition to excuse applicant's failure to act within prescribed time limits in an international design application (§ 1.1051):

By a micro entity (§ 1.29(a)) $500.00
By a small entity (§ 1.27(a)) 1,000.00
By other than a small or micro entity 2,000.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d):

By a micro entity (§ 1.29(a)) $60.00
By a small entity (§ 1.27(a)) 120.00
By other than a small or micro entity 240.00

* * * * *

(t) For filing a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 (§ 1.1052):

By a micro entity (§ 1.29(a)) $45.00
By a small entity (§ 1.27(a)) 90.00

By other than a small or micro entity 180.00

■ 4. Section 1.18 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a)(1) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a micro entity (§ 1.29(a)) $250.00
By a small entity (§ 1.27(a)) 500.00
By other than a small or micro entity 1,000.00

(2) [Reserved]

(b)(1) Issue fee for issuing an original design patent:

By a micro entity (§ 1.29(a)) $200.00
By a small entity (§ 1.27(a)) 400.00
By other than a small or micro entity 800.00

(2) [Reserved]

(3) Issue fee for issuing an international design application designating the United States, where the issue fee is paid through the International Bureau (Hague Agreement Rule 12(3)(c)) as an alternative to paying the issue fee under paragraph (b)(1) of this section: The amount established in Swiss currency pursuant to Hague Agreement Rule 28 as of the date of mailing of the notice of allowance (§ 1.311).

(c)(1) Issue fee for issuing an original plant patent:

By a micro entity (§ 1.29(a)) $250.00
By a small entity (§ 1.27(a)) 500.00
By other than a small or micro entity 1,000.00

(2) [Reserved]

* * * * *

■ 5. Section 1.19 is amended by revising paragraphs (b)(1), (2), and (4); removing and reserving paragraphs (e) and (g); and adding paragraphs (h) through (l) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) Copy of a patent application as filed, or a patent-related file wrapper and contents, stored in paper in a paper file wrapper, in an image format in an image file wrapper, or if color documents, stored in paper in an Artifact Folder:

(i) If provided on paper:

(A) Application as filed: $35.00

(B) File wrapper and contents: $280.00

(C) [Reserved]

(D) Individual application documents, other than application as filed, per document: $25.00

(ii) If provided on compact disc or other physical electronic medium in single order or if provided electronically (*e.g.,* by electronic transmission) other than on a physical electronic medium:

(A) Application as filed: $35.00

(B) File wrapper and contents: $55.00

(C) [Reserved]

(iii) [Reserved]

(iv) If provided to a foreign intellectual property office pursuant to a bilateral or multilateral agreement (see § 1.14(h)): $0.00.

(2) [Reserved]

* * * * *

(4) For assignment records, abstract of title and certification, per patent: $35.00

* * * * *

(h) Copy of Patent Grant Single-Page TIFF Images (52 week subscription): $10,400.00

(i) Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription): $5,200.00

(j) Copy of Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc) Products: $50.00

(k) Copy of U.S. Patent Custom Data Extracts: $100.00

(l) Copy of Selected Technology Reports, Miscellaneous Technology Areas: $30.00

■ 6. Section 1.20 is amended by revising paragraphs (a) through (c) and (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323) $150.00

(b) Processing fee for correcting inventorship in a patent (§ 1.324) 150.00

(c) In reexamination proceedings:

(1)(A) For filing a request for *ex parte* reexamination (§ 1.510(a)) having:

(i) Forty (40) or fewer pages;

(ii) Lines that are double-spaced or one-and-a-half spaced;

(iii) Text written in a non-script type font such as Arial, Times New Roman, or Courier;

(iv) A font size no smaller than 12 point;

(v) Margins which conform to the requirements of § 1.52(a)(1)(ii); and

(vi) Sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition.

By a micro entity (§ 1.29(a)) $1,500.00
By a small entity (§ 1.27(a)) 3,000.00
By other than a small or micro entity 6,000.00

(B) The following parts of an *ex parte* reexamination request are excluded from paragraphs (c)(1)(A)(i) through (v) of this section:

(i) The copies of every patent or printed publication relied upon in the request pursuant to § 1.510(b)(3);

(ii) The copy of the entire patent for which reexamination is requested pursuant to § 1.510(b)(4); and

(iii) The certifications required pursuant to § 1.510(b)(5) and (6).

(2) For filing a request for ex parte reexamination (§ 1.510(b)) which has sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition, and which otherwise does not comply with the provisions of paragraph (c)(1) of this section::

By a micro entity (§ 1.29) $3,000.00
By a small entity (§ 1.27(a)) 6,000.00
By other than a small or micro entity 12,000.00

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of three and also in excess of the number of claims in independent form in the patent under reexamination:

By a micro entity (§ 1.29(a)) $115.00
By a small entity (§ 1.27(a)) 230.00
By other than a small or micro entity 460.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a)) $25.00
By a small entity (§ 1.27(a)) 50.00
By other than a small or micro entity 100.00

* * * * *

(e) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a micro entity (§ 1.29(a)) $400.00
By a small entity (§ 1.27(a)) 800.00

By other than a small or micro entity 1,600.00

(f) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a micro entity (§ 1.29(a)) $900.00
By a small entity (§ 1.27(a)) 1,800.00
By other than a small or micro entity 3,600.00

(g) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a micro entity (§ 1.29(a)) $1,850.00
By a small entity (§ 1.27(a)) 3,700.00
By other than a small or micro entity 7,400.00

* * * * *

■ 7. Amend § 1.21 by:
■ a. Revising paragraph (a);
■ b. Removing and reserving paragraph (g);
■ c. Revising paragraph (h) introductory text and paragraphs (h)(2) and (i);
■ d. Removing and reserving paragraph (j); and
■ e. Adding paragraphs (o) through (q).

The revisions and additions read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(l) For admission to examination for registration to practice:

(i) Application Fee (non-refundable): $100.00

(ii) Registration examination fee.

(A) For test administration by commercial entity: $200.00

(B) For test administration by the USPTO: $450.00

(iii) For USPTO-administered review of registration examination: $450.00

(2) On registration to practice or grant of limited recognition:

(i) On registration to practice under § 11.6 of this chapter: $200.00

(ii) On grant of limited recognition under § 11.9(b) of this chapter: $200.00

(iii) On change of registration from agent to attorney: $100.00

(3) [Reserved]

(4) For certificate of good standing as an attorney or agent:

(i) Standard: $40.00

(ii) Suitable for framing: $50.00

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: $400.00

(ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: $400.00

(6) Recovery/Retrieval of OED Information System Customer Interface account by USPTO:

(i) For USPTO-assisted recovery of ID or reset of password: $70.00

(ii) For USPTO-assisted change of address: $70.00

(7) and (8) Reserved

(9)(i) Delinquency fee: $50.00

(ii) Administrative reinstatement fee: $200.00

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: $1,600.00

* * * * *

(h) For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

* * * * *

(2) If not submitted electronically: $50.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: $25.00

* * * * *

(o) The submission of very lengthy sequence listings (mega-sequence listings) are subject to the following fees:

(1) Submission of sequence listings ranging in size from 300MB to 800MB: $1,000.00

(2) Submission of sequence listings exceeding 800MB in size: $10,000.00

(p) Additional Fee for Overnight Delivery: $40.00

(q) Additional Fee for Expedited Service: $160.00

■ 8. Section 1.362 is amended by revising paragraph (b) to read as follows:

§ 1.362 Time for payment of maintenance fees.

* * * * *

(b) Maintenance fees are not required for any plant patents or for any design patents.

* * * * *

■ 9. Section 1.445 is amended by adding paragraph (a)(5) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

By a micro entity (§ 1.29(a)) $75.00
By a small entity (§ 1.27(a)) 150.00
By other than a small or micro entity 300.00

* * * * *

■ 10. Section 1.482 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1.482 International preliminary examination and processing fees.

* * * * *

(c) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

By a micro entity (§ 1.29(a)) $75.00
By a small entity (§ 1.27(a)) 150.00
By other than a small or micro entity 300.00

■ 11. Section 1.492 is amended by revising paragraphs (a), (b)(2) through (4), (c)(2), and (d) through (f) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371:

By a micro entity (§ 1.29(a)) $75.00
By a small entity (§ 1.27(a)) 150.00
By other than a small or micro entity 300.00

(b) * * *

(2) If the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a micro entity (§ 1.29(a)) $35.00
By a small entity (§ 1.27(a)) 70.00
By other than a small or micro entity 140.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a micro entity (§ 1.29(a)) $130.00

By a small entity (§ 1.27(a))	260.00
By other than a small or micro entity	520.00

(4) In all situations not provided for in paragraph (b)(1), (2), or (3) of this section:

By a micro entity (§ 1.29(a))	$165.00
By a small entity (§ 1.27(a))	330.00
By other than a small or micro entity	660.00

(c) * * *

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a micro entity (§ 1.29(a))	$190.00
By a small entity (§ 1.27(a))	380.00
By other than a small or micro entity	760.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29(a))	$115.00
By a small entity (§ 1.27(a))	230.00
By other than a small or micro entity	460.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a))	$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity	100.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29(a))	$205.00
By a small entity (§ 1.27(a))	410.00
By other than a small or micro entity	820.00

■ 12. Section 1.1031 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 1.1031 International design application fees.

(a) International design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee (35 U.S.C. 382(b) and article 4(2)) in the amount of

By a micro entity (§ 1.29(a))	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	120.00

* * * * *

(f) The designation fee for the United States shall consist of:

(1) A first part established in Swiss currency pursuant to Hague Rule 28 based on the combined amounts of the basic filing fee (§ 1.16(b)), search fee (§ 1.16(l)), and examination fee (§ 1.16(p)) for a design application. The first part is payable at the time of filing the international design application; and

(2) A second part (issue fee) as provided in § 1.18(b). The second part is payable within the period specified in a notice of allowance (§ 1.311).

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 13. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Public Law 112–29.

■ 14. Section 41.20 is amended by revising paragraphs (b)(1) and (4) to read as follows:

§ 41.20 Fees.

* * * * *

(b) * * *

(1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

By a micro entity (§ 1.29 of this chapter)	$250.00
By a small entity (§ 1.27(a) of this chapter)	500.00
By other than a small or micro entity	1,000.00

* * * * *

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

By a micro entity (§ 1.29(a) of this chapter)	$625.00
By a small entity (§ 1.27(a) of this chapter)	1,250.00
By other than a small or micro entity	2,500.00

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 15. The authority citation for part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 16. Section 42.15 is amended by revising paragraphs (a) and (b) to read as follows:

§ 42.15 Fees

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: $14,000.00

(2) *Inter Partes* Review Post-Institution fee: $16,500.00

(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20: $300.00

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting review of each claim in excess of 15: $600.00

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post-Grant or Covered Business Method Patent Review request fee: $16,000.00

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee: $22,000.00

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting review of each claim in excess of 20: $375.00

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting review of each claim in excess of 15: $825.00

* * * * *

Dated: September 20, 2016.

Michelle K. Lee,

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

[FR Doc. 2016–23093 Filed 9–30–16; 8:45 am]

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Part IV

Department of Commerce

13 CFR Parts 300, 301, 302, et al.

Revolving Loan Fund Program Changes and General Updates to PWEDA Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 300, 301, 302, 303, 304, 305, 307, 309, and 314

[Docket No.: 160519444–6444–01]

RIN 0610–AA69

Revolving Loan Fund Program Changes and General Updates to PWEDA Regulations

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of proposed rulemaking, request for public comment.

SUMMARY: Through this notice of proposed rulemaking (''NPRM''), the Economic Development Administration (''EDA''), U.S. Department of Commerce (''DOC''), proposes and requests comments on updates to the agency's regulations implementing the Public Works and Economic Development Act of 1965, as amended (''PWEDA''). In particular, through this NPRM EDA is proposing important changes to the regulations governing the Revolving Loan Fund (''RLF'') program that are intended to reflect current best practices and strengthen EDA's efforts to evaluate, monitor, and improve RLF performance by establishing the Risk Analysis System, a risk-based management framework, to evaluate and manage the RLF program. The proposed Risk Analysis System is modeled on the Uniform Financial Institutions Rating System, commonly known as the capital adequacy, assets, management capability, earnings, liquidity, and sensitivity (''CAMELS'') rating system, which has been used since 1979 to assess financial institutions on a uniform basis and to identify those in need of additional attention. EDA also proposes to reorganize the RLF regulations to improve their readability and clarify the requirements that apply to the distinct phases of an RLF award. In addition, EDA proposes specific changes to RLF requirements to make RLF awards more efficient for Recipients to administer and EDA to monitor.

In addition, through this NPRM EDA proposes important, but less comprehensive updates to other parts of its regulations, including revising definitions, replacing references to superseded regulations to reflect the promulgation of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (2 CFR part 200) (''Uniform Guidance''), streamlining the provisions that outline EDA's application process, and clarifying EDA's property management regulations.

DATES: Written comments on this NPRM must be submitted by December 2, 2016.

ADDRESSES: Comments on the NPRM may be submitted through any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. EDA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).
- *Email: regulations@eda.gov.* Include ''Comments on EDA's regulations'' and Docket No. 160519444–6444–01 in the subject line of the message.
- *Fax:* (202) 482–5671. Please indicate ''Attention: Office of Chief Counsel,'' ''Comments on EDA's regulations,'' and Docket No. 160519444–6444–01 on the cover page.
- *Mail:* Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230. Please indicate ''Comments on EDA's regulations'' and Docket No. 160519444–6444–01 on the envelope.

FOR FURTHER INFORMATION CONTACT: Rachel Wallace, Attorney-Advisor, Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background on EDA and the RLF Program

EDA leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through strategic investments that foster job creation and attract private investment, EDA supports development in economically distressed areas of the United States.

Authorized under section 209 of the Public Works and Economic Development Act of 1965 (''PWEDA'') (42 U.S.C. 3149) the RLF program has served as an important pillar of EDA's investment programs since the program's establishment in 1975. The goal of the RLF program is to help communities and regions transform their economies and propel them towards economic prosperity through innovation, entrepreneurship, and public-private partnerships. Through the RLF program, EDA provides grants to eligible Recipients, which include State and local governments, political subdivisions, and nonprofit organizations to operate a lending program that offers low-interest loans and flexible repayment terms to businesses that cannot obtain traditional bank financing and to governmental entities for public infrastructure. These loans enable small businesses to expand and lead to new employment opportunities that pay competitive wages and benefits. They also help retain jobs that might otherwise be lost, create wealth, and support minority and women-owned businesses.

Since the program's inception, EDA has funded approximately 800 RLFs nationwide, investing $550 million in RLFs that have a combined capital base of about $813.5 million as of September 30, 2015. These funds currently have a total of $250 million available for lending. EDA-funded RLFs have made more than 27,000 loans to American small businesses and have leveraged more than $12 billion non-RLF dollars. RLF Recipients report that the program has contributed to creating 340,000 jobs and retaining 307,000 jobs.

Each RLF Recipient contributes matching funds in accordance with EDA's statutory requirements to capitalize an RLF. As loans made from this original pool of EDA and Recipient funds are repaid, the fund is replenished and new loans are extended to qualified businesses. They can also be provided to governmental entities for eligible public infrastructure. Each RLF Recipient must develop and maintain an RLF Plan to demonstrate how the fund fits specific economic development goals and how it will adequately administer the RLF throughout its lifecycle. Because RLF funds currently retain their Federal character in perpetuity, the RLF Recipient's obligation to manage the RLF continues as long as the Federal Interest in the RLF exists.

Since February 1, 2011, EDA has taken a critical and comprehensive look-back at its regulations to reduce burdens by removing outmoded provisions and streamlining and clarifying requirements. On December 19, 2014, EDA published a Final Rule (79 FR

76108) (''2014 Final Rule'') revising the agency's regulations and reflecting the agency's practices and policies in administering its economic development assistance programs.

EDA's regulations at 13 CFR part 307 set out the requirements for awards under EDA's Economic Adjustment Assistance program, through which EDA can support a wide-range of technical assistance, planning, and infrastructure assistance in Regions experiencing adverse economic changes that may occur suddenly or over time. The types of assistance that EDA can provide through this program include strategy development, infrastructure construction, and RLF capitalization. Subpart A of part 307 details the general requirements for Economic Adjustment Assistance awards; and subpart B sets out requirements specific to the RLF program.

Through the 2014 Final Rule, EDA reorganized part 307 to help clarify award requirements and incorporate all RLF program requirements under subpart B to part 307. When developing those regulations, EDA received a number of comments on the RLF program, including several recommending that EDA set a time limit for releasing the Federal Interest in RLF awards. EDA explained that while some RLF awards have been operating for a considerable length of time—some for as many as three decades—EDA currently is not authorized to release its interest in RLF awards; however, EDA continues to actively work to obtain the necessary authorities for what is known as ''de-federalization'' or ''local control.''

Other comments remarked that the RLF program reporting requirements were too burdensome. EDA noted that the semi-annual reporting requirement for the RLF program is in place to address an audit report by the DOC's Office of Inspector General (''OIG''), which recommended that EDA undertake more rigorous oversight of the RLF program to ensure the financial integrity and sustainability of the program. Because the reporting requirements are designed to address past program issues and ensure the viability and transparency of the program, EDA declined to make wholesale changes at that time but expressed its intent to continue to improve the RLF Recipient reporting system to make it more user-friendly. In the current set of regulatory changes, EDA proposes to move from the semi-annual reporting requirement to a frequency (either annual or semi-annual) that will be determined by each Recipient's score in the Risk Analysis System. In addition, EDA is changing the reporting period to be based on each Recipient's fiscal year end.

Six comments received from the prior set of regulatory changes suggested the establishment of an RLF task force to address program issues and improve communications between EDA and program stakeholders. EDA has established such a task force, which is represented by personnel from EDA Headquarters and all six of EDA's Regional Offices and has examined ways to address challenges that have been identified by the OIG, program stakeholders, and EDA management.

Overview of Proposed Changes to the RLF Program

Given this greater focus on improving the RLF program and its operations through a risk-based management framework, EDA now looks to strengthen and clarify its RLF regulations. As further detailed in this NPRM, EDA seeks to improve the agency's ability to monitor RLF performance and provide targeted technical assistance through a risk-based management framework, better organize and clarify the RLF regulations, and make additional changes designed to clarify and streamline RLF requirements. Given the important role of this program as a driver of small business growth, job creation, and economic development, EDA seeks the public's input and insight in the regulatory revision process.

With these goals in mind, the Part-by-Part Analysis will describe the changes to the RLF program in more detail, but the following provides a high-level overview of these changes.

- EDA proposes important definitional revisions, including adding a definition for *Disbursement phase* to go along with the existing definition of *Revolving phase* so that it is clear which requirements apply during the two phases of an RLF's lifecycle. We also define the important term *RLF Capital Base,* which is the total value of RLF Grant assets administered by the RLF Recipient and is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable) the RLF, plus Local Share, plus RLF Income, plus Voluntarily Contributed Capital, less any loan losses and disallowances.
- EDA proposes simplifying the language explaining RLF disbursements to clarify that EDA will disburse funds in the amount needed to meet the Federal share of a new RLF loan. For example, assume an RLF Grant totals $500 and has a Local Share requirement of 50 percent. If the RLF Recipient closes on a loan obligation worth $30, EDA will disburse $15.
- We add language to clarify how RLF Income is treated during the Disbursement Phase. The current regulations specify that RLF Income held to reimburse administrative costs does not need to be disbursed to draw additional Grant funds, but do not address RLF Income not used for administrative costs. Through this regulatory revision, EDA is clarifying that RLF Income earned during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs and increase the RLF Capital Base. However, RLF Income earned during the Disbursement Phase need not be disbursed to support new RLF loans, unless otherwise specified in the terms and conditions of the RLF Grant.
- Consistent with EDA's new approach to managing RLF Grants, this NPRM proposes expanding the requisite period during which RLF Income must be earned and administrative costs must be incurred from the same six-month Reporting Period to the same fiscal year. We also specify that RLF Recipients may not use funds in excess of RLF Income for administrative costs during the fiscal year unless directed to do so by EDA and add language advising RLF Recipients to keep administrative expenses to a minimum to maintain the RLF Capital Base and to specify that the percentage of RLF Income used for administrative expenses will be one of the metrics used in EDA's Risk Analysis System. In keeping with this program management change, EDA is removing the requirement that RLF Recipients submit an RLF Income and Expense Statement (*i.e.,* Form ED–209I). The Risk Analysis System will incentivize RLF Recipients to manage RLF administrative expenses and maintain their RLF Capital Base.
- This NPRM also proposes language to describe the process of adding Voluntarily Contributed Capital to the RLF Capital Base and to clarify that such capital becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF.
- In response to a request from some existing Recipients, this NPRM proposes broadening the types of investments that may serve as appropriate leveraging to allow Recipients to use funds from State and local lending programs to meet the RLF leveraging requirement. Similar to allowing Federal loans to count as leveraging, if the managers of State and local lending programs are willing to provide financing to a borrower, EDA believes such financing should count towards the leveraging requirement.

• EDA proposes adopting a Risk Analysis System to evaluate and manage the performance of RLF Recipients, which would provide Recipients with a set of portfolio management and operations standards to evaluate their program and improve performance. Revised § 307.16 includes language on the proposed system, which will provide EDA with an internal tool for assessing the risk of each Recipient's loan operations and identifying RLF Recipients that require additional monitoring, technical assistance, or other action. EDA's proposed risk-based RLF management framework is modeled on the Uniform Financial Institutions Rating System (the CAMELS rating system), used by regulators to assess financial institutions and to identify those in need of extra assistance or attention. Additional details on the proposed system are provided below under the Part-by-Part Analysis. The technical aspects of this system will be described in a separate notice that will be published in the **Federal Register** at a later time. This notice will provide additional agency guidance regarding the system and the underlying metrics.

• EDA proposes adopting an Allowable Cash Percentage concept to replace the capital utilization standard. Recognizing that different regions face very different economic and access to capital conditions and that a one-size-fits-all capital utilization standard can be difficult for RLF Recipients to meet and for EDA to implement, EDA proposes eliminating the capital utilization standard, which requires Recipients to provide that at all times at least 75 percent of their RLF Capital is loaned or committed. In place of the capital utilization standard, which is based on the amount of capital that is loaned out, EDA proposes to assess RLF Recipients on the amount of cash Recipients have on hand available for lending—defined as the Allowable Cash Percentage. Each year, each EDA Regional Office will calculate the average percentage of RLF Cash Available for Lending held by each RLF Recipient in the region's RLF portfolio and will notify Recipients by January 1 each year of the Allowable Cash Percentage to be used during the ensuing year. RLF Recipients will be required to manage their repayment and lending schedules to provide that at all times, their amount of RLF Cash Available for Lending does not exceed the Allowable Cash Percentage. *See* the part-by-part analysis below for an example of how the Allowable Cash Percentage concept will work and proposed revisions to §§ 307.16(c) and 307.17(b).

One feature of the move to the Allowable Cash Percentage concept is that EDA will no longer require automatic sequestration as a remedy for failure to satisfy the capital utilization standard. Given the replacement of the capital utilization standard with the more flexible Allowable Cash Percentage and the adoption of a Risk Analysis System, sequestration will be considered as one of a range of possible tools used to ensure compliance with the terms of the RLF Grant and will also be considered in EDA's Risk Analysis System.

• EDA proposes clarifying the use restrictions related to RLF Cash Available for Lending. Specifically, to address recent concerns EDA has encountered in administering the RLF program, EDA is adding language to make clear that RLF Cash Available for Lending cannot be used as collateral to obtain credit or any other type of financing without EDA's prior written approval, cannot be used to support operations or administration of the RLF Recipient, and cannot be used for any purpose that would violate EDA's property requirements set out in 13 CFR part 314.

• EDA is seeking to restructure the compliance regulations by creating a regulation that sets out actions (or failures to act) for which EDA may take appropriate compliance actions (§ 307.20) and another section listing remedies for noncompliance (§ 307.21). Restructuring the compliance regulations will help RLF stakeholders to better understand program prohibitions and the potential consequences.

Part-by-Part Analysis of Proposed Changes

General

Part 300—General Information

Part 300 of the regulations states EDA's mission and highlights the policies and practices that EDA employs in order to attract private capital investments and new and better jobs to those Regions experiencing substantial and persistent economic distress. This NPRM proposes several clarifying revisions to the ''Definitions'' section of EDA's regulations at § 300.3. First, in the definition of *In-kind contribution(s),* EDA replaces references to 15 CFR parts 14 and 24, which set out the Uniform Administrative Requirements applicable to grants and agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations and State and Local Governments, respectively, with a reference to the uniform administrative requirements cost principles, and audit requirements set out in the Uniform Guidance. In addition, EDA proposes revising the definition of *Project* by adding a reference to ''or Stevenson-Wydler'' between the reference to ''PWEDA'' and the word ''and'' to clarify that EDA may provide Investment Assistance to support a Project under Stevenson-Wydler. Please see the explanation of the proposed definition of Stevenson-Wydler below for more information on this authority.

EDA proposes to revise the definition of *Recipient* by defining separately the concepts of *Co-recipients* and *Subrecipients* in EDA's programs. The term co-recipient has been used in EDA's regulations for some time, and adding a reference to the term in the Definitions section is designed to clarify that when EDA awards Investment Assistance to more than one recipient, they are known as co-recipients and are generally jointly and severally responsible for fulfilling the terms of the Investment Assistance. We also propose to introduce the term *Subrecipient* as the eligible recipient that receives a subgrant under 13 CFR part 309. The definition of *Subrecipient* in this NPRM is consistent with the definition of *Subrecipient* set out in the Uniform Guidance at 2 CFR 200.93, which is ''a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.'' Note that the Uniform Guidance defines ''Non-Federal entity'' as ''a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient'' and ''Pass-through entity'' as ''a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.'' *See* 2 CFR 200.69 and 200.74, respectively.

In addition, EDA proposes adding a definition of Stevenson-Wydler, which is the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*). The America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (''COMPETES'') Act as reauthorized in 2010 (Pub. L. 111–358 (January 4, 2011)) amended Stevenson-Wydler to add several innovation and entrepreneurship-focused provisions creating EDA offices

and/or programs, including the Office of Innovation and Entrepreneurship (15 U.S.C. 3720), the loan guarantees for innovative technologies in manufacturing (''ITM'') program (15 U.S.C. 3721), and the Regional Innovations Strategies (''RIS'') program (15 U.S.C. 3722). EDA is proposing to add a definition of Stevenson-Wydler in order to begin incorporating these programs under its regulations and proposes adding references to specific regulations throughout this part to reflect that they apply to Stevenson-Wydler. Via a future notice, EDA anticipates publishing proposed regulations at 13 CFR part 312 to reflect requirements specific to Projects funded under Stevenson-Wydler, including eligibility and matching share requirements.

Part 301—Eligibility, Investment Rate, and Application Requirements

Part 301 sets forth eligibility criteria, the maximum allowable Investment Rates, and application requirements common to all PWEDA-enumerated programs (and thus excludes Community Trade Adjustment Assistance at part 313 and Trade Adjustment Assistance for Firms (''TAAF'') at part 315). In general, subpart A of part 301 presents an overview of EDA's eligibility requirements; subpart B addresses applicant eligibility; subpart C addresses Regional economic distress level requirements; subpart D sets forth maximum allowable Investment Rates and Matching Share requirements; and subpart E addresses application requirements, as well as the evaluation criteria used by EDA in selecting Projects.

EDA proposes adding the phrase ''at its sole discretion'' to the second sentence of § 301.2(b) (''*Applicant eligibility''*). § 301.2(b) requires non-profit organizations that are applicants for investment assistance to include in their applications a resolution or letter from an authorized representative of a political subdivision of a State, acknowledging that the applicants are acting in cooperation with the officials of that subdivision. The second sentence of this paragraph allows EDA to waive this requirement for Projects of a significant Regional or national scope. By adding the phrase, ''at its sole discretion,'' to this second sentence, EDA is seeking to clarify that such a waiver is solely at EDA's discretion. In the second sentence of § 301.5 (''*Matching share requirements''*), EDA proposes replacing the word ''show'' with the phrase ''provide documentation to EDA demonstrating'' to better explain what applicants are required to provide to fulfill EDA's Matching Share requirements. In addition, EDA proposes adding a sentence to § 301.5 to clarify that EDA retains the discretion to determine whether Matching Share documentation adequately addresses the requirements of the regulation.

This NPRM proposes to simplify § 301.7(a) (''*Investment assistance application''*) to state that for all of EDA's Investment Assistance programs, application submission requirements and evaluation procedures criteria will be set out in published Federal Funding Opportunity (''FFO'') announcements. In 2011, EDA moved to an application and selection process that required a single application that was competitively evaluated in quarterly funding cycles under its Public Works and Economic Adjustment Assistance programs. After evaluating the impact of this process on applicants and staff, EDA is again adjusting the application and selection process under the Public Works and Economic Adjustment Assistance programs to return to a two-phase process that requires the submission of a proposal followed by a complete application. As more fully explained in the FY 2016 Economic Development Assistance Programs (''EDAP'') FFO, which is available on *www.grants.gov,* there are no submission deadlines and proposals and applications are accepted on an ongoing basis. All submissions under the Public Works and Economic Adjustment Assistance programs must proceed through a two-phase review process where the first phase allows applicants to submit a shorter proposal through which EDA can provide an initial analysis on whether the applicant's project is responsive to the EDAP FFO and the second phase allows EDA to evaluate the competitiveness of a complete application against specified evaluation criteria. Proposals will be reviewed by EDA within 30 days of receipt; and following the proposal review, complete applications will be reviewed within 60 days of receipt.

The application procedures for EDA's other programs, including the Planning, Local Technical Assistance, University Center, and Research and Evaluation programs, will be specified in applicable FFOs. To avoid engraining a particular process in a regulation, EDA simply revises § 301.7(a) to provide that for EDA Investment Assistance programs, application submission requirements and evaluation procedures and criteria will be specified in FFOs published on the EDA Web site and at *www.grants.gov.*

Likewise, EDA revises § 301.8 (''*Application evaluation criteria''*) to remove specific evaluation criteria as currently set out in subsections (a) through (f) from the regulation and to specify that program-specific evaluation criteria will be set out in applicable FFOs. EDA has found that including specific evaluation criteria in the regulation can be confusing. Providing that EDA will set appropriate evaluation criteria in FFOs allows EDA additional flexibility to respond to changing economic conditions.

In § 301.11 (''*Infrastructure''*), EDA proposes adding the parenthetical ''(*e.g.,* roads, sewers, and water lines)'' in the second sentence of § 301.11(a) to provide several core examples of ''basic economic development assets'' referenced in the sentence.

Part 302—General Terms and Conditions for Investment Assistance

Part 302 sets forth the general terms and conditions for EDA Investment Assistance, including environmental reviews of Projects; relocation assistance and land acquisition requirements; inter-governmental review of Projects; and Recipients' reporting, recordkeeping, post-approval, and civil rights requirements.

As noted above under the description of changes to part 300, EDA administers several programs authorized under Stevenson-Wydler. EDA proposes revising § 302.5 (''*Relocation assistance and land acquisition policies''*) to add a reference to Stevenson-Wydler by adding the phrase ''or any other types of assistance'' between ''Investment Assistance'' and ''under PWEDA'' and a reference to '', and Stevenson-Wydler'' between ''Trade Act'' and ''(States and political subdivisions of States. . . .)''. EDA also corrects a typo by replacing the phrase ''nonprofits organizations'' with ''nonprofit organizations''. EDA revises § 302.6 (''*Additional requirements; Federal policies and procedures''*), to replace references to 15 CFR parts 14 and 24 with a reference to ''2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards''. In addition, EDA proposes adjustments to § 302.20 (''*Civil rights''*) to clarify that nondiscrimination requirements apply to any type of assistance provided under Stevenson-Wydler. Specifically, in § 302.20(a), EDA adds a reference to ''or Stevenson-Wydler'' between the reference to ''PWEDA'' and the phrase ''or by an entity'', as well as the phrase ''or any other type of assistance under Stevenson-Wydler'' between the reference to ''Trade Act'' and the phrase

''in accordance with the following authorities''. In § 302.20(d) regarding written assurances of compliance with nondiscrimination requirements, EDA adds a reference to ''and Stevenson-Wydler'' between ''PWEDA'' and ''all Other Parties'', as well as a reference to ''or any other type of assistance under Stevenson-Wydler'' between ''Trade Act'' and the phrase that begins with ''must submit to EDA''.

In addition, in § 302.20(a)(2), EDA proposes adding a reference to Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), which proscribe discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution. Practically speaking, such discrimination has long been prohibited under EDA's programs, because various other provisions prohibit discrimination on this basis, which have been incorporated under the regulation at § 302.20(a)(2), as have the DOC's regulations as 15 CFR part 8a, which implement Title IX of the Education Amendments of 1972, as amended. However, a direct reference to Title IX of the Education amendments of 1972, as amended has been missing, and we add that via this NPRM.

Part 303—Planning Investments and Comprehensive Economic Development Strategies

Part 303 sets forth regulations governing EDA's Planning program, through which the agency provides assistance to help Eligible Applicants create strategies or plans to stimulate and guide the economic development efforts of a community or Region. EDA has three distinct types of Planning Investments: (1) Partnership Planning; (2) State Planning; and (3) Short-Term Planning. Through EDA's Partnership Planning Investments, the agency facilitates the development, implementation, revision, or replacement of Comprehensive Economic Development Strategies (''CEDS''). EDA provides Partnership Planning awards to Planning Organizations (*e.g.,* District Organizations) serving as EDA-designated Economic Development Districts (''EDD'') (as defined in § 300.3) throughout the U.S. The EDDs are recognized by the State(s) in which they reside as multijurisdictional councils of governments, regional commissions, or planning and development centers. The Partnership Planning awards enable Planning Organizations to manage and coordinate the development and implementation of CEDS to address the unique needs of their respective Regions. The CEDS are central to EDA's economic development initiatives, and a proposed Project must be consistent with a relevant CEDS before EDA makes a competitive award under the Public Works or Economic Adjustment Assistance programs under parts 305 or 307. Finally, part 303 sets forth the requirements for State and Short-Term Planning Investments, which can help distressed Regions strategize to create and retain new and better jobs and respond quickly and effectively to sudden economic dislocations.

In this NPRM, EDA proposes minor clarifications and modifications to the Planning program. First, EDA proposes to modify § 303.6(b)(1) to replace ''including'' with ''which may include'' to clarify that the CEDS Strategy Committee has the discretion to determine which parties represent the main economic interests of the Region. Those parties may include some but not all of the listed entities. Second, as a result of the broad discretion conferred upon the CEDS Strategy Committee to determine which parties represent the main economic interests of the Region, the last sentence of § 303.6(b)(1) is now superfluous. As such, EDA proposes to remove the last sentence and to revise that section to clarify that Indian Tribes and State officials may be represented on the CEDS Strategy Committee, along with all other groups listed, when representative of the economic interests of the region. Third, in accordance with § 303.6 (''*Partnership Planning and the EDA-funded CEDS process*''), Planning Organizations of EDDs must submit a revised CEDS to EDA at least every five years as specified under § 303.6(b)(3)(ii). To ensure that participating counties or other areas within the EDD remain engaged in the planning process, EDA proposes to require that Planning Organizations obtain renewed commitments to support the economic development activities of the District from such counties or areas as part of the five-year renewal. Therefore, we propose adding the sentence, ''In connection with the submission of a new or revised CEDS, the Planning Organization must obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District,'' to § 303.6(b)(3)(ii).

In addition, in accordance with sub-section (c)(1) of § 303.7 (''*Requirements for Comprehensive Economic Development Strategies*''), EDA may accept a non-EDA funded CEDS, even if such a strategy does not contain all elements required of an EDA-funded CEDS. The 2011 NPRM and the 2014 Final Rule streamlined the content requirements of CEDS from a laundry-list of ten detailed items to the following four essential planning elements in § 303.7(b)(1)(i) through (iv): (a) A summary of economic development conditions of the Region; (b) an in-depth analysis of the economic and community strengths, weaknesses, opportunities and threats; (c) strategies and an implementation plan to build upon the Region's strengths and opportunities and resolve or mitigate the weaknesses and threats facing the Region, but should not be inconsistent with applicable State and local economic development or workforce development strategies; and (d) performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS. Because EDA has consolidated required CEDS elements to include those that are generally considered to be foundational for a successful planning process, EDA wants to emphasize that a non-EDA funded CEDS should include all elements of an EDA-funded CEDS. However, in particular circumstances, such as a natural disaster or sudden and severe economic dislocation, EDA will accept a non-EDA funded CEDS that does not include the foundational CEDS elements. With this in mind, EDA proposes revisions to § 303.7(c)(1), specifically in the first sentence replacing the phrase ''without fulfilling all the requirements of paragraph (b) of this section'' with the phrase ''so long as it includes all of the elements listed in paragraph (b) of this section'' and adding the new sentence ''In certain circumstances, EDA may accept a non-EDA funded CEDS that does not contain all the elements listed in paragraph (b) of this section'' between the existing first and second sentences of this provision.

Part 304—Economic Development Districts

Part 304 on Economic Development Districts, which also may be referred to as a ''District'' or an ''EDD'' as stated in § 300.3, sets forth the Regional eligibility requirements that must be satisfied in order for EDA to consider a District Organization's request to designate a Region as an EDD, including submission of an EDA-approved CEDS, and the District Organization's formation and organizational requirements. This part also contains provisions relating to termination and performance evaluations of District Organizations.

In the 2011 NPRM and 2014 Final Rule, in response to comments that

organizational requirements applicable to District Organizations should be more flexible to allow the groups to focus on effective strategy development and implementation rather than meeting membership thresholds, EDA revised subsection (c)(2) of § 304.2 (''*District Organizations: Formation, organizational requirements and operations*''), to remove the current membership thresholds, but maintain the requirement that governing bodies demonstrate that they are broadly representative of the principal economic interests of the Region. However, in making this change, EDA inadvertently used language that can be interpreted to require that all District Organizations include members from certain sectors; specifically, the phrase in § 304.2(c)(2) that reads ''*including* the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals'' (emphasis on the word ''including'' added). EDA proposes replacing the word ''including'' in this sentence with the phrase ''which may include'' to indicate that these groups should be included insofar as they represent principal economic interests of the Region. Each District Organization must continue to demonstrate that its governing body is broadly representative of the principal economic interest of the Region and that it has the capacity to implement the EDA-approved CEDS.

Part 305—Public Works and Economic Development Investments

Part 305 provides information about EDA's Public Works and Economic Development Investments. Section 305.1 explains the purpose and scope of these Investments and § 305.2 specifies the scope of activities eligible for consideration under a Public Works Investment and sets forth a list of determinations that EDA must reach in order to award a Public Works Investment. Specific application requirements are set forth in § 305.3, and § 305.4 provides the requirements for Public Works Investments awarded solely for design and engineering work.

EDA proposes two minor changes to Part 305 in this NPRM to reflect the promulgation of the Uniform Guidance. Specifically, in sub-section (b) of § 305.6 (''*Allowable methods of procurement for construction services*'') and sub-section (c) of § 305.8 (''*Recipient-furnished equipment and materials*''), EDA replaces the references to ''15 CFR parts 14 or 24, as applicable'' with a reference to ''2 CFR part 200''.

Part 306—Training, Research and Technical Assistance

Part 306 sets out the requirements for EDA's Local and National Technical Assistance and Research Investments. Local and National Technical Assistance Investments help Recipients fill the knowledge and information gaps that may prevent leaders in the public and non-profit sectors in economically distressed Regions from making optimal decisions on local economic development issues. Through the Research program, EDA invests in research and technical assistance-related Projects to promote competitiveness and innovation in distressed rural and urban Regions. EDA does not propose any changes to part 306 through this NPRM.

Part 307—Economic Adjustment Assistance Investments

Part 307 sets out the requirements for awards under EDA's Economic Adjustment Assistance program, which can provide a wide-range of technical assistance, planning, and infrastructure assistance in Regions experiencing adverse economic changes that may occur suddenly or over time, including strategy development, infrastructure construction, and Revolving Loan Fund (''RLF'') capitalization. Subpart A of part 307 details the general requirements for Economic Adjustment Assistance awards, and subpart B sets out requirements specific to the RLF program. As noted above in the Overview of Proposed Changes to the RLF Program, a focus of this NPRM is strengthening and clarifying EDA's RLF regulations to improve the agency's ability to monitor RLF performance and provide targeted technical assistance through a risk-based management framework and propose changes designed to clarify and streamline RLF requirements. Given the important role of this program as a driver of small business growth, job creation, and economic development, EDA seeks the public's input and insight in the regulatory revision process.

Specifically, EDA proposes to clarify the language in § 307.6 (''*Revolving Loan Funds established for business lending*'') by removing the reference to ''business'' lending in the title to that section, as well as the phrase in the second sentence of the provision regarding subpart B's application to ''business lending activities'' and the phrase ''to accommodate non-business RLF awards'' regarding the application of special award conditions in the third sentence of the provision. By removing this language, we seek to clarify that both public infrastructure and business lending activities are subject to subpart B and that special award conditions may be used to provide appropriate modifications to either type of lending. While the current regulations state that RLFs may be used for business and other types of lending, the language we propose to remove created confusion about the applicability of the RLF regulations to other types of lending. In addition, in the second sentence of § 307.6, we add the phrase ''EDA-funded'' between the phrase ''apply to'' and the acronym ''RLFs'' to clarify that the RLF regulations in subpart B to part 307 apply to EDA-funded RLFs.

In § 307.7 (''*Revolving Loan Fund award requirements*''), EDA proposes additional language to clarify the compliance obligations for RLF Grants and update the reference to location of the Compliance Supplement, which was changed with the promulgation of the Uniform Guidance. Specifically, in addition to part 307, RLF Recipients must comply with relevant provisions of parts 300 through 303, 305, and 314 of 13 CFR chapter III, which set forth EDA's general definitions, general terms and conditions for Investment Assistance, Planning requirements, Public Works requirements, and property management requirements. Therefore, in § 307.7(b), EDA proposes adding the phrase '', as well as relevant provisions of parts 300 through 303, 305, and 314 of this chapter,'' between the phrases ''set forth in this part'' and ''and in the following publications''. In addition, in § 307.7(b)(2), we replace the reference to ''OMB Circular A–133'' as the location of the Compliance Supplement with '', which is Appendix XI to 2 CFR part 200'' and with respect to the electronic availability of the Compliance Supplement, we replace the general reference to the OMB Web site with the more specific site where all OMB circulars, including the Compliance Supplement, are located.

In § 307.8 (''*Definitions*''), EDA proposes adding several new definitions and revising existing definitions as we implement the proposed risk-based framework to manage RLF Grants. Specifically, we propose adding new definitions for the following terms:

- *Allowable Cash Percentage* as ''the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office's portfolio of RLF Grants over the previous year.'' This defined concept will serve as a replacement for the concept of the capital utilization standard, which is currently found in § 307.16(c) and requires RLF Recipients to manage their

repayment and lending schedules to provide that at all times, at least 75 percent of the RLF Capital is loaned or committed. The Allowable Cash Percentage will be defined annually by each EDA Regional Office for that region's RLF Grants based on the previous year's average percentage of unloaned and uncommitted cash held by the region's portfolio of RLFs. *See* the description of proposed changes to sub-section (c) of § 307.16(c) (''*Risk Analysis System*'') and sub-section (b) of § 307.17 (''*Requirements for Revolving Lon Fund Cash Available for Lending*'') below for more information on how the Allowable Cash Percentage concept will work.

• *Disbursement Phase* as ''the period of loan activity where Grant funds awarded have not been fully disbursed to the RLF Recipient.'' While EDA's regulations have indicated that particular requirements apply during the time period when EDA is disbursing funds to an RLF Recipient, the term has never been defined. EDA proposes defining *Disbursement phase* to clarify the specific requirements that apply during this phase of an RLF's life cycle, including that RLF Income earned during the Disbursement Phase is not required to be used for new RLF loans, unless otherwise specified in the terms and conditions of the RLF Grant. *See* the description of proposed revisions to § 307.11 (''*Pre-Disbursement Requirements and Disbursement of Revolving Loan Funds*'') for requirements applicable to the Disbursement Phase.

• *Risk Analysis System* as ''a set of metrics defined by EDA to evaluate a Recipient's administration of its RLF Grant and that may include but is not limited to capital, assets, management, earnings, liquidity, strategic results, and financial controls.'' EDA is introducing a risk-based management framework that will be used to evaluate a Recipient's administration of its RLF Grant and that may include the following metrics: Capital, assets, management, earnings, liquidity, strategic results, and financial controls. This is a new approach based on the CAMELS rating system used to assess financial institutions and to identify those in need of additional attention. *See* the discussion of proposed revised § 307.16 (''*Risk Analysis System*'') for more information on EDA's proposed risk-based approach to managing RLF Grants.

• *RLF Capital Base* as ''the total value of RLF Grant assets administered by the RLF Recipient. It is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable) the RLF, plus Local Share, plus RLF Income, plus Voluntarily Contributed Capital, less any loan losses and disallowances. Except as used to pay for eligible and reasonable administrative costs associated with the RLF's operations, the RLF Capital Base is maintained in two forms at all times: As RLF Cash Available for Lending and as outstanding loan principal.'' Currently, the term *RLF Capital* is used and defined as an equation of ''Grant funds plus Local Share plus RLF Income, less any amount used for eligible and reasonable costs necessary to administer the RLF and any amount of loan principal written off.'' While the current regulations define *RLF Capital* to apparently comprise all RLF assets, the regulations also refer to the ''capital base of an RLF'' or the ''RLF Capital base'', without defining that concept (*see* the current definition of *Recapitalization Grants* at § 307.8 (defining *Recapitalization Grants* as ''additional Grant funds to increase the capital base of an RLF'') and the current regulations at §§ 307.11(a)(1) (requiring the amount of fidelity bond coverage to be at least ''25 percent of the RLF Capital base''), 307.12(a) (requiring RLF Income to ''be placed into the RLF Capital base'' and providing that RLF Income earned in one period cannot be ''withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than lending without the prior written consent of EDA''), and 307.16 (stating that the usual lending schedule ''requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three years of Grant award'' and allowing different capital utilization rate based on the size of the ''RLF Capital base''). EDA proposes introducing a definition of RLF Capital Base so that this important concept is clearly defined.

• *RLF Cash Available for Lending* as ''the portion of the RLF Capital Base that is held in cash and available to make loans.'' As specified in the definition of RLF Capital Base, RLF assets are maintained in two forms at all times: Held by the RLF Recipient as cash available for lending and as outstanding loan principal. EDA is proposing this new definition to clarify requirements applicable to the part of the RLF Capital Base that is currently unloaned or uncommitted and available to make loans. *See* the discussion of proposed revised § 307.17 (''*Requirements for Revolving Loan Fund Cash Available for Lending*'') for more information on the requirements applicable to RLF Cash Available for Lending.

• *RLF Recipient* as ''the Eligible Recipient that receives an RLF Grant to manage an RLF in accordance with an RLF Plan, Prudent Lending Practices, the terms and conditions of the RLF Grant, and all applicable policies, laws, and regulations.'' While this term is used throughout the existing regulations, it was not previously defined and EDA thinks it will be useful as a defined term.

• *Voluntarily Contributed Capital* as ''an RLF Recipient's voluntary infusion of additional non-EDA funds into the RLF Capital Base that is separate from and exceeds any Local Share that is required as a condition of the RLF Grant. Voluntarily Contributed Capital is an irrevocable addition to the RLF Capital Base and must be administered in accordance with EDA regulations and policies.'' EDA proposes adding this definition to clarify that, as of the effective date of these regulations, Voluntarily Contributed Capital is an RLF Recipient's voluntary infusion of additional RLF capital that is separate from and exceeds any Matching Share that is required as a condition of the RLF Grant. This definition is being added to clarify the process for contributing additional capital to an RLF and to explain how the additional capital is treated once added to the RLF Capital Base. In particular, once added, such capital will be considered irrevocable and will become part of the RLF Capital Base.

In addition, we propose revising the definitions of the following existing terms:

• In the existing definition of *Recapitalization Grants,* we propose replacing the phrase ''capital base of an RLF'' within the proposed defined term ''RLF Capital Base'' for clarity.

• In the existing definition of *Reporting Period,* EDA proposes to change the Reporting Period to align with each RLF Recipient's fiscal year end in order to ensure consistency between RLF reports using Form ED–209 and annual audit reports by replacing the phrase ''means the period from April 1st to September 30th or the period from October 1st to March 31st'' with the phrase ''is based on the RLF Recipient's fiscal year end and is on an annual or semi-annual basis as determined by EDA.'' EDA will specify an RLF Recipient's reporting frequency as either on an annual or semi-annual basis, which will be based in part on the Recipient's score under the Risk Analysis System. *See also* § 307.14(a) (''*Revolving Loan Fund report*'') for revisions regarding the frequency of reports.

• In the definition of *RLF Income,* we propose clarifying the language excluding repayments of principal and

interest earned on excess funds that are remitted to the U.S. Treasury by noting that these are excluded pursuant to § 307.20(h). Therefore, we delete as repetitive the parenthetical ''(excluding interest earned on excess funds pursuant to § 307.16(c)(2))'' in the first sentence of the definition and correct a citation in the final sentence of the definition by replacing the reference to ''§ 307.16(c)(2)(i)'' with a reference to ''§ 307.20(h)''.

In addition, EDA proposes to better organize the regulations by placing all pre-disbursement and Disbursement Phase requirements into § 307.11. To accomplish this, EDA revises the title of the section to read ''Pre-Disbursement Requirements and Disbursement of funds to Revolving Loan Funds'' from ''Disbursement of funds to Revolving Loan Funds''. The timing language in § 307.11(a) that currently reads ''Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA'' is revised to read ''Within 60 calendar days before the initial disbursement of EDA funds, the RLF Recipient must provide the following in a form acceptable to EDA'', and then we revise the regulations to list the certifications and evidence required before EDA will make an initial disbursement of Grant funds. Currently, the regulations place different and sometimes conflicting timing requirements on these certifications. Specifically, under current § 307.11(a), RLF Recipients must submit evidence of fidelity bond coverage and the independent accountant's certification regarding the RLF Recipient's accounting system, respectively, before any disbursement of EDA funds. In contrast, current § 307.15(b)(1) requires the Recipient to submit the independent accountant's certification regarding the RLF Recipient's accounting system within 60 days prior to the initial disbursement of EDA funds, and current § 307.15(b)(2) requires the RLF Recipient's certification regarding standard loan documents before the disbursement of any EDA funds). In practice, while RLF Recipients must maintain these standards throughout the duration of an RLF's operations, the certifications and evidence are only required before the initial disbursement of EDA funds. Therefore, EDA is reconciling the timing of the requirements and clarifying that these items are required within 60 calendar days before the initial disbursement of EDA funds by revising the language of § 307.11(a).

In addition, we propose moving the following two provisions from § 307.15(b), which currently sets out pre-disbursement requirements regarding loan and accounting system documents, to § 307.11(a) titled ''Pre-disbursement requirements'': (1) The requirement that a qualified independent accountant certify as to the adequacy of the RLF Recipient's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations (as proposed § 307.11(a)(1)); and (2) the requirement that the Recipient certify that the standard loan documents are in place and have been reviewed by legal counsel (as proposed § 307.11(a)(2)). *See* the proposed deletions at § 307.15(b) and appropriate re-lettering of that provision.

With respect to the certification regarding legal counsel review of standard RLF loan documents currently set out at § 307.15(b)(2), in relocating the requirement to § 307.15(a)(2), EDA proposes a revision to require the certification that standard loan documents are adequate and comply with the terms and conditions of the RLF Grant, RLF Plan, and applicable State and local law to come directly from the RLF Recipient's legal counsel rather than have the Recipient certify as to counsel review. This change will not only streamline this process but also ensure that the Recipient's legal counsel reviewed the standard loan documents and verified that those documents are adequate and in compliance with the applicable requirements. Therefore, in rewording this provision, we propose replacing the phrase ''the Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by legal counsel'' with ''The RLF Recipient's certification that standard RLF loan documents reasonably necessary or advisable for lending are in place and a certification from the RLF Recipient's legal counsel.''

In the same section, we also propose removing the requirement that a signed bank turn-down letter be included in each loan package. We propose replacing the requirement that RLF Recipients obtain and borrowers provide a signed bank turn-down letter to demonstrate that credit is not otherwise available with the more general requirement for evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. This revision allows EDA to remove the requirement that alternative evidence to a signed bank turn-down letter be allowed in the RLF Plan.

The provision regarding evidence of fidelity bond coverage will remain in place in § 307.11(a), but will be re-lettered as § 307.11(a)(3). In addition, EDA revises the provision to establish minimum amount of coverage required as the maximum loan amount allowed for the EDA-approved RLF Plan. The existing regulation allows the minimum amount of coverage to be equal to the greater of the maximum permissible loan amount or 25 percent of the RLF Capital base. In practice, the alternative approach permitting coverage of at least 25 percent of the RLF Capital Base requires Recipients to regularly change the amount of fidelity bond coverage to remain in compliance. Also, the two alternative approaches to determining the amount of required coverage are likely to yield approximately the same amount. EDA seeks to simplify this requirement and reduce the burden on Recipients by removing the phrases ''the greater of'' and '', or 25 percent of the RLF Capital base'' from re-lettered § 307.11(a)(3).

We also add language following § 307.11(a)(3) to clarify that the RLF Recipient must maintain the adequacy of the RLF's accounting system and standard RLF loan documents, as well as records and documentation to demonstrate that these requirements are met, throughout the RLF's operation. This maintenance language includes a cross-reference to proposed § 307.13(b)(3) where we underscore that the RLF Recipient must maintain records to document compliance with these requirements. This NPRM also proposes conforming language changes to incorporate these requirements into a list format. Because we are moving the language regarding the accountant certification from § 307.15 to § 307.11, this NPRM removes the language in § 307.11(a)(2) that cited to the certification required under § 307.15. Finally, we make a minor change to re-lettered § 307.11(a)(1) to reflect the promulgation of the Uniform Guidance, replacing the reference to ''OMB Circular A–133 requirements'' with ''the audit requirements set out as subpart F to 2 CFR part 200''. *See* proposed revisions to §§ 307.11(a) and 307.15.

In § 307.11(c), we simplify the language regarding the amount of Grant fund disbursements. EDA believes that the current language is overly complicated and causes undue confusion. The revised language clarifies that EDA will disburse funds in the amount needed to meet the Federal share of a new RLF loan. EDA will continue to disburse Grant funds as the

RLF Recipient closes on loan obligations. For example, assume an RLF Grant has a Matching Share requirement of 50 percent. If the RLF Recipient closes on a loan obligation worth $30, EDA will disburse $15. Therefore, EDA proposes replacing the phrase ''not to exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with Grant funds'' with the phrase ''be the amount required to meet the Federal share requirement of a new RLF loan'' in the first sentence of § 307.11(c).

In addition, EDA proposes new language to § 307.11(c) to clarify how RLF Income is treated during the Disbursement Phase. The current regulations specify that RLF Income held to reimburse administrative costs does not need to be disbursed to draw additional Grant funds, but do not address RLF Income not used for administrative costs. Through this regulatory revision, EDA is clarifying that RLF Income earned during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs and increase the RLF Capital Base; however, RLF Income earned during the Disbursement Phase need not be disbursed to support new RLF loans, unless otherwise specified in the terms and conditions of the RLF Grant. *See* proposed revisions to § 307.11(c).

In addition, EDA proposes a non-substantive revision to § 307.11(d) to capitalize the word ''Grant.''

This NPRM locates all provisions that set out Local Share requirements in § 307.11(f), which requires re-locating the substance of the provision at § 307.17(d) regarding use of In-Kind Contributions to satisfy Local Share requirements. Accordingly, EDA proposes removing current § 307.17(d) and re-numbering the regulation accordingly. In revised § 307.11(f), EDA adds the phrase '', which must be specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs,'' between the term ''In-Kind Contributions'' and the phrase ''and cash Local Share'' in the first sentence of § 307.11(f)(2). EDA notes that because the purpose of the RLF program is to provide capital to borrowers that cannot otherwise access credit, EDA rarely determines that In-Kind Contributions are necessary and reasonable for accomplishment of the RLF program and, therefore, most RLF Local Share is cash. *See* proposed revisions to §§ 307.11(f) and 307.17(d).

In addition, to consolidate all pre-disbursement and disbursement requirements into § 307.11, EDA proposes relocating the provisions regarding loan closing and disbursement schedules, as well as time schedule extensions, from § 307.16(a) and (b), respectively, to § 307.11 and re-lettering them as § 307.11(g) and (h), respectively. We also propose non-substantive conforming changes to reflect defined terms and correct cross-references because of this reorganization. Specifically, EDA replaces the phrase ''initial RLF Capital Base'' with ''RLF Grant'' in the final sentence of re-lettered § 307.11(g)(1) to clarify the corpus of funds to which the lending schedule applies; replaces the cross-reference to ''§ 307.16(b)'' in re-lettered § 307.11(g)(2)(iii) with a reference to ''paragraph (h) of this section'' to reflect the reorganization of these provisions; corrects a typo by replacing the plural ''requests'' with a singular ''request'' in the last sentence of re-lettered § 307.11(h)(1); and breaks re-lettered § 307.11(h)(2) into two sentences for clarity and emphasis. *See* proposed revisions to §§ 307.11(g), 307.11(h), and 307.16(a) and (b).

In keeping with EDA's effort to clarify the distinct requirements that apply during the Disbursement and Revolving Phases of an RLF, we propose to rename the title of § 307.12 ''*Revolving Loan Fund Income requirements during the Revolving Phase; payments on defaulted and written off Revolving Loan Fund loans; Voluntarily Contributed Capital*'' to clarify that the provision describes certain requirements that apply during the Revolving Phase of the RLF and addresses other topics, rather than solely setting out RLF Income requirements. We also add the introductory phrase ''During the Revolving Phase,'' to the first sentence of § 307.12(a). In addition, EDA is providing additional flexibilities in using RLF Income to cover administrative costs. Currently, RLF Income earned during one six-month Reporting Period must be used to cover administrative costs accrued during that same six-month period. EDA is extending the time period during which RLF Income must be used to cover accrued administrative costs to a full fiscal year. Accordingly, EDA proposes revising § 307.12(a) to clarify that RLF Income earned in one fiscal year of the RLF Recipient must be used to cover administrative costs accrued during the same fiscal year, instead of the same six-month Reporting Period. Accordingly, in § 307.12(a)(1), we replace the word, ''incurred'' with ''accrued,'' and, in § 307.12(a)(1) and (2), we replace the phrase ''six-month Reporting Period'' with the phrase ''fiscal year of the RLF Recipient.'' In § 307.12(a)(3), we replace the phrase ''Reporting Period'' with ''fiscal year.'' In addition, we make a non-substantive change in § 307.12(a)(1) to add the phrase ''is earned'' after ''Such RLF Income'' to clarify that RLF Income is earned by the RLF Recipient as opposed to administrative costs, which are incurred by the RLF Recipient. In addition, in § 307.12(a)(3), we replace the phrase ''RLF Capital base'' with the proposed defined term ''RLF Capital Base.''

Furthermore, under EDA's current regulations, an RLF Recipient may use 100 percent of RLF Income incurred in a six-month Reporting Period to cover administrative expenses by submitting an RLF Income and Expense Statement (*i.e.,* Form ED–209I). EDA proposes to no longer require the RLF Income and Expense Statement, but to clearly specify that RLF Recipients may not use funds in excess of RLF Income for administrative costs during the RLF Recipient's fiscal year unless directed to do so by EDA. While EDA would no longer require Recipients to submit the RLF Income and Expense Statement, Recipients would continue to account for their RLF Income and administrative expenses through their regular ED–209 reporting. EDA also proposes language advising that RLF Recipients are expected to keep administrative expenses to a minimum to maintain the RLF Capital Base available for lending and to specify that the percentage of RLF Income used for administrative expenses will be one of the performance metrics used in EDA's Risk Analysis System. Under the proposed Risk Analysis System, RLF Recipients will be incentivized to manage their expenses in order to maintain their RLF Capital Base, and EDA will work proactively with Recipients to help maintain their RLF Capital Base and, through the annual report and audit, to monitor use of RLF Income. Given EDA's proposal to move to a risk-based management framework and the agency's efforts to encourage Recipients to use RLF Income to maintain the RLF Capital Base, as described above, EDA will no longer require the RLF Income and Expense Statement, which will reduce the reporting burden on Recipients. Accordingly, EDA replaces current § 307.12(a)(4), which requires the submission of an RLF Income and Expense Statement, with proposed language that prohibits RLF Recipients from using funds in excess of RLF

Income for administrative costs in a Recipient's fiscal year, sets the expectation that administrative costs should be kept to a minimum, and states that the percentage of RLF Income used for administrative costs will be a metric under the Risk Analysis System. *See* proposed revisions to § 307.12(a)(4) and the deletion of the current provision at § 307.14(c), which sets out the requirement for the RLF Income and Expense Statement.

In § 307.12(b), which sets out compliance guidance for charging costs against RLF Income, EDA proposes revisions to reflect the promulgation of the Uniform Guidance. Specifically, in revised § 307.12(b)(1), EDA specifies that for RLF Grants made or recapitalized on or after December 26, 2014, the RLF Recipient must comply with the administrative and cost principles set out in 2 CFR part 200. In revised § 307.12(b)(2), EDA specifies that for RLF Grants awarded before December 26, 2014, unless otherwise indicated in the terms of the Grant, the RLF Recipient must comply with the cost principles set out in 2 CFR parts 225 (for State, local, and Indian tribal governments); 230 (for non-profit organizations other than institutions of higher education, hospitals, and other organizations); or 220 (for educational institutions), as applicable. EDA proposes a new § 307.12(b)(3) to specify that regardless of when an RLF Grant was awarded or recapitalized, the audit requirements set out as subpart F to 2 CFR part 200 apply to audits of the RLF Recipient for fiscal years beginning on or after December 26, 2014, as does the Compliance Supplement, as appropriate.

In § 307.12(c), we propose minor adjustments to clarify that the prioritization of payments on RLF loans includes payments on both defaulted RLF loans and those that have been written off, adding the phrase ''and written off'' to the heading of § 307.12(c) and the first sentence of the provision between the word ''defaulted'' and the phrase ''RLF loan''. In addition, we propose revising the cross reference to ''§ 307.20'' in the provision to ''§ 307.21'' to reflect the proposed reorganization of the noncompliance provisions. *See* proposed revisions to § 307.12(c).

We also propose adding new § 307.12(d) to introduce additional clarifying language regarding the treatment of the proposed defined term Voluntarily Contributed Capital. As noted above, in addition to proposing a definition to clarify the process for contributing additional capital to an RLF and to explain how the additional capital is treated once added to the RLF Capital Base, we also propose adding a provision within the section on pre-disbursement and disbursement requirements to specify that when an RLF Recipient wishes to add additional capital to the RLF Capital Base, the Recipient must submit a written request that specifies the source of the funds to be added. Upon approval by EDA, the Voluntarily Contributed Capital becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF. This should help prevent situations when the sources of Voluntarily Contributed Capital subsequently seek to retrieve the funds that were, in effect, commingled with the rest of the Capital Base, making it difficult—if not impossible—to separate out those additional funds and to determine the local and Federal shares. *See* proposed revisions to §§ 307.8 and 307.12(d).

EDA proposes to revise RLF reporting requirements to specify that records for administrative expenses must be kept for three years from the submission date of the last report that covers the fiscal year in which the costs were recorded, rather than the last semi-annual report that covers the Reporting Period in which the costs were incurred. Therefore, in § 307.13(b)(2), we propose deleting the phrase ''last semi-annual'' between the phrase ''date of the'' and the word ''report'' and replace the defined term ''Reporting Period'' with ''fiscal year''. In addition, we propose revising § 307.13(a)(3) to specify that, consistent with the requirements of § 307.11(a), for the duration of RLF operations, Recipients must retain records to demonstrate the adequacy of the RLF's accounting system, that standard RLF loan documents are in place, and that sufficient fidelity bond coverage is maintained. In addition, the existing requirement to make records available for inspection is re-lettered as new § 307.13(a)(4). *See* proposed revisions to § 307.13.

This NPRM proposes removing the stipulation that all RLF reports be submitted to EDA on a semi-annual basis, which will permit EDA to establish a reporting frequency (annual or semi-annual) based on the objective risk presented by a given RLF, allowing EDA to more closely monitor RLF program performance and engage with RLF Recipients to identify and address existing and potential challenges. Accordingly, EDA proposes revising the title of § 307.14 to read ''*Revolving Loan Fund report*'' and in § 307.14(a), replaces the phrase ''must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission'' with ''must complete and submit an RLF report, using Form ED–209 or any successor form, in a format and frequency as required by EDA.''

To improve the accuracy and quality of the information provided during the regular reporting process, EDA proposes requiring that RLF Recipients certify as part of their regular reporting to EDA that the RLF is operating in accordance with their RLF Plan and that the information being provided is complete and accurate. In § 307.14(b), we remove the adjective ''semi-annual'' and add the phrase ''and that the information provided is complete and accurate.'' In addition, EDA proposes deleting the second sentence of § 307.14(b) to clarify that proposals to modify RLF Plans cannot be made through the reporting process. Such modifications can only be done by separate notification to EDA as described in § 307.9(c). Finally, as noted previously in this NPRM, because EDA proposes to no longer required the submission of an RLF Income and Expense Statement, EDA removes § 307.14(c) in its entirety.

EDA proposes clarifying the provision permitting the inclusion of a loan loss reserve in an RLF Recipient's financial statements, in accordance with generally accepted accounting principles (''*GAAP*'') to show the fair market value of an RLF loan portfolio. This provision has created confusion on the part of some RLF Recipients, who understood it to mean that the inclusion of a loan loss reserve also applied to the Schedule of Expenditures of Federal Awards (''*SEFA*''), which is the list of expenditures for each Federal award covered by the Recipient's financial statements and must be reviewed as part of the audit process. While GAAP permits the inclusion of a loan loss reserve in financial statements, subpart F to 2 CFR part 200, which sets out the requirements for handling audits of Federal grant programs, specifically prohibits the inclusion of a loan loss reserve in the SEFA. As a result, RLF Recipients that understood the loan loss reserve provision of the RLF regulations to apply to the SEFA ultimately provided inaccurate (and undervalued) RLF valuations in the SEFA. EDA hopes to resolve this confusion by adding a sentence to the end of § 307.15(a)(2) that clearly provides that loan loss reserves are non-cash entries only and shall not be used to reduce the nominal value of the RLF in the SEFA. In addition, the current regulations allow a loan loss reserve to be recorded to ''show the fair market value of the RLF's loan portfolio''. In the first sentence of

§ 307.15(a)(2), EDA proposes replacing the phrase ''fair market'' with ''adjusted current'' to allow a loan loss reserve to be recorded as a non-cash entry to show the adjusted current value, which will more accurately reflect how RLF portfolios are valued. In addition, EDA revises § 307.15(a)(1) to reflect the promulgation of the Uniform Guidance, replacing the reference to ''in OMB Circular A–133'' with ''the audit requirements set out as subpart F to 2 CFR part 200'' and, after the reference to the Compliance Supplement, adding the phrase ''which is Appendix XI to 2 CFR part 200,'' to help the reader locate the Supplement.

Proposed § 307.15(c), which was re-lettered from § 307.15(d) to reflect the relocation of loan and accounting systems certification requirements to § 307.11(a), sets out the requirements for RLF leveraging and enumerates investments that qualify as leverage. Recipients are currently required to ensure funding from additional sources at a ratio of $2 of additional funding to every $1 of RLF loans. This applies to the whole RLF portfolio, rather than for individual loans, and is effective for the duration of the RLF. EDA proposes to broaden RLF leveraging requirements to enable Recipients to use funds from State and local lending programs, in addition to the non-guaranteed portions and 90 percent of the guaranteed portions of Federal loan programs. Similar to allowing Federal loans to count as leveraging, if the managers of State and local lending programs are willing to provide financing to a borrower, EDA believes that such financing should count towards the leveraging requirement. To better reflect the content of this provision, EDA proposes renaming § 307.15(c) ''RLF leveraging'' and replacing the phrase ''private investment'' with ''additional investment'' in § 307.15(c)(1). In addition, we propose adding new § 307.15(c)(1)(iv) to read ''Loans from other State and local lending programs.''

As noted throughout the NPRM, EDA proposes adopting a Risk Analysis System to evaluate and manage the performance of RLF Recipients to make the RLF program more effective and efficient. Such an approach is designed to provide Recipients with a set of portfolio management and operations standards to evaluate their RLF program and improve performance. It will also provide EDA with an internal tool for assessing the risk of each Recipient's loan operations and identifying RLF Recipients that require additional monitoring, technical assistance, or other action. This approach to risk-based analysis and management is modeled on the Uniform Financial Institutions Rating System (the ''*CAMELS*'' rating system), used by regulators to assess financial institutions and to identify those in need of extra assistance or attention. The CAMELS system produces a composite rating by examining six components: Capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. EDA proposes using factors that will likely include capital, assets, management, earnings, liquidity, strategic results, and financial controls, and to use the information and data currently required to be submitted by RLF Recipients in regular reporting to assign risk analysis ratings to each RLF. Scores will be assigned for each factor on a numerical scale of one to three, with three being the highest score. The scores will be totaled to determine each RLF Recipient's classification as A, B, or C, with an A classification describing the highest performers, B identifying those who are generally managing their program well but who may need some assistance on one or more areas, and C labelling those Recipients that face serious challenges with their programs and require significant improvement. Recipients classified as B or C will generally be given a reasonable amount of time to become compliant with the relevant requirements and improve their score. However, persistent noncompliance may result in EDA undertaking appropriate compliance actions, including requiring a corrective action plan, disallowing Grant funds, or suspending or terminating the RLF Grant. As such, EDA proposes replacing EDA's current management scheme, which mainly consists of the capital utilization standard (see additional details on changes to this standard below) and monitoring loan default rates, with the Risk Analysis System. Accordingly, through this NPRM we propose completely revising § 307.16 to name it ''Risk Analysis System'' and to locate the description of the Risk Analysis System in paragraph (a) and its compliance framework in paragraph (b). As noted above, this NPRM proposes relocating current paragraphs (a) and (b) of § 307.16, which set out requirements for loan closing and disbursement schedules and time schedule extensions, respectively, as proposed paragraphs (g) and (h) to § 307.11. We also propose removing paragraphs (c) and (d) of § 307.16, which set out the capital utilization standard (to be replaced by the proposed concept of the Allowable Cash Percentage, as more fully explained below) and EDA's system for monitoring loan default rates, respectively.

Consistent with EDA's revisions to its Definitions section, this NPRM revises § 307.17 to incorporate proposed defined terms and better specify EDA's requirements related to the proposed defined term ''RLF Cash Available for Lending.'' As such, EDA proposes revising the title of § 307.17 to read ''*Requirements for Revolving Loan Fund Cash Available for Lending*'' and replacing the term *RLF Capital* with the proposed defined term *RLF Cash Available for Lending* in the first sentence of § 307.17(a) and the heading and first sentence of paragraph (c) and paragraph (c)(6)(ii) of § 307.17. In addition, we add the phrase ''shall be deposited and held in an interest-bearing account by the Recipient and'' following ''RLF Cash Available for Lending shall be'' in the first sentence of § 307.17(a) to clarify how RLF Recipients must maintain RLF Cash Available for Lending.

In addition, through this NPRM, EDA proposes adopting the concept of an *Allowable Cash Percentage,* which will be considered in the Risk Analysis System, to replace the capital utilization standard, which requires Recipients to manage their lending and repayment schedules so that at all times at least 75 percent of their RLF Capital is loaned or committed. Noncompliance with the capital utilization standard frequently triggered sequestration as a remedy. Although EDA encourages RLF Recipients to prudently make capital available as much as possible, EDA recognizes that different regions face very different economic and access to capital conditions and that a one-size-fits-all capital utilization standard can be difficult for RLF Recipients to meet and for EDA to implement. To help resolve this, EDA proposes to reverse the standard on which RLF Recipients will be assessed from the amount of capital that is loaned or committed to the amount of cash Recipients have on hand available for lending—defined as the Allowable Cash Percentage.

Each year, each EDA Regional Office will calculate the average percentage of RLF Cash Available for Lending across their RLF portfolio and will notify RLF Recipients by January 1 of each year of the Allowable Cash Percentage to be used during the ensuing year. RLF Recipients will be required to manage their repayment and lending schedules to provide that at all times, their amount of RLF Cash Available for Lending does not exceed the Allowable Cash Percentage. For example, assume an EDA Regional Office's RLF portfolio is made up of five awards. Based on their

2015 RLF reports, the percentage of each RLF's RLF Capital Base that was held as RLF Cash Available for Lending was as follows:

RLF 1—RLF Capital Base of $4,500,000, of which $1,200,000 was held as RLF Cash Available for Lending;

RLF 2—RLF Capital Base of $7,600,000, of which $2,800,000 was held as RLF Cash Available for Lending;

RLF 3—RLF Capital Base of $1,670,000, of which $630,000 was held as RLF Cash Available for Lending;

RLF 4—RLF Capital Base of $13,872,930, of which $2,974,025 was held as RLF Cash Available for Lending; and

RLF 5—RLF Capital Base of $5,423,000, of which $900,000 was held as RLF Cash Available for Lending.

Based on these numbers, on January 1, 2016, the EDA Regional Office would inform all RLF Recipients in the region's RLF portfolio that the Allowable Cash Percentage is 26 percent (the sum of RLF Cash Available for Lending for the 5 RLFs ($8,504,025) divided by the sum of the RLF Capital Base for the 5 RLFs ($33,065,930) and that they must manage their lending and repayment schedules throughout 2016 so that at all times their RLF Cash Available for Lending does not exceed 26 percent. EDA also proposes to revise its compliance framework on this issue. As noted above, noncompliance with the capital utilization standard frequently triggered automatic sequestration. Given the replacement of the capital utilization standard with the more flexible Allowable Cash Percentage and the adoption of a Risk Analysis System, EDA proposes to no longer require automatic sequestration of what is currently referred to as ''excess funds,'' the difference between the actual percentage of RLF Capital loaned and the capital utilization standard. With this change, noncompliance with the Allowable Cash Percentage will be considered in EDA's Risk Analysis System and may affect the RLF Recipient's ranking in the system. In addition, rather than being applied automatically, sequestration will be considered as one of a range of possible tools used to ensure compliance with the terms of the RLF Grant.

Accordingly, EDA revises § 307.17 (b) to set out the requirements for the Allowable Cash Percentage and re-letters existing § 307.17(b), which has been revised to set out restrictions on RLF Cash Available for Lending, as § 307.17(c) and existing § 307.17(c), which provides that EDA may require an independent third party to conduct a compliance and loan quality review, as new § 307.17(d).

In addition, to address recent concerns EDA has encountered in administering the RLF program, we propose clearly stating that RLF Cash Available for Lending may not be used to: (1) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval; (2) support operations or administration of the RLF Recipient; or (3) undertake any activity that would violate the requirements found in 13 CFR part 314, including § 314.3 (''Authorized Use of Property'') and § 314.4 (''Unauthorized Use of Property''). Using RLF funds in these ways has long been prohibited by EDA's regulations; however, EDA proposes to clearly state these prohibitions and add them as new paragraphs (c)(7), (8), and (9) to § 307.17.

Finally, we propose minor clarifying changes to the list of transactions for which RLF Cash Available for Lending may not be used. Specifically, in re-lettered § 307.17(c)(3), we replace the sentence ''Provide for borrowers' required equity contributions under other Federal Agencies' loan programs'' with ''Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan program''. In addition, in the second sentence of re-lettered § 307.17(c)(6)(ii), we replace the phrase ''RLF Capital'' with ''RLF funds'' and the phrase ''reasonable period of time, as determined by EDA'' with ''reasonable time frame approved by EDA''. As noted above, current § 307.17(d) is being removed to locate all provisions regarding In-Kind Contributions within proposed § 307.11(f).

This NPRM clarifies that EDA can approve multiple New Lending Area requests with respect to a given RLF. Recipients may request changes to their original or approved Lending Areas to address changes within the local economy or to respond to a burgeoning need. Currently, the regulations state that once EDA approves a New Lending Area, it remains in place indefinitely. EDA is simply adding language to specify that the New Lending Area remains in place until EDA approves a subsequent request for a New Lending Area. In § 307.18(a)(2), we add the introductory phrase ''Following EDA approval,'' and replace the concluding phrase ''shall remain in place indefinitely following EDA approval'' with ''shall remain in place until EDA approves a subsequent request for a New Lending Area''.

We also propose clarifying language to distinguish between the addition of lending areas and mergers of RLFs. EDA proposes removing the word, ''merged,'' from the discussion of additional lending areas in the second sentence of § 307.18(a)(1) to clarify that merging RLFs and adding lending areas are two different transactions. EDA is also clarifying the terminology in § 307.18(b)(1) used to describe a consolidated RLF by replacing the word ''surviving'' with the word ''combined''. This change is designed to make clearer the distinction between consolidations, which involve a single RLF Recipient, and mergers, which involve multiple RLF Recipients.

For clarity, this NPRM completely reorganizes the compliance regulations by separating them into one section describing what actions are considered noncompliance (§ 307.20 with the proposed title ''*Noncompliance*'') and another section listing remedies for noncompliance (§ 307.21 with the proposed title ''*Remedies for noncompliance*''). This reorganization is designed to help all RLF stakeholders understand problematic practices and appropriate remedies. *See* proposed revisions to §§ 307.20 and 307.21. In connection with this, we propose revising the list of problematic practices that could result in disallowances of a portion of an RLF. EDA proposes to remove the following from this list to reflect their incorporation into the Risk Analysis System: (1) Having RLF loans that are more than 120 days delinquent; and (2) having excess cash sequestered for 12 months or longer without an EDA-approved extension request. Procedures for dealing with delinquent loans are also covered in Part 2 of the RLF Plan. With regards to excess sequestered cash, as discussed above, the automatic sequestration of funds is now being addressed by the Risk Analysis System and the use of an Allowable Cash Percentage. However, EDA does reserve the right to take appropriate compliance action if an RLF Recipient holds RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base without an EDA-approved extension request.

We also clarify the provision regarding a Recipient's duty to compensate the Federal Government for the Federal Share of the RLF Grant in the event that the Recipient requests termination of the Grant. The current regulations state that the Recipient requesting termination must compensate the Federal Government for the Federal share of the RLF ''property, including the current value of all outstanding RLF loans.'' EDA seeks to make this regulation clearer and easier to comply with by requiring the Recipient to compensate for the Federal

share of the RLF Capital Base, including the monetary value of all outstanding loan principal. *See* proposed revisions to § 307.21(d).

We also remove the provision that required Recipients, after termination of an RLF Grant, to seek EDA approval to retain and use for other economic development activities the RLF Recipients' share of RLF Income generated by the RLF. By removing this provision, EDA is clarifying that Recipients do not need to seek EDA approval to use their share of funds returned to them following termination of an RLF. *See* proposed revisions to § 307.21(d).

Part 308—Performance Incentives

Part 308 sets out EDA's performance incentives for Recipients. When a Project is constructed under projected cost, EDA may allow the Recipient to use the excess funds to either increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 for which the Project was eligible at the time of the Investment award, or further improve the Project consistent with its purpose. The terms for performance awards under EDA's Public Works and Economic Adjustment Assistance programs are set out in § 308.2 and the terms for performance awards under EDA's Planning program are set out under § 308.3. EDA does not propose any changes to part 308.

Part 309—Redistributions of Investment Assistance

Part 309 sets out EDA's policies regarding redistributing grant funds in the form of subgrants, loans, or other appropriate assistance. Information with respect to redistributions of Investment funds for Planning, Public Works, and Training, Research, and Technical Assistance Investments is presented in § 309.1 (''*Redistributions under parts 303, 305, and 306*''). Specifically, § 309.1(a) provides that a Recipient under any program governed by parts 303, 305, and 306 may directly expend the Investment Assistance, or, with prior EDA approval, redistribute such funds in the form of a subgrant to another Eligible Recipient that qualifies for EDA Investment Assistance under the same program part as the Recipient. All subgrants must be subject to the same terms and conditions applicable to the Recipient under the original Investment award. Subsection 309.1(b) stipulates that Investment Assistance received under parts 303 or 305 may not be redistributed to a for-profit entity.

Section 309.2 (''*Redistributions under part 307*'') addresses redistributions under part 307 for Economic Adjustment Assistance Investments. This section reads similarly to § 309.1. However, a Recipient under part 307 may redistribute Investment funds to another Eligible Recipient in the form of a grant or to a non-profit and private for-profit entity in the form of a loan or other appropriate assistance under subpart B of part 307.

In both §§ 309.1 and 309.2, EDA proposes language to clarify EDA's practice of requiring the Eligible Recipient under the original award to comply with special award conditions and Subrecipient (in accordance with the proposed defined term at § 300.3) to provide appropriate certifications of compliance with relevant legal requirements. Accordingly, EDA proposes adding the sentence ''EDA may require the Eligible Recipient under the original Investment award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements'' to §§ 309.1(a) and 309.2(b). In addition, we propose adding language to refer to the proposed defined term Subrecipient in § 300.3 by adding the phrase '', generally referred to as a Subrecipient,'' to the first sentence of § 309.1(a) and § 309.2(a)(1).

Part 310—Special Impact Areas

Part 310 implements section 214 of PWEDA (42 U.S.C. 3154), which authorizes the Assistant Secretary to waive the CEDS requirements of section 302 of PWEDA (42 U.S.C. 3162) for a Project that will fulfill a ''pressing need'' of the Region or prominently address or alleviate Regional underemployment or unemployment. Section 310.1 outlines the process for designating a Region as a Special Impact Area and § 310.2 defines what may be considered a pressing need. EDA does not propose any changes to part 310.

Parts 311 and 312 [Reserved]

Part 313—Community Trade Adjustment Assistance

Part 313 sets forth regulations to implement the Trade Adjustment Assistance for Communities program authorized under chapter 4 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2371 *et seq.*). EDA does not propose any revisions to part 313.

Part 314—Property

Part 314 sets forth the rules governing Property acquired or improved, in whole or in part, with EDA Investment Assistance. As proposed in the 2011 NPRM and finalized in the 2014 Final Rule, EDA revised part 314 to make it easier to navigate and understand, including clarifying EDA's requirements on encumbrances in § 314.6 and streamlining the procedures for the release of the Federal Interest in connection with EDA-assisted Property in § 314.10. Through this NPRM, EDA proposes minor revisions to further clarify terminology and its authority to release the Federal Interest 20 years after the date of the award of Investment Assistance.

Specifically, for clarity and to conform to the proposed changes to the RLF program, EDA adds a phrase to clarify that *Personal Property* includes the *RLF Capital Base,* adding the phrase '', including the RLF Capital Base as defined at § 307.8'' to the definition of *Personal Property* set out at § 314.1. In addition, for clarity and to avoid repetitive language throughout part 314, we propose adding a definition of *Project Property.* The 2011 NPRM introduced the concept of Project Property, but did not define it. Therefore, in the definitions section at § 314.1, this NPRM adds a definition of Project Property to read as follows: ''*Project Property* means all Property that is acquired or improved, in whole or in part, with Investment Assistance and is required, as determined by EDA, for the successful completion and operation of a Project and/or serves as the economic justification of a Project. As appropriate to specify the type of Property to which they are referring, subparts B and C of this part refer to Project Property as 'Project Real Property' or 'Project Personal Property'.'' In addition, this NPRM proposes simplifying the definition of *Real Property* to clarify that, in the context of part 314 and for the purposes of EDA Investment Assistance, Real Property may include Property that is served by the construction of Project infrastructure, where such infrastructure is not located on or under the Property. Accordingly, we replace the word ''improved'' in the second sentence of the definition with the word ''served'' and remove the phrase ''that are not situated on or under the land''. We also propose putting the exemplar list of infrastructure projects ''such as roads, sewer, and water lines'' in parentheses and removing the phrase '', but not limited to'' from the exemplar list because it is unnecessary. Removing ''but not limited to'' is not substantive and does not make the list exclusive.

In § 314.2 (''*Federal Interest''*), we add a sentence to the beginning of paragraph (a) to set out the general expectation that title to Project Property vests upon acquisition with the Recipient. In addition, in the now second sentence of § 314.2(a), we propose replacing the

phrase ''Property that is acquired or improved, in whole or in part, with Investment Assistance'' with the newly defined term Project Property. For clarity, we split the sentence regarding the purpose of the Federal Interest and how it is secured into two sentences and replace the word ''secures'' in the now third sentence with the word ''ensures'' and also add the phrase ''EDA Project requirements, including those related to'' between ''ensures compliance with'' and ''the purpose, scope, and use of a Project''. With respect to the method by which Recipients must secure the Federal Interest, we replace the phrase ''and is often reflected by'' with the phrase ''The Recipient typically must secure the Federal Interest through''.

In § 314.2(b), we replace the phrase ''Property acquired or improved, in whole or in part, with Investment Assistance'' with the newly defined term Project Property. In addition, to flag that nondiscrimination requirements continue to apply even if the Federal Government is compensated for the Federal Share, we add the phrase ''except as provided in § 314.10(e)(3) regarding nondiscrimination requirements'' to the end of § 314.2(b).

In § 314.3 (''*Authorized Use of Property''*), we propose revising the title of the regulation to read ''Authorized Use of Project Property'' to reflect the newly defined term Project Property. We also break current paragraph (e), which addresses requirements for replacement Personal Property and Real Property into two separate paragraphs that address the requirements of the different types of Property. Accordingly, we move the sentence that addresses replacement Real Property that is currently the final sentence of § 314.3(e) into new § 314.3(f) and re-number the regulation accordingly, re-designating current § 314.3(f) as new § 314.3(g). In addition, EDA adds helpful paragraph headings to help the reader better navigate the section and find information more quickly. Accordingly, we add the heading ''*General''* to § 314.3(a), ''*Project Property that is no longer needed for Project purposes''* to § 314.3(b), ''*Real Property for sale or lease''* to § 314.3(c), ''*Property transfers and Successor Recipients''* to § 314.3(d), ''*Replacement Personal Property''* to § 314.3(e), ''*Replacement Real Property''* to § 314.3(f), and ''*Incidental use of Project Property''* to § 314.3(g).

In both § 314.3(a) and (b), we replace the phrase ''Property acquired or improved, in whole or in part, with Investment Assistance'' with the newly defined term Project Property and in the first sentence of both § 314.3(d) and (g), we add the word ''Project'' before ''Property'' to incorporate the newly defined term Project Property. Finally, in § 314.3(g), which addresses under what circumstances EDA can approve an incidental use of Project Property, we add the phrase ''undermine the economic purpose for which the Investment was made'' between ''otherwise'' and ''or adversely'' to clarify that as well as not adversely affecting the economic useful life of the Property, an approved incidental use of Project Property must not undermine the purpose of the Investment.

In § 314.4 (''*Unauthorized Use of Property''*), we propose revising the title of the regulation to read ''Unauthorized Use of Project Property'' to reflect the newly defined term ''Project Property''. In addition, EDA proposes adding helpful paragraph headings to help the reader navigate the regulation, adding the heading ''*Compensation of Federal Share upon an Unauthorized Use of Project Property''* to § 314.4(a), ''*Additional Unauthorized Uses of Project Property''* to § 314.4(b), and ''*Recovery of the Federal Share''* to § 314.4(c). In § 314.4(a), this NPRM proposes minor clarifying changes, specifically replacing ''EDA's interest'' with ''the Federal Interest'', capitalizing the word ''Government'' as used in the term ''Federal Government'', replacing ''Property acquired or improved in whole or in part with Investment Assistance'' with the newly defined term ''Project Property'', and replacing a reference to 15 CFR parts 14 or 24 with 2 CFR part 200. We make similar clarifying changes to § 314.4(b), replacing ''EDA's interest'' with ''the Federal Interest'' and ''Real Property or tangible personal property acquired or improved with EDA Investment Assistance'' with the phrase ''Project Real Property or tangible Project Personal Property''. Finally, in § 314.4(c), in the first sentence we add the word ''Project'' before two instances of the word ''Property'', replace ''its interest'' with ''the Federal Interest'', and capitalize the word ''Government'' in ''Federal Government''. In the final sentence of the paragraph, EDA proposes capitalizing ''Government'' in ''Federal Government'' and adding a reference to the ongoing requirement that Project Property not be used in violation of nondiscrimination requirements even after the compensation of the Federal Share by adding the phrase '', except for the nondiscrimination requirements set forth in § 314.10(d)(3)'' to the end of the paragraph.

Section 314.5 (''Federal Share'') addresses the portion of Project Property attributable to EDA's Investment Assistance. In § 314.5(a), EDA proposes adding two new sentences to explain EDA's usual practice of relying on a certified appraisal prepared by a licensed appraiser to determine the fair market value of Project Property and also provide that in certain extraordinary circumstances, and at the agency's sole discretion, EDA may rely on an alternative method to determine the fair market value, such as the amount of the award of Investment Assistance or the amount paid by a transferee. EDA recognizes that in certain, very unusual circumstances, such as when Property is located in an extremely remote location or, for whatever reasons, there are no buyers for similar Property, it may be impossible or cost prohibitive to obtain a certified appraisal and wishes to provide for this situation. Therefore, EDA proposes adding the following sentences to the paragraph: ''EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA's sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee.'' In addition, EDA adds the word ''Project'' before ''Property'' in the first sentence of the paragraph and the phrase ''or other valuation as determined by EDA'' between ''fair market value'' and ''of the Property'' in the final sentence of the paragraph.

In § 314.6 (''Encumbrances''), this NPRM proposes revising paragraph (a) to replace the phrase ''Recipient-owned Property acquired or improved in whole or improved in whole or in part with Investment Assistance'' with the newly proposed defined term ''Project Property''. In addition, in the exception provision to the requirement that there be no encumbrances on Project Property regarding encumbrances to secure a grant or loan made by a governmental body, EDA proposes adding the phrase ''so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance'' to reflect the requirement that the Recipient expeditiously disclose any such encumbrance to EDA. In § 314.6(b)(3) on pre-existing encumbrances, we add the phrase ''and disclosed to EDA'' between ''in place'' and ''at the time'' to

underscore that the Recipient must disclose pre-existing encumbrances to EDA and add ''**,** in its sole discretion,'' to underscore that the approval of pre-existing encumbrances is at EDA's discretion. In addition, because pre-existing encumbrances pose the same risks to Project Property as other types of encumbrances, EDA revises § 314.6(b)(3) to incorporate certain requirements from the subparagraphs setting out requirements for encumbrances proposed both proximate to and after Project approval: Namely, for EDA to approve a pre-existing encumbrance, in addition to the requirement that EDA determine that the requirements of § 314.7(b) are met, EDA must determine that the terms and conditions of the encumbrance are satisfactory and that there is a reasonable expectation that the Recipient will not default on its obligations. EDA renumbers these three requirements as § 314.6(b)(1)(i), (ii), and (iii), respectively.

With respect to § 314.6(b)(4) and (5), which set out the requirements for EDA's approval of encumbrances proposed proximate to Project approval and encumbrances proposed after Project approval, respectively, while EDA does not propose any changes to the regulatory text, in the preamble to the 2011 NPRM and the 2015 Final Rule, EDA repeatedly referred to revisions to § 314.6 to clarify the requirements for EDA to subordinate its interest in Project Property. However, the regulatory text sets out the requirements for EDA to approve any type of encumbrance on Project Property, regardless of the priority of the Federal Interest and whether EDA agrees to subordinate or not, and through this preamble, EDA confirms that this read is correct. EDA must undertake the analyses required under § 314.6(b) for encumbrances proposed on Project Property regardless of whether EDA's position in such Property changes.

In addition, we propose minor style changes to § 314.6(b)(4)(v)(B) and (5)(v)(B) to add the phrase ''A Recipient that is a'' to the beginning of the subparagraph to maintain the parallel nature of the list. In addition, in § 314.5(c), we replace the phrase ''Recipient-owned Property'' with ''Project Property''. As specified in the government-wide grant regulations set out at 2 CFR part 200 and noted in the proposed revisions to § 314.2(a), Project Property generally vests upon acquisition in the Recipient, and so the adjective ''Recipient-owned'' is unnecessary.

In § 314.7 (''*Title*''), EDA proposes adding language to paragraph (a) to flag that certain limited exceptions apply to the title requirement, make the provision more readable, and refer directly to the definition of Real Property set out in § 314.1. As such, EDA adds the introductory phrase ''Except in those limited circumstances identified in paragraph (c) of this section'' to the first sentence. In addition, we relocate the temporal requirement of when title must be obtained to the beginning of the sentence by adding ''**,** at the time Investment Assistance is awarded'' between ''in paragraph (c) of this section'' and ''the Recipient''. For clarity with respect to EDA's requirements, we include a reference to the definition of Real Property in § 314.1 by adding the clause ''**,** which, as noted in § 314.1 in the definition of 'Real Property' includes land that is served by the construction of Project infrastructure (such as roads, sewers, and water lines) and where the infrastructure contributes to the value of such land as a specific purpose of the Project'' to the first sentence of the paragraph. We also break the requirement that the Recipient maintain title at all times during the Estimated Useful Life of the Project into a separate sentence, which we place as the second sentence of the paragraph. This NPRM proposes replacing the phrase ''Real Property required for a project'' with the proposed defined term ''Project Real Property'' in both the first and third sentences of § 314.7(a).

Throughout paragraph (c) of § 314.7, which sets out the exceptions to EDA's title requirement, we replace the phrase ''the Real Property required for a Project'' with ''Project Real Property''. EDA proposes adding the clause ''at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project'' to the introductory sentence at § 314.7(c), add ''Project'' before ''Real Property'' twice in § 314.7(c)(1), and capitalize ''Government'' in ''Federal Government'' in § 314.7(c)(1)(i). In § 314.7(c)(4), which clarifies the exception for the title requirement when a Project includes construction on a government-owned roads, EDA proposes clarifying changes to replace the phrase ''public highway'' with the more descriptive ''State or local government owned roadway or highway'' in the heading, first sentence of § 314.7(c)(4), and first clause of § 314.7(c)(4)(ii)(B). To avoid excessive wordiness, we maintain the phrase ''public highway'' where it exists in the remainder of the provision, but revise it to read ''public roadway or highway'' and note that the exception in this provision is intended to apply to State or local government owned roadways or highways.

In § 314.7(c)(5)(i), which sets out EDA's requirements when the purpose of a Project is to construct facilities to serve Recipient or privately owned Real Property, we propose clarifying syntax changes to revise the phrase ''Real Property, including industrial or commercial parks, for sale or lease'' to read ''Project Real Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease''. In subparagraph (i)(A) of the provision, we replace the phrase ''required for such Project'' with the clarifying phrase ''intended for sale or lease'' and add a cross-reference to the appropriate title requirements by adding the phrase ''in accordance with paragraphs (C), (D), and (E) of this section'' to the end of the subparagraph. In subparagraph (i)(B), EDA replaces ''required for such Project'' with ''intended for lease'', and in subparagraph (iii) we capitalize ''Owner''.

Section 314.8 (''*Recorded Statement for Project Real Property*'') sets out requirements for recording the Federal Interest in Project Real Property. Throughout the provision we replace three instances of ''EDA's interest'' with ''the Federal Interest'' and use the defined term ''Project Real Property'' as appropriate, using the term in the heading of the regulation and replacing ''the Property acquired or improved in whole or in part with the EDA Invest Assistance'' in paragraph (a), ''Real Property'' in paragraph (b), and ''Project Property'' in paragraph (d).

In § 314.9 (''*Recorded statement for Personal Property*''), EDA revises the provision to clarify that the recorded statement, which is generally a Uniform Commercial Code Financing Statement (''*Form UCC–1*''), provides notice of the Federal Interest in Project Personal Property, but does not create a lien on the Property by inserting the phrase ''provide notice of the Federal Interest in all Project Personal Property by executing'' between ''the Recipient shall'' and ''a Uniform Commercial Code Financing Statement'' in the first sentence of the regulation. In addition, we use the term ''Project Personal Property'' appropriately throughout the provision, including in the title to the regulation, inserting ''Project'' before the phrase ''Personal Property, acceptable in form and substance to EDA'' in the first sentence of the regulation, and replacing ''Personal Property acquired or improved as part of the Project'' with

''all Project Personal Property'' in the second sentence of the regulation, and replace ''EDA's interest'' with ''the Federal Interest'' in the first sentence to the regulation.

Section 314.10 (''*Release of EDA's Property Interest''*) sets out EDA's procedures for releasing the agency's interest in Project Property. This NPRM proposes replacing the term ''EDA's Property Interest'' with ''the Federal Interest'' in the titles of both subpart D and § 314.10 and throughout § 314.10 for clarity and consistency. This change does not implicate any substantive change to the Federal Government's undivided equitable reversionary interest in award property, but is intended for consistency throughout these regulations and with 2 CFR part 200. In addition, in § 314.10(a), EDA replaces the phrase ''Property acquired or improved with Investment Assistance'' with ''Project Property'' for consistency with the proposed defined term at § 314.1 and its usage throughout part 314. In addition, EDA proposes removing the portions of paragraph (a) that provide background on EDA's historical practice for establishing the Estimated Useful Life of specific Projects. It is accurate that since 1999, EDA has typically established useful lives of between 15 and 20 years, depending on the nature of the asset. As EDA noted in the 2011 NPRM, the Economic Development Administration and Appalachian Regional Development Reform Act of 1998 (Pub. L. 105–393) added section 601(d) to PWEDA (42 U.S.C. 3211(d)) to allow EDA to release its interest in Real or Personal Property after 20 years. This amendment was designed to provide EDA with additional flexibilities to release its interest in Project Property, particularly as some Projects implicated 40-year Estimated Useful Lives, not to mandate a minimum 20-year useful life for all Project Property. Although these regulatory provisions provided useful background, they were not necessary for the regulation and we believe maintaining this history in the preamble is sufficient. Accordingly, we remove the concluding clause of the second sentence and the third sentence of paragraph (a) and combine the first and second sentence of the paragraph to read ''As provided in § 314.2 of this chapter, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award.'' We also simplify the final sentence in paragraph (a), replacing the phrase ''govern the manner of obtaining'' with the word ''obtain'' and adding the phrase ''in Project Property'' at the end of the sentence following the phrase ''of the Federal Interest''.

In paragraph (b), which sets out EDA's procedures for releasing the Federal Interest after the expiration of the Estimated Useful Life, we revise the paragraph heading to read ''*Release of the Federal Interest''* instead of ''*Release of Property''* to more accurately reflect the content of the provision, correct a typo in the second sentence by adding the word ''the'' between ''in writing by'' and ''Recipient'', and add a sentence to the end of the paragraph that provides a helpful cross reference to § 314.10(e), which sets out the limitations and covenants of use that are applicable to any release of the Federal Interest.

In paragraph (c), which sets out the EDA's procedures for releasing the Federal Interest before the expiration of the Estimated Useful Life, which release requires compensation of the Federal Interest, we correct a typo in the paragraph heading by adding the word ''the'' between ''prior to'' and ''expiration''. In addition, as more fully explained in the description of revisions to paragraph (e) below, we add a clause to clarify that when EDA releases the Federal Interest after receiving compensation for such interest, EDA has no further interest in the property, except for specific nondiscrimination requirements. Accordingly, we add a concluding clause to the final sentence of the paragraph to read ''and will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.''

Paragraph (d) of § 314.10 sets out EDA's procedures for releasing the Federal Interest before the expiration of the Estimated Useful Life, but at least 20 years after the award of Investment Assistance, as authorized under section 601(d)(2) of PWEDA. This authority is generally applicable when the Estimated Useful Life is long (*i.e.,* 30 or 40 years) and when the Recipient has complied with all terms of the award of Investment Assistance and the economic development benefits of the award have been achieved. To clarify the intent of this paragraph, EDA revises the heading to read ''*Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance''.* In addition, we make additional clarifying changes throughout the paragraph. In the first sentence of the paragraph, we replace the phrase ''that exceeds 20 years'' with '', but where 20 years have elapsed since the award of Investment Assistance''. In addition, to clarify the determinations that EDA will make in this situation, EDA adds the following concluding phrase to the paragraph ''if EDA determines: (1) The Recipient has made a good faith effort to fulfill all terms and conditions of the of the award of Investment Assistance; and (2) The economic development benefits as set out in the award of Investment Assistance have been achieved.'' As with paragraph (b), EDA has added a sentence to the end of this paragraph that provides a necessary cross reference to § 314.10(e), which sets out the limitations and covenants of use that are applicable to any release of the Federal Interest.

Finally, in paragraph (e), EDA makes needed corrections and clarifications to limitations of use and required covenants applicable to a release of the Federal Interest. When EDA releases its interest at the expiration of the Estimated Useful Life under § 314.10(b) or releases its interest before the expiration of the Estimated Useful Life but after at least 20 years have elapsed since the award of Investment Assistance under § 314.10(d), two use limitations on Project Property survive the release: (1) Such Property may not be used for explicitly religious purposes; and (2) such Property may not be used in violation of the nondiscrimination requirements set out in § 302.20. However, in the above two scenarios, if compensation is made to EDA of the Federal Interest at the time of the release or anytime thereafter, the requirement that Project Property not be used for explicitly religious purposes will be extinguished. Similarly, when EDA releases the Federal Interest before the expiration of the Estimated Useful Life and upon compensation of the Federal Interest, the requirement that Project Property not be used for explicitly religious purposes no longer remains. Note that while § 314.10 currently makes references to ''inherently religious purposes,'' EDA is proposing changing these references to ''explicitly religious purposes'' to be consistent with recent rulemakings by nine other Federal agencies implementing Executive Order 13559. *See, e.g.,* 28 CFR 38.5(a) (Department of Justice); 81 FR 19358–59. The term ''explicitly religious activities'' clarifies that the prohibition is against external, observable activities, and not directed against the religious motivation an entity may have in providing services.

Through this NPRM, EDA proposes revisions to subparagraphs (e)(2) and (3) to make the points above clear. Specifically, we add a final sentence to

paragraph (e)(2) clarifying that when requesting release of the Federal Interest, the Recipient must disclose the future intended use of the Real Property. New subparagraph (e)(2)(i) clarifies that a Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities will be required to execute and record a covenant prohibiting use of the Real Property for explicitly religious activities. New subparagraph (e)(2)(ii) clarifies the requirements for a Recipient that intends or foresees the use of Real Property or tangible Personal Property for explicitly religious activities. In this case, EDA may require the Recipient to compensate the agency for the Federal Interest to obtain a release and resulting waiver of the ''explicitly religious activities'' prohibition, and recommends that any such Recipient contact EDA well in advance of requesting a release. It is important to recognize that the structure now proposed—payment of the Federal Interest excusing the Recipient from having to comply with the religious use prohibition but not excusing continued compliance with the non-discrimination prohibition—was actually in place before EDA's most recent Final Rule became effective on January 20, 2015. As became clear in the past year when the agency was confronted with several situations involving the religious use prohibition, the January 20, 2015 Final Rule appears to have inadvertently amended certain language in § 314.10 that created ambiguity and unintended consequences that necessitates the proposed changes. Subparagraph (e)(3) is revised so that it specifies the requirement that Real Property or tangible Personal Property not be used in violation of the nondiscrimination requirements of § 302.20. Therefore, we add the clause '', including a release upon a Recipient's compensation for the Federal Share'' between ''under this section'' and ''a Recipient must'' in the first sentence of (e)(3). In addition, where (e)(3) specifies the requirements for avoiding any discriminatory use of Project Property, we remove two instances of the phrase ''for inherently religious activities prohibited by applicable Federal law and'' from the first and second sentences. EDA emphasizes that the differing treatments of the religious use covenant and non-discrimination covenant, which has been part of EDA's regulatory framework for a number of years, is in our view justified by the fact that different legal authorities control the agency's obligations in each situation.

Part 315—Trade Adjustment Assistance for Firms

Part 315 sets forth regulations to implement the Trade Adjustment Assistance for Firms program authorized under chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*). EDA does not propose any revisions to part 315.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866 and No. 13563

This proposed rule was drafted in accordance with Executive Orders 12866 and 13563. The Office of Management and Budget (OMB) has determined that this proposed rule is significant for purposes of Executive Order 12866 and Executive Order 13563. Accordingly, the rule has undergone interagency review.

Congressional Review Act

This NPRM is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' It has been determined that this proposed rule does not contain policies that have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''*PRA*'') requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this proposed rule. These collections of information are necessary for the proper performance and functions of EDA.

Part or section of this proposed rule	Nature of request	Form/title/OMB control number
307.14(a)	All RLF Recipients must submit reports to EDA in a format designated by EDA.	ED–209, RLF Report (0610–0095).
307.14(b)	All Recipients must certify as part of the report that the RLF is operating in accordance with the RLF Plan and that the information provided is complete and accurate.	ED–209, RLF Report (0610–0095).

List of Subjects

13 CFR Part 300

Distressed region, Financial assistance, Headquarters, Regional offices.

13 CFR Part 301

Applicant and application requirements, Economic distress levels, Eligibility requirements, Grant administration, Grant programs, Investment rates.

13 CFR Part 302

Civil rights, Conflicts-of-interest, Environmental review, Federal policy

and procedures, Fees, Intergovernmental review, Post-approval requirements, Pre-approval requirements, Project administration, Reporting and audit requirements.

13 CFR Part 303

Award and application requirements, Comprehensive economic development strategy, Planning, Short-term planning investments, State plans.

13 CFR Part 304

District modification and termination, Economic development district, Organizational requirements, Performance evaluations.

13 CFR Part 305

Award and application requirements, Economic development, Public works, Requirements for approved projects.

13 CFR Part 307

Award and application requirements, Economic adjustment assistance, Income, Liquidation, Merger, Revolving loan fund, Pre-loan requirements, Record and reporting requirements, Sales and securitizations, Termination.

13 CFR Part 309

Redistributions of investment assistance, Subgrants, Subrecipients.

13 CFR Part 314

Authorized use, Federal interest, Federal share, Property, Property interest, Release, Title.

Regulatory Text

For the reasons discussed above, EDA proposes to amend 13 CFR, chapter III as follows:

PART 300—GENERAL INFORMATION

■ 1. Revise the authority citation of part 300 to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; 15 U.S.C. 3701; Department of Commerce Organization Order 10–4.

■ 2. Amend § 300.3 by:

■ a. Adding a definition for *Co-Recipient* in alphabetical order;

■ b. Revising the definitions of *In-Kind Contribution(s), Project,* and *Recipient;* and

■ c. Adding definitions for *Stevenson-Wydler* and *Sub-Recipient* in alphabetical order.

The revisions and additions read as follows:

§ 300.3 Definitions.

* * * * *

Co-Recipient means one of multiple Recipients awarded Investment Assistance under a single award. Unless otherwise provided in the terms and conditions of the Investment Assistance, each Co-Recipient is jointly and severally liable for fulfilling the terms of the Investment Assistance.

* * * * *

In-Kind Contribution(s) means non-cash contributions, which may include contributions of space, equipment, services and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal Uniform Administrative Requirements and cost principles as set out in 2 CFR part 200.

* * * * *

Project means the proposed or authorized activity (or activities) the purpose of which fulfills EDA's mission and program requirements as set forth in PWEDA or Stevenson-Wydler and this chapter and which may be funded in whole or in part by EDA Investment Assistance.

* * * * *

Recipient means an entity receiving EDA Investment Assistance, including any EDA-approved successor to the entity.

* * * * *

Stevenson-Wydler, for purposes of EDA, means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*).

Subrecipient means an Eligible Recipient that receives a redistribution of Investment Assistance in the form of a subgrant, under part 309 of this chapter, from another Eligible Recipient to carry out part of a Federal program.

* * * * *

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

■ 3. The authority section for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 4. Revise paragraph (b) of § 301.2 to read as follows:

§ 301.2 Applicant eligibility.

* * * * *

(b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA, at its sole discretion, may waive this cooperation requirement for certain Projects of a significant Regional or national scope under parts 306 or 307 of this chapter. *See* §§ 306.3(b), 306.6(b), and 307.5(b) of this chapter.

■ 5. Revise § 301.5 to read as follows:

§ 301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must provide documentation to EDA demonstrating that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance. EDA shall determine at its sole discretion whether the Matching Share documentation adequately addresses the requirements of this section.

■ 6. Revise paragraph (a) of § 301.7 to read as follows:

§ 301.7 Investment Assistance application.

(a) For all EDA Investment Assistance programs, including the Public Works, Economic Adjustment Assistance, Planning, Local Technical Assistance, Research and National Technical Assistance, and University Center programs, EDA will publish an FFO that specifies application submission requirements and evaluation procedures and criteria. Each FFO will be published on the EDA Web site and at *http://www.grants.gov.* All forms required for EDA Investment Assistance may be obtained electronically from *http://www.grants.gov* or from the appropriate regional office.

* * * * *

■ 7. Revise § 301.8 to read as follows:

§ 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA's statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the Eligible Applicant to implement the proposed Project. EDA will also review applications for conformance with program-specific evaluation criteria set out in the applicable FFO.

■ 8. Revise the introductory text of paragraph (a) to § 301.11 to read as follows:

§ 301.11 Infrastructure.

(a) EDA will fund both construction and non-construction infrastructure necessary to meet a Region's strategic economic development goals and needs,

which in turn results in job creation. This includes infrastructure used to develop basic economic development assets as described in §§ 305.1 and 305.2 of this chapter (*e.g.,* roads, sewers, and water lines), as well as infrastructure that supports innovation and entrepreneurship. The following are examples of innovation and entrepreneurship-related infrastructure that support job creation:

* * * * *

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

■ 9. Revise the authority citation of part 302 to read as follows:

Authority: 19 U.S.C. 2341 *et seq.;* 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10–4.

■ 10. Revise § 302.5 to read as follows:

§ 302.5 Relocation assistance and land acquisition policies.

Recipients of EDA Investment Assistance or any other types of assistance under PWEDA, the Trade Act, and Stevenson-Wydler (States and political subdivisions of States and non-profit organizations, as applicable) are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646; 42 U.S.C. 4601 *et seq.*). *See* 15 CFR part 11 and 49 CFR part 24 for specific compliance requirements.

■ 11. Revise § 302.6 to read as follows:

§ 302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

■ 12. Revise the introductory text to paragraph (a) and paragraphs (a)(2) and (d) of § 302.20 to read as follows:

§ 302.20 Civil rights.

(a) Discrimination is prohibited by a Recipient or Other Party (as defined in paragraph (b) of this section) with respect to a Project receiving Investment Assistance under PWEDA or Stevenson-Wydler or by an entity receiving Adjustment Assistance (as defined in § 315.2 of this chapter) under the Trade Act or any other type of assistance under Stevenson-Wydler, in accordance with the following authorities:

* * * * *

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA), 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*) (proscribing discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution), and the Department's implementing regulations found at 15 CFR part 8a;

* * * * *

(d) All Recipients of Investment Assistance under PWEDA and Stevenson-Wydler, all Other Parties, and all entities receiving Adjustment Assistance under the Trade Act or any other type of assistance under Stevenson-Wydler must submit to EDA written assurances that they will comply with applicable laws, EDA regulations, Department regulations, and such other requirements as may be applicable, prohibiting discrimination.

* * * * *

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

■ 13. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 14. Revise paragraphs (b)(1) and (b)(3)(ii) of § 303.6 to read as follows:

§ 303.6 Partnership Planning and the EDA-funded CEDS process.

* * * * *

(b) * * *

(1) *CEDS Strategy Committee.* The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region, which may include Indian tribes, the private sector, State and other public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education, minority and labor groups, and others who can contribute to and benefit from improved economic development in the relevant Region. In addition, the Strategy Committee must demonstrate the capacity to undertake a collaborative and effective planning process.

* * * * *

(3) * * *

(ii) The Planning Organization must submit a new or revised CEDS to EDA at least every five years, unless EDA or the Planning Organization determines that a new or revised CEDS is required earlier due to changed circumstances. In connection with the submission of a new or revised CEDS, the Planning Organization must obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District.

* * * * *

■ 15. Revise paragraph (c)(1) of § 303.7 to read as follows:

§ 303.7 Requirements for Comprehensive Economic Development Strategies.

* * * * *

(c) * * *

(1) In determining the acceptability of a CEDS prepared independently of EDA Investment Assistance or oversight for Projects under parts 305 and 307 of this chapter, EDA may in its discretion determine that the CEDS is acceptable so long as it includes all of the elements listed in paragraph (b) of this section. In certain circumstances, EDA may accept a non-EDA funded CEDS that does not contain all the elements listed in paragraph (b) of this section. In doing so, EDA shall consider the circumstances surrounding the application for Investment Assistance, including emergencies or natural disasters and the fulfillment of the requirements of section 302 of PWEDA.

* * * * *

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

■ 16. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

■ 17. Revise paragraph (c)(2) of § 304.2 to read as follows:

§ 304.2 District Organizations: Formation, organizational requirements and operations.

* * * * *

(c) * * *

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, which may include the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. In addition, the governing body must

demonstrate the capacity to implement the EDA-approved CEDS.

* * * * *

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT DISTRICTS

■ 17. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

■ 18. Revise paragraph (b) of § 305.6 to read as follows:

§ 305.6 Allowable methods for procurement of construction services.

* * * * *

(b) For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 CFR part 200.

■ 19. Revise paragraph (c) of § 305.8 to read as follows:

§ 305.8 Recipient-furnished equipment and materials.

* * * * *

(c) Acquisition of Recipient-furnished equipment or materials under this section also is subject to the requirements of 2 CFR part 200.

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

■ 20. The authority citation of part 307 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

■ 21. Revise § 307.6 to read as follows:

§ 307.6 Revolving Loan Funds established for lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but also may fund public infrastructure or other authorized lending activities. The requirements in this subpart B apply to EDA-funded RLFs. Special award conditions may contain appropriate modifications of these requirements.

■ 22. Revise the introductory text of paragraph (b) and paragraph (b)(2) of § 307.7 to read as follows:

§ 307.7 Revolving Loan Fund award requirements.

* * * * *

(b) RLF Grants shall comply with the requirements set forth in this part, as well as relevant provisions of parts 300 through 303, 305, and 314 of this chapter and in the following publications:

(1) * * *

(2) The Compliance Supplement, which is appendix XI to 2 CFR part 200 and is available on the OMB Web site at *https://www.whitehouse.gov/omb/circulars_default.*

■ 23. Amend § 307.8 as follows:

■ a. Add definitions for *Allowable Cash Percentage* and *Disbursement Phase* in alphabetical order;

■ b. Revise the definitions of *Recapitalization Grants* and *Reporting Period*;

■ c. Add a definition for *Risk Analysis System* in alphabetical order;

■ d. Remove the definition of *RLF Capital;*

■ e. Add definitions for *RLF Capital Base* and *RLF Cash Available for Lending* in alphabetical order;

■ f. Revise the definition of *RLF Income;* and

■ g. Add definitions for *RLF Recipient* and *Voluntarily Contributed Capital* in alphabetical order.

The additions and revisions read as follows:

§ 307.8 Definitions.

* * * * *

Allowable Cash Percentage means the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office's portfolio of RLF Grants over the previous year.

* * * * *

Disbursement Phase means the period of loan activity where Grant funds awarded have not been fully disbursed to the RLF Recipient.

* * * * *

Recapitalization Grants are Investments of additional Grant funds to increase the RLF Capital Base.

Reporting Period, for purposes of this subpart B only, is based on the RLF Recipient's fiscal year end and is on an annual or semi-annual basis as determined by EDA.

* * * * *

Risk Analysis System refers to a set of metrics defined by EDA to evaluate a Recipient's administration of its RLF Grant and that may include but is not limited to capital, assets, management, earnings, liquidity, strategic results, and financial controls.

RLF Capital Base means the total value of RLF Grant assets administered by the RLF Recipient. It is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable), the RLF, plus Local Share, plus RLF Income, plus Voluntarily Contributed Capital, less any loan losses and disallowances. Except as used to pay for eligible and reasonable administrative costs associated with the RLF's operations, the RLF Capital Base is maintained in two forms at all times: As RLF Cash Available for Lending and as outstanding loan principal.

RLF Cash Available for Lending means the portion of the RLF Capital Base that is held in cash and available to make loans.

RLF Income means interest earned on outstanding loan principal and RLF accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to generally accepted accounting principles (GAAP) and § 307.20(h).

RLF Recipient means the Eligible Recipient that receives an RLF Grant to manage an RLF in accordance with an RLF Plan, Prudent Lending Practices, the terms and conditions of the RLF Grant, and all applicable policies, laws, and regulations.

* * * * *

Voluntary Contributed Capital means an RLF Recipient's voluntary infusion of additional non-EDA funds into the RLF Capital Base that is separate from and exceeds any Local Share that is required as a condition of the RLF Grant. Voluntary Contributed Capital is an irrevocable addition to the RLF Capital Base and must be administered in accordance with EDA regulations and policies.

■ 24. In § 307.11, revise the section heading and paragraphs (a), (c), (d), and (f)(2) and add paragraphs (g) and (h) to read as follows:

§ 307.11 Pre-disbursement requirements and disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.* (1) Within 60 calendar days before the initial disbursement of EDA funds, the RLF Recipient must provide the following in a form acceptable to EDA:

(i) A certification from a qualified independent accountant who preferably has audited the RLF Recipient's accounting system in accordance with the audit requirements set out as subpart F to 2 CFR part 200 that such system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations.

(ii) The RLF Recipient's certification that standard RLF loan documents reasonably necessary or advisable for lending are in place and a certification from the RLF Recipient's legal counsel that the loan documents are adequate and comply with the terms and conditions of the RLF Grant, RLF Plan, and applicable State and local law. The standard loan documents must include, at a minimum, the following:

(A) Loan application;

(B) Loan agreement;

(C) Board of directors' meeting minutes approving the RLF loan;

(D) Promissory note;

(E) Security agreement(s);

(F) Deed of trust or mortgage (as applicable);

(G) Agreement of prior lien holder (as applicable); and

(H) Evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

(iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Grant award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the maximum loan amount allowed for in the EDA-approved RLF Plan.

(2) The RLF Recipient is required to maintain the adequacy of the RLF's accounting system and maintain and update standard RLF loan documents at all times during the duration of the RLF's operation. In addition, the RLF recipient must maintain sufficient fidelity bond coverage as described in this subsection for the duration of the RLF's operation. The RLF Recipient shall maintain records and documentation to demonstrate the requirements set out in this paragraph (a) are maintained for the duration of the RLF's operation. *See also* § 307.13(b)(3).

* * * * *

(c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall be the amount required to meet the Federal share requirement of a new RLF loan. RLF Income held during the disbursement phase may be used to reimburse eligible administrative costs. RLF Income earned during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs, provide the requirements of § 307.12(a) and (b) are met, and increase the RLF Capital Base. RLF Income earned during the Disbursement Phase is not required to be used for new RLF loans, unless otherwise specified in the terms and conditions of an RLF Grant.

(d) *Interest-bearing account.* All Grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account by the Recipient until an RLF loan is made to a borrower.

* * * * *

(f) * * *

(2) When an RLF has a combination of In-Kind Contributions, which must be specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs, and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last 20 percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

(g) *Loan closing and disbursement schedule.* (1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the RLF Grant within three years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within 45 days of the deadline;

(ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or

(iii) EDA has approved a time schedule extension pursuant to paragraph (h) of this section.

(h) *Time schedule extensions.* (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension request by demonstrating that:

(i) The delay was unforeseen or beyond the control of the RLF Recipient;

(ii) The financial need for the RLF still exists;

(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension. In the event an extension is denied, EDA may de-obligate all or part of the unused Grant funds and terminate the Grant.

■ 25. In § 307.12, revise the section heading, paragraphs (a) and (b), and the paragraph heading and introductory text of paragraph (c), and add paragraph (d) to read as follows:

§ 307.12 Revolving Loan Fund Income requirements during the Revolving Phase; payments on defaulted and written off Revolving Loan Fund loans; Voluntarily Contributed Capital.

(a) During the Revolving Phase, RLF Income must be placed into the RLF Capital Base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income is earned and the administrative costs are accrued in the same fiscal year of the RLF Recipient;

(2) RLF Income earned, but not used for administrative costs during the same fiscal year of the RLF Recipient is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital Base in a subsequent fiscal year for any purpose other than lending without the prior written consent of EDA; and

(4) An RLF Recipient shall not use funds in excess of RLF Income for administrative costs unless directed otherwise in writing by EDA. In accordance with EDA's RLF Risk Analysis System, RLF Recipients are expected to keep administrative costs to a minimum in order to maintain the RLF Capital Base. The percentage of RLF Income used for administrative expenses will be one of the metrics used in EDA's RLF Risk Analysis System to evaluate RLF Recipients. *See also* § 307.16.

(b) *Compliance guidance.* When charging costs against RLF Income, RLF Recipients must comply with applicable Federal Uniform Administrative Requirements, cost principles, and audit requirements as detailed in this provision and in the terms and conditions of the RLF Grant.

(1) *For RLF Grants made on or after December 26, 2014.* For RLFs awarded

on or after December 26, 2014 or for RLFs that have received one or more Recapitalization Grants on or after December 26, 2014, the RLF Recipient must comply with the administrative and cost principles in 2 CFR part 200 (''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'').

(2) *For RLF Grants made before December 26, 2014.* For RLFs awarded before December 26, 2014, unless otherwise indicated in the terms of the Grant, the RLF Recipient must comply with the following cost principles:

(i) 2 CFR part 225 (OMB Circular A–87 for State, local, and Indian tribal governments),

(ii) 2 CFR part 230 (OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular), and

(iii) 2 CFR part 220 (OMB Circular A–21 for educational institutions).

(3) *For all RLF Grants.* For all RLF Grants, regardless of when they were awarded, the audit requirements set out as subpart F to 2 CFR part 200 apply to audits of the RLF Recipient fiscal years beginning on or after December 26, 2014. In addition, the Compliance Supplement, which is appendix XI to 2 CFR part 200, applies as appropriate.

(c) *Priority of payments on defaulted and written off RLF loans.* When an RLF Recipient receives proceeds on a defaulted or written off RLF loan that is not subject to liquidation pursuant to § 307.21, such proceeds shall be applied in the following order of priority:

* * * * *

(d) *Voluntarily Contributed Capital.* An RLF Recipient that wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend must submit a written request that specifies the source of the funds to be added. Once an RLF Recipient elects to commit Voluntarily Contributed Capital and upon approval by EDA, the Voluntarily Contributed Capital becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF.

■ 26. Revise § 307.13 as follows:

■ a. Revise paragraph (b)(2);

■ b. Redesignate paragraph (b)(3) as paragraph (b)(4); and

■ c. Add new paragraph (b)(3).

The revisions and additions read as follows:

§ 307.13 Records and retention.

* * * * *

(b) * * *

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.

(3) Consistent with § 307.11(a), for the duration of RLF operations, maintain records to demonstrate:

(i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations;

(ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place; and

(iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF.

* * * * *

■ 27. Revise § 307.14 to read as follows:

§ 307.14 Revolving Loan Fund report.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit an RLF report, using Form ED–209 or any successor form, in a format and at a frequency as required by EDA.

(b) *Report contents.* RLF Recipients must certify as part of the RLF report to EDA that the RLF is operating in accordance with the applicable RLF Plan and that the information provided is complete and accurate.

■ 28. Amend § 307.15 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b);

■ b. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and

■ c. Revise the paragraph heading of newly redesignated paragraph (c) and paragraph (c)(1).

The revisions and additions read as follows:

§ 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs shall operate in accordance with generally accepted accounting principles (''GAAP'') as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the adjusted current value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and is represented by a non-cash entry. However, loan loss reserves shall not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards (''SEFA'') required as part of the RLF Recipient's audit requirements under 2 CFR part 200.

* * * * *

(c) *RLF leveraging.* (1) RLF loans must leverage additional investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities;

(iii) The non-guaranteed portions and 90 percent of the guaranteed portions of any Federal loan; or

(iv) Loans from other State and local lending programs.

* * * * *

■ 29. Revise § 307.16 to read as follows:

§ 307.16 Risk Analysis System.

(a) EDA shall evaluate and manage RLF recipients using a Risk Analysis System that will focus on such risk factors as: Capital, assets, management, earnings, liquidity, strategic results, and financial controls. Risk analysis ratings of each RLF Recipient's RLF program shall be conducted at least annually and will be based on the most recently submitted Form ED–209 RLF report.

(b) An RLF Recipient generally will be allowed a reasonable period of time to achieve compliance with risk factors as defined by EDA. However, persistent noncompliance with these factors and their limits as identified through EDA's Risk Analysis System over multiple Reporting Periods may result in EDA taking appropriate remedies for noncompliance as detailed in § 307.21.

■ 30. Revise § 307.17 to read as follows:

§ 307.17 Requirements for Revolving Loan Fund Cash Available for Lending.

(a) *General.* RLF Cash Available for Lending shall be deposited and held in an interest-bearing account by the Recipient and used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Allowable Cash Percentage.* EDA shall notify each RLF recipient by January 1 of each year of the Allowable Cash Percentage that is applicable to lending during the ensuing calendar year. During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules so that at all times they do not exceed the Allowable Cash Percentage.

(c) *Restrictions on use of RLF Cash Available for Lending.* RLF Cash Available for Lending shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan programs;

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a ''sound economic justification'' for the refinancing (*e.g.,* the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Cash Available for Lending will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.

(7) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval;

(8) Support operations or administration of the RLF Recipient; or

(9) Undertake any activity that would violate the requirements found in part 314 of this chapter, including § 314.3 (''Authorized Use of Property'') and § 314.4 (''Unauthorized Use of Property'').

(d) *Compliance and loan quality review.* To ensure that the RLF recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations provided the requirements set forth in § 307.12 are satisfied.

■ 31. Revise paragraphs (a)(1) introductory text, (a)(2), (b)(1), (b)(1)(i), and (b)(2)(i) of § 307.18 to read as follows:

§ 307.18 Addition of lending areas; consolidation and merger of RLFs.

(a)(1) An RLF Recipient shall make loans only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the RLF Plan. An RLF Recipient may add a lending area (an ''*Additional Lending Area*'') to its existing lending area to create a new lending area (the ''*New Lending Area*'') only with EDA's prior written approval and subject to the following provisions and conditions:

* * * * *

(2) Following EDA approval, the New Lending Area designation shall remain in place until EDA approves a subsequent request for a New Lending Area.

(b) * * *

(1) *Single RLF Recipient.* An RLF Recipient with more than one EDA-funded RLF Grant may consolidate two or more EDA-funded RLFs into one combined RLF with EDA's prior written approval and provided:

(i) It is up-to-date with all reports in accordance with § 307.14;

* * * * *

(2) * * *

(i) The replacement RLF Recipient is up-to-date with all reports in accordance with § 307.14;

* * * * *

■ 32. Revise § 307.20 to read as follows:

§ 307.20 Noncompliance.

EDA will take appropriate compliance actions as detailed in § 307.21 for the RLF Recipient's failure to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, including but not limited to:

(a) Failing to obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;

(b) Failing to submit an updated RLF Plan to EDA in accordance with § 307.9(c);

(c) Failing to submit timely progress, financial, and audit reports in the format required by the RLF Grant and § 307.14, including the Form ED–209 RLF report;

(d) Failing to manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(e) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or other extenuating circumstances;

(f) Making an ineligible loan;

(g) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant;

(h) Failing to sequester funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(i) Failing to comply with the audit requirements set forth in subpart F to 2 CFR part 200 and the related Compliance Supplement, including reference to the correctly valued EDA RLF Federal expenditures in the SEFA, timely submission of audit reports to the Federal Audit Clearinghouse, and the inclusion of the RLF program as an appropriately audited program;

(j) Failing to implement timely resolutions to audit findings or questioned costs contained in the annual audit, as applicable;

(k) Failing to comply with an EDA-approved corrective action plan to remedy persistent noncompliance with RLF-related findings;

(l) Failing to comply with the conflicts of interest provisions set forth in § 302.17; and

(m) Making unauthorized use of RLF Cash Available for Lending in violation of § 307.18(c).

■ 33. Revise § 307.21 to read as follows:

§ 307.21 Remedies for noncompliance.

(a) *General.* If an RLF Recipient fails to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, as detailed in § 307.20, as appropriate in the circumstances, EDA may require one or more of the following actions, as appropriate in the circumstances:

(1) Increased reporting requirements;

(2) Implementation of a corrective action plan;

(3) A special audit;

(4) Sequestration of RLF funds;

(5) Repayment of ineligible loans or other costs to the RLF;

(6) Transfer or merger of the RLF in accordance with § 307.18;

(7) Suspension of the RLF Grant; or

(8) Termination of the RLF Grant, in whole or in part.

(b) *Disallowance of a portion of an RLF Grant, liquidation.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include the RLF Recipient:

(1) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request;

(2) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(3) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to the disallowance.

(c) *Termination or suspension.* To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

(d) *Termination, liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA must make all efforts to recover the pro rata Federal Share (as defined in § 314.5 of this chapter). EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation. The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (d)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(e) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(i) *First,* for any third party liquidation costs;

(ii) *Second,* for the payment of EDA's Federal Share; and

(iii) *Third,* if any proceeds remain, to the RLF Recipient.

(f) *RLF Recipient's request to terminate.* EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal Government for the pro rata Federal Share of the RLF Capital Base.

(g) Upon termination, distribution of proceeds shall occur in accordance with § 307.21(e).

PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

■ 34. The authority citation of part 309 continues to read as follows:

Authority: 42 U.S.C. 3154c; 42 U.S.C. 3211; Department of Commerce Delegation Order 10–4.

■ 35. Revise § 309.1(a) to read as follows:

§ 309.1 Redistributions under parts 303, 305 and 306.

(a) *General.* Except as provided in paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient, generally referred to as a Subrecipient, that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible Recipient under the original Investment award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

* * * * *

■ 36. Revise paragraphs (a)(1) and (b) of § 309.2 to read as follows:

§ 309.2 Redistributions under part 307.

(a) * * *

(1) A subgrant to another Eligible Recipient, generally referred to a Subrecipient, that qualifies for Investment Assistance under part 307 of this chapter; or

* * * * *

(b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible Recipient under the original Investment Award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

PART 314—PROPERTY

■ 37. The authority citation for part 314 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 38. Amend § 314.1 by:

■ a. Revising the definition of *Personal Property;*

■ b. Adding the definition of *Project Property in alphabetical order;* and

■ c. Revising the definition of *Real Property.*

The revisions and additions read as follows:

§ 314.1 Definitions.

* * * * *

Personal Property means all tangible and intangible property other than Real Property, including the RLF Capital Base as defined at § 307.8.

Project Property means all Property that is acquired or improved, in whole or in part, with Investment Assistance and is required, as determined by EDA, for the successful completion and operation of a Project and/or serves as the economic justification of a Project. As appropriate to specify the type of Property to which they are referring, subparts B and C of this part refer to Project Property as ''Project Real Property'' or ''Project Personal Property''.

* * * * *

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and

other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is served by the construction of Project infrastructure (such as roads, sewers and water lines) where the infrastructure contributes to the value of such land as a specific purpose of the Project.

* * * * *

■ 39. Revise § 314.2 to read as follows:

§ 314.2 Federal Interest.

(a) Subject to the obligations and conditions set forth in this part and in relevant provisions of 2 CFR part 200, Project Property vests upon acquisition in the recipient (or, if approved by EDA, in a Co-recipient or Subrecipient). Project Property shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the ''Federal Interest''). The Federal Interest ensures compliance with EDA Project requirements, including those related to the purpose, scope, and use of a Project. The Recipient typically must secure the Federal Interest through a recorded lien, statement, or other recordable instrument setting forth EDA's Property interest in a Project (*e.g.,* a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction, or improvement of a building. See § 314.8.).

(b) When the Federal government is fully compensated for the Federal Share of Project Property, the Federal Interest is extinguished and the Federal Government has no further interest in the Property, except as provided in § 314.10(e)(3) regarding nondiscrimination requirements.

■ 40. Revise § 314.3 to read as follows:

§ 314.3 Authorized use of Project Property.

(a) *General.* During the Estimated Useful Life of the Project, the Recipient or Owner must use any Project Property only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) *Project Property that is no longer needed for Project purposes.* Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Project Property is longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) *Real Property for sale or lease.* Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including nondiscrimination and environmental compliance.

(d) *Property transfers and Successor Recipients.* EDA, in its sole discretion, may approve the transfer of any Project Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.

(e) *Replacement Personal Property.* When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property; provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property.

(f) *Replacement Real Property.* In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(g) *Incidental use of Project Property.* With EDA's prior written approval, a Recipient may undertake an incidental use of Project Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made; provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise undermine the economic purpose for which the Investment was made or adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at *http://www.eda.gov*) for guidelines on obtaining approval for incidental use of Property under this section.

■ 41. Revise the section heading, paragraph (a), the introductory text of paragraph (b) and paragraph (c) of § 314.4 to read as follows:

§ 314.4 Unauthorized Use of Project Property.

(a) *Compensation of Federal Share upon an Unauthorized Use of Project Property.* Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of the Federal Interest in certain Property), or as otherwise authorized by EDA, the Federal Government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Project Property is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the requirements of 2 CFR part 200, including any supplements or amendments thereto, shall apply.

(b) *Additional Unauthorized Uses of Project Property.* Additionally, prior to the release of the Federal Interest, Project Real Property or tangible Project Personal Property may not be used:

* * * * *

(c) *Recovery of the Federal Share.* Where the Disposition, encumbrance, or use of any Project Property violates paragraphs (a) or (b) of this section, EDA may assert the Federal Interest in the Project Property to recover the Federal Share for the Federal Government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§ 302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal Government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in § 314.10(d)(3).

■ 42. Revise § 314.5(a) to read as follows:

§ 314.5 Federal Share.

(a) For purposes of this part, ''Federal Share'' means that portion of the current fair market value of any Project Property attributable to EDA's participation in the Project. EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA's sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee. The Federal Share shall be the current fair market value or other valuation as determined by EDA of the Property after deducting:

* * * * *

■ 43. Revise paragraphs (a), (b)(3), (b)(4)(v)(B), (b)(5)(v)(B), and (c) of § 314.6 to read as follows:

§ 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Project Property must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project, so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance.

(b) * * *

(3) *Pre-existing encumbrances.* Encumbrances already in place and disclosed to EDA at the time EDA approves the Project where EDA, in its sole discretion, determines that:

(i) The requirements of § 314.7(b) are met;

(ii) Consistent with paragraphs (b)(4)(iv) and (b)(5)(iv) of this section, the terms and conditions of the encumbrance are satisfactory; and

(iii) Consistent with paragraphs (b)(4)(v) and (b)(5)(v), there is a reasonable expectation that the Recipient will not default on its obligations.

(4) * * *

(v) * * *

(B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

* * * * *

(5) * * *

(v) * * *

(B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

* * * * *

(c) Encumbering Project Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

■ 44. Revise paragraphs (a), (c) introductory text, (c)(1), (c)(1)(ii), (c)(2) introductory text, (c)(4) introductory text, (c)(4)(ii)(B), (c)(4)(iii), (c)(5)(i), and (c)(5)(iii) of § 314.7 to read as follows:

§ 314.7 Title.

(a) *General title requirement.* Except in those limited circumstances identified in paragraph (c) of this section, at the time Investment Assistance is awarded, the Recipient must hold title to Project Real Property, which, as noted in § 314.1 in the definition of ''Real Property'' includes land that is served by the construction of Project infrastructure (such as roads, sewers, and water lines) and where the infrastructure contributes to the value of such land as a specific purpose of the Project. The Recipient must maintain title to Project Real Property at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient also must furnish evidence, satisfactory in form and substance to EDA, that title to Project Real Property (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

* * * * *

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to Project Real Property at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project.

(1) *Project Real Property acquisition.* Where the acquisition of Project Real Property is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal Government's interest in the Project Real Property.

(2) *Leasehold interests.* EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(4) *State or local government owned roadway or highway construction.* When the Project includes construction on a State or local government owned roadway or highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public roadway or highway, provided that:

* * * * *

(ii) * * *

(B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the State or local government owned roadway or highway are relocated for any reason pursuant to requirements of the owner of the public roadway or highway, the Recipient shall be responsible for accomplishing such relocation, including expending the Recipient's own funds as necessary, so that the Project continues as authorized by the Investment Assistance; and

(iii) The Recipient obtains all written authorizations (*i.e.,* State or county permit(s)) necessary for the Project to be constructed within the public roadway or highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public roadway or highway for the Project during the Estimated Useful Life of the Project.

(5) * * *

(i) *General.* At EDA's discretion, when an authorized purpose of the Project is to construct Recipient-owned facilities to serve Recipient or privately owned Project Real Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease parcels of the Project Real Property to private parties, such ownership, sale, or lease, as applicable, is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for sale or lease prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property in accordance with

paragraphs (c)(5)(i)(C) through (E) of this section;

(B) In cases where an authorized purpose of the Project is to lease Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for lease prior to the disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient provides adequate assurances that the Project and the development of land and improvements on the Recipient or privately owned Project Real Property to be served by or that provides the economic justification for the Project will be completed according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project or of Project Real Property served by the Project or that provides the economic justification for the Project during the Project's Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; and

* * * * *

(iii) *Agreement between Recipient and Owner.* In addition to paragraphs (c)(5)(i) and (ii) of this section, when an authorized purpose of the Project is to construct facilities to serve privately owned Real Property, the Recipient and the Owner must agree to use the Real Property improved or benefitted by the EDA Investment Assistance only for the authorized purposes of the Project and in a manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project.

* * * * *

■ 45. Revise paragraphs (a), (b), and (d) of § 314.8 to read as follows:

§ 314.8 Recorded statement for Real Property.

(a) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant, or other statement of the Federal Interest in such Project Real Property. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of the Federal Interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Project Real Property is located, all in accordance with applicable law.

* * * * *

(d) In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the Federal Interest in Project Real Property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with paragraph (a) of this section is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by the Recipient.

■ 46. Revise § 314.9 to read as follows:

§ 314.9 Recorded statement for Project Personal Property.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall provide notice of the Federal Interest all Project Personal Property by executing a Uniform Commercial Code Financing Statement (Form UCC–1, as provided by State law) or other statement of the Federal Interest in the Project Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to all Project Personal Property, except as otherwise provided in this part.

■ 47. Revise the section heading and paragraphs (a) through (d), (e)(2), and the introductory text to paragraph (e)(3) to read as follows:

§ 314.10 Procedures for release of the Federal Interest.

(a) *General.* As provided in § 314.2 of this chapter, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award. Upon request of the Recipient, EDA will release the Federal Interest in Project Property upon expiration of the Estimated Useful Life as established in the terms and conditions of the Investment Assistance and in accord with the requirements of this section and part. This section provides procedures to obtain a release of the Federal Interest in Project Property.

(b) *Release of the Federal Interest after the expiration of the Estimated Useful Life.* At the expiration of a Project's Estimated Useful Life and upon the written request of a recipient, the Assistant Secretary may release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance. The determination provided for in this paragraph shall be established at the time of Recipient's written request and shall be based, at least in part, on the facts and circumstances provided in writing by the Recipient. For a Project in which a Recorded Statement as provided for in §§ 314.8 and 314.9 of this chapter has been recorded, EDA will provide for the release by executing an instrument in recordable form. The release will terminate the Investment as of the date of its execution and satisfy the Recorded Statement. See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(c) *Release prior to the expiration of the Estimated Useful Life.* If the Recipient will no longer use the Project Property in accord with the requirements of the terms and conditions of the Investment within the time period of the Estimated Useful Life, EDA will determine if such use by the Recipient constitutes an Unauthorized Use of Property and require compensation for the Federal Interest as provided in § 314.4 and this section. EDA may release the Federal Interest in connection with such Property only upon receipt of full payment in compensation of the Federal Interest and thereafter will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.

(d) *Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance.* In accord with section 601(d)(2) of PWEDA, upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, but where 20 years have elapsed since the award of Investment Assistance, EDA may release any Real Property or tangible Personal Property interest held by EDA, if EDA determines:

(1) The Recipient has made a good faith effort to fulfill all terms and conditions of the award of Investment Assistance; and

(2) The economic development benefits as set out in the award of

Investment Assistance have been achieved.

(3) See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(e) * * *

(2) In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of § 314.3 or § 314.4; and other such factors as EDA deems appropriate. When requesting a release of the Federal Interest pursuant to this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with § 314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. *See* § 314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property for explicitly religious activities in violation of applicable Federal law.

(ii) EDA may require a Recipient (or its successors in interest) that intends or foresees the use of Real Property or tangible Personal Property for explicitly religious activities following the release of the Federal Interest to compensate EDA for the Federal Share of such Property. If such compensation is made, no covenant with respect to explicitly religious activities will be required as a condition of the release. EDA recommends that any Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for explicitly religious activities to contact EDA well in advance of requesting a release pursuant to this section.

(3) Notwithstanding any release of the Federal Interest under this section, including a release upon a Recipient's compensation for the Federal Share, a Recipient must ensure that Project Property is not used in violation of nondiscrimination requirements set forth in § 302.20 of this chapter. Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

* * * * *

Dated: September 12, 2016.

Roy K.J. Williams,

Assistant Secretary of Commerce for Economic Development.

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Part V

Environmental Protection Agency

40 CFR Parts 50 and 51

Treatment of Data Influenced by Exceptional Events; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2013–0572, EPA–HQ–OAR–2015–0229; FRL–9952–89–OAR]

RIN 2060–AS02

Treatment of Data Influenced by Exceptional Events

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification to states with areas subject to mitigation requirements; final guidance.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to certain sections within the regulations that govern the exclusion of event-influenced air quality data from certain regulatory decisions under the Clean Air Act (CAA). The EPA's mission includes preserving and improving the quality of our nation's ambient air to protect human health and the environment, and the CAA and the EPA's regulations rely heavily on ambient air quality data. However, the CAA also recognizes that it may not be appropriate to use the monitoring data influenced by ''exceptional'' events that are collected by the ambient air quality monitoring network when making certain regulatory determinations. When ''exceptional'' events cause exceedances or violations of the national ambient air quality standards (NAAQS) that subsequently affect certain regulatory decisions, the normal planning and regulatory process established by the CAA may not be appropriate. This final rule contains definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA's approval of the exclusion of event-influenced air quality data and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. It reflects the experiences of the EPA, state, local and tribal air agencies, federal land managers and other stakeholders in implementing this program over the past 10 years. These regulatory revisions, the EPA's commitment to improved communications, our focus on decisions with regulatory significance, and the expressed non-binding guidance in the preamble regarding recommendations for demonstration narrative and analyses to include in demonstration packages, protect human health and the environment while providing needed clarity, increasing the administrative efficiency of demonstration submittal process, and removing some of the challenges associated with implementing the Exceptional Events Rule. As part of the EPA's mission to protect public health, this action promulgates new requirements for mitigation plans for areas with known, recurring events. We are simultaneously using this action to provide written notification to those states with areas that are initially subject to these new requirements. In addition to finalizing revisions to the Exceptional Events Rule, the EPA is also announcing the availability of the final version of the non-binding guidance document titled *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,* which applies the rule revisions to wildfire events that could influence monitored ozone concentrations.

DATES: This final rule is effective on September 30, 2016.

ADDRESSES: The EPA established Docket ID No. EPA–HQ–OAR–2013–0572 for this action. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

The EPA also established Docket ID No. EPA–HQ–OAR–2015–0229 for the related guidance document titled *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations.* All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general information regarding this rule, please contact Beth Palma, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–5432, email at *palma.elizabeth@epa.gov*. For general information regarding the *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,* please contact Lev Gabrilovich, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–1496, email at *gabrilovich.lev@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Executive Summary

Pursuant to section 319(b) of the CAA, the EPA is taking action to finalize revisions to the Exceptional Events Rule (codified at 40 CFR 50.1, 50.14 and 51.930), which governs the exclusion of these event-affected air quality data. The CAA recognizes that it may not be appropriate to use monitoring data influenced by ''exceptional'' events collected by the ambient air quality monitoring network when making certain regulatory determinations. When ''exceptional'' events influence monitoring data and cause exceedances or violations of the NAAQS, air agencies can request the exclusion of event-influenced data, and the EPA can agree to exclude these data, from the data set used for certain regulatory decisions.

This section summarizes the purpose of this regulatory action and its major provisions and provides an overview of the associated guidance. After considering the comments received during the public comment period, we are making several changes to the promulgated rule language and/or the preamble, in which we provide non-binding guidance to assist air agencies in implementing the rule. In accordance with section 553(d)(3) of the Administrative Procedures Act, good cause exists to expedite effectiveness of this final rule, therefore, we are also establishing the effective date of this action to be the date that it is published in the **Federal Register**. *See* 5 U.S.C. 553(d)(3). Good cause exists when urgency of conditions are coupled with demonstrated and unavoidable limitations in time; primary consideration is given to the convenience or necessity of the people affected. In this circumstance, prompt effectiveness of this final rule will allow state governors and tribes, if they wish, to consider the final rule revisions in advance of submitting recommendations for area designations for the 2015 Ozone NAAQS, which are due by October 1, 2016, and which could include the consideration of exceptional events. The

deadline for states and tribes to submit recommendations for area designations for the 2015 Ozone NAAQS is a demonstrated and unavoidable time limitation. Prompt effectiveness of this final rule is in the public interest as it will ensure adequate time for states to develop their exceptional events demonstrations and time for the public to comment on those demonstrations. In addition, typically rules are effective at least 30 days after publication to provide time for affected parties to adjust their behavior and prepare before the final rule takes effect. That circumstance does not apply to this final rule because this rule does not require a behavior change. Rather, this final rule revises and provides additional clarity with respect to a previously existing opportunity.

We are promulgating language to define those regulatory actions that comprise ''determinations by the Administrator with respect to exceedances or violations of the [NAAQS].'' In doing so, we apply the provisions in CAA section 319(b) to a specific set of regulatory actions (*e.g.,* designations). The final rule language returns to the three core statutory elements and implicit concepts of CAA section 319(b): (1) The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, (2) the event was not reasonably controllable or preventable, and (3) the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. We clarify in the preamble the general types of analyses and narrative that the EPA expects to see in demonstrations to address each of these three core statutory elements. We also clarify how to apply these criteria in certain scenarios and to certain event types.

In returning to the first of the three core statutory elements (*i.e.,* the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation), we are promulgating regulatory text that subsumes the ''affects air quality'' element into the ''clear causal relationship'' criterion. We are also removing from the rule language the requirement for air agencies to provide evidence that the event is associated with a measured concentration in excess of ''normal historical fluctuations including background'' and replacing it with a requirement for a comparison of the event-related concentration to historical concentrations. Additionally, we are removing the 2007 Exceptional Events Rule language commonly referred to as the ''but for'' criterion and focus instead on the clear causal relationship criterion.

With respect to the ''not reasonably controllable or preventable'' criterion, the EPA is promulgating a provision that enforceable control measures are ''reasonable controls'' with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) Implemented in accordance with an attainment or maintenance state implementation plan (SIP), a federal implementation plan (FIP) or a tribal implementation plan (TIP), (2) if the EPA approved the plan within 5 years of the date of an event, and (3) if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP.[1] Also for the ''not reasonably controllable or preventable'' criterion, the EPA is codifying in regulatory text that air agencies generally have no obligation to specifically address controls if the event was due to emissions originating outside their jurisdictional (*i.e.,* state or tribal) border. Of course, a submission based on emissions originating outside of the submitter's jurisdictional borders must demonstrate that the event also meets the other exceptional events criteria.

With respect to the ''human activity that is unlikely to recur at a particular location or was a natural event'' criterion, we present options in this preamble that air agencies and the EPA can use to determine whether the recurrence frequency of an event is ''unlikely to recur at a particular location.'' We expand on this concept with regulatory language that defines a specific approach to recurrence frequency applicable to prescribed fire on wildland. We also clarify in regulatory language that natural events can recur, sometimes frequently, without affecting the approvability of a demonstration for the identified natural event and that we consider reasonably controlled anthropogenic emissions sources to play little or no direct role in causing those emissions.

The final rule preamble and rule text clarify that air agencies must address all of the core statutory elements and implicit concepts of CAA section 319(b) within an exceptional events demonstration. To facilitate early communications and coordination regarding the identification, development and review of these demonstrations, we are promulgating a regulatory requirement for an initial notification by the air agency to the EPA of a potential exceptional event for which the agency is considering preparing a demonstration as a preliminary step before submitting a demonstration. We further establish in rule language that the required demonstration elements include a narrative conceptual model, or narrative, describing the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance at the affected monitor(s); a demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation supported, in part, by a comparison to historical concentrations; a demonstration that the event was both not reasonably controllable and not reasonably preventable; and a demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event. Additionally, the rule revisions require documentation that the air agency conducted a public comment process.

Because affected air agencies have provided feedback regarding the difficulty associated with meeting the regulatory timelines in the 2007 rule associated with data flagging, initial event descriptions and demonstration submittals, the EPA is promulgating revisions that remove specific deadlines that apply in situations other than initial area designations following promulgation of a new or revised NAAQS. Also associated with demonstration timing, the EPA is promulgating a provision to terminate the EPA's obligation to review a demonstration following a 12-month period of inactivity by the air agency. In addition, although we are not promulgating timelines in rule language for the EPA's response to submitted demonstrations, we are identifying in this preamble the following intended response timelines: A formal response to the Initial Notification (*see* Section IV.G.5 of this preamble) within 60 days, initial review of an exceptional events demonstration with regulatory significance within 120 days of receipt (*see* Section IV.G.7 of this preamble), a decision regarding event concurrence/nonconcurrence within 12 months of receipt of a complete demonstration (*see* Section IV.G.7 of this preamble), and a

[1] If the air agency is required to revise its implementation plan as a result of a SIP Call action pursuant to CAA section 110(k)(5), any deference to the implementation plan's enforceable control measures will be determined on a case-by-case basis.

''deferral letter'' within 60 days of receipt of a demonstration that the EPA determined during the Initial Notification process to not to have regulatory significance (*see* Section IV.G.7 of this preamble).

Among the questions stakeholders have raised since promulgation of the 2007 Exceptional Events Rule are those regarding fire-related components that the preamble to the 2007 Exceptional Events Rule discussed, but did not fully define or clarify. This final action promulgates in rule language several fire-related definitions and the conditions under which prescribed fires could qualify as exceptional events, which include the use of smoke management programs (SMP) and the application of basic smoke management practices (BSMP). We also discuss that while exceptional events demonstrations and data exclusions requests must be submitted by the affected state/tribal agency(ies), or with their concurrence, we support and encourage federal land managers (FLMs), other federal agencies and air agencies to work collaboratively to prepare and submit exceptional events demonstrations and data exclusion requests.

In keeping with the EPA's mission to protect public health and after seeking comment on approaches ranging from retaining the existing ''mitigation'' rule requirements to promulgating new mitigation-related rule components, we are promulgating in regulatory language the requirement to develop mitigation plans in areas with ''historically documented'' or ''known seasonal'' exceptional events. This action indicates those areas to which this requirement newly applies and makes clear that the EPA will not concur with certain exceptional events demonstrations if an air agency has not submitted the related required mitigation plan within 2 years of the effective date of this action.

In addition to finalizing revisions to the 2007 Exceptional Events Rule, this action simultaneously announces the availability of a final non-binding guidance document titled *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* (Wildfire Guidance), which applies the Exceptional Events Rule Revisions to wildfire events that may influence ozone levels. The EPA prepared this guidance document to further address specific stakeholder questions regarding the Exceptional Events Rule and further increase the efficiency of rule implementation.

The Wildfire Guidance provides air agencies with information on how to prepare and submit evidence to meet the Exceptional Events Rule requirements for monitored ozone exceedances caused by wildfires. The document includes example analyses, conclusion statements, and technical tools that air agencies can use to provide evidence to satisfy the Exceptional Events Rule criteria. The Wildfire Guidance also identifies wildfire and monitor-based characteristics that might allow for a simpler and less resource-consuming demonstration. The Wildfire Guidance is not an EPA rule, and in specific cases the EPA may depart from the guidance for reasons that the EPA will explain at the time of the action. As noted by commenters, while many of the technical analyses included in the document may also be applied to prescribed fire events, the guidance document does not specify how demonstrations for prescribed fire events can address all promulgated rule requirements. The public comment period for the *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* ran simultaneously with the comment period on the proposed rule revisions and closed on February 3, 2016. The EPA received 31 comments on the draft guidance during the public comment period. The EPA summarizes and discusses these comments in a document that accompanies the final guidance document. Both the public comments received on the draft guidance and the EPA's discussion document are available in the docket at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OAR–2015–0229).

Based on feedback from interested parties on the proposed rule revisions and the draft Wildfire Guidance, we intend to develop supplementary guidance to assist air agencies in addressing the Exceptional Events Rule criteria for prescribed fire on wildland. This guidance will focus on analyses and supporting documentation recommended to show that prescribed fire events on wildland were unlikely to recur at a particular location and were not reasonably controllable or preventable. We intend to post the draft guidance for prescribed fires and instructions for providing public comment on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events* shortly after finalizing these rule revisions.

Also based on feedback from interested parties, we intend to develop supplementary guidance to describe satisfying the Exceptional Events Rule criteria for stratospheric ozone intrusions. In addition, as we discussed in the proposal and as discussed in more detail in Section IV.C of this preamble, we also intend to develop a supplementary guidance document, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS,* to describe the appropriate additional pathways for data exclusion for some ''predicted future'' monitoring data applications. Once available, the EPA intends to post both draft guidance documents on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events*.

B. Entities Affected by This Rule

Entities potentially affected directly by this final rule and associated guidance include all state air agencies and local air quality agencies to which a state has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis. Tribal air agencies operating ambient air quality monitors that produce regulatory data may also be directly affected. Entities potentially affected indirectly by this final rule and related guidance include FLMs of Class I areas, other federal agencies and other entities that operate ambient air quality monitors and submit collected data to the EPA's Air Quality System (AQS) database.

C. Obtaining a Copy of This Document and Other Related Information

In addition to being available in the docket, we will post an electronic copy of this **Federal Register** document and the final guidance at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*

D. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 2, 2016. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

E. Organization of this ***Federal Register*** *Document*

The information presented in this document is organized as follows:

I. General Information
A. Executive Summary
B. Entities Affected by This Rule
C. Obtaining a Copy of This Document and Other Related Information
D. Judicial Review
E. Organization of this **Federal Register** Document
II. Glossary of Terms and Acronyms
III. Overview of Exceptional Events Statutory Authority, Regulation and Implementation
IV. Final Rule Revisions
A. Applicability of the Exceptional Events Rule: Affected Entities and Pollutants
1. Summary of Proposal
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3. Comments and Responses
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1. Aggregation of Events
2. Demonstrations With Respect to Multiple NAAQS for the Same Pollutant
3. Exclusion of Entire 24-hour Value Versus Partial Adjustment of the 24-Hour Value for Particulate Matter
4. Flagging of Data
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6. Submission of Demonstrations
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B. Paperwork Reduction Act (PRA)
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D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
VIII. Statutory Authority

II. Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

AQCR Air Quality Control Region
AQS Air Quality System
BACM Best Available Control Measures
BACT Best Available Control Technology
BLM Bureau of Land Management
BMP Best management practice(s)
BSMP Basic smoke management practices
CAA Clean Air Act
CASTNET Clean Air Status and Trends Network
CBI Confidential business information
CBSA Core based statistical area
CFR Code of Federal Regulations
CO Carbon monoxide
EPA Environmental Protection Agency
FIP Federal implementation plan
FLM Federal land manager responsible for management of a federally owned area that has been designated a Class I area as codified in 40 CFR part 81, subpart D
FR Federal Register
LAER Lowest Achievable Emission Rate
$\mu g/m^3$ Micrograms per cubic meter
CH_4 Methane
Mph Miles per hour
NAAQS National ambient air quality standard or standards
NEAP Natural Events Action Plan
NEI National Emissions Inventory
NH_3 Ammonia
NO_2 Nitrogen dioxide
NOAA National Oceanic and Atmospheric Administration
NOV Notice of violation
NO_X Nitric oxides
NPRM Notice of proposed rulemaking
NPS National Park Service
NRCS Natural Resources Conservation Service
NRDC Natural Resources Defense Council
NWCG National Wildfire Coordinating Group
NWS National Weather Service
OAQPS Office of Air Quality Planning and Standards, U.S. EPA
OMB Office of Management and Budget
Pb Lead
PM Particulate matter
PM_{10} Particulate matter with a nominal mean aerodynamic diameter less than or equal to 10 micrometers
$PM_{2.5}$ Particulate matter with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers
PRA Paperwork Reduction Act
PSD Prevention of significant deterioration
RACM Reasonably available control measures
RACT Reasonably Available Control Technology
RFA Regulatory Flexibility Act
SIP State implementation plan
SMP Smoke management program(s)
SO_2 Sulfur dioxide
TAR Tribal Authority Rule
TIP Tribal implementation plan
Tpy Tons per year
UMRA Unfunded Mandates Reform Act
USB U.S. background
USDA U.S. Department of Agriculture
VOC Volatile organic compound or compounds

III. Overview of Exceptional Events Statutory Authority, Regulation and Implementation

The EPA's mission includes preserving and improving, when needed, the quality of our nation's ambient air to protect human health and the environment as provided by the CAA. To accomplish this, the EPA develops the NAAQS for criteria pollutants and oversees the states' programs to improve air quality in areas where the current air quality is not in attainment with the NAAQS and to prevent deterioration in areas where the air quality meets or exceeds the NAAQS. The EPA then evaluates the status of the ambient air as compared to these NAAQS using data collected in the national ambient air quality monitoring network established under the authority of section 319(a) of the CAA.

Congress recognized that it may not be appropriate for the EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in the EPA's AQS in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by ''exceptional events'' meeting specific criteria by adding section 319(b) to the CAA. To implement this 2005 CAA amendment, the EPA promulgated the 2007 Exceptional Events Rule (72 FR 13560, March 22, 2007).

The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (sections 50.1,

50.14 and 51.930). These regulatory sections, which superseded the EPA's previous guidance on handling data influenced by events,[2] contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA's approval of the exclusion of event-affected air quality data from the data set used for regulatory decisions and requirements for air agencies [3] to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS.[4]

Shortly after promulgation, the Natural Resources Defense Council (NRDC) brought a petition for judicial review challenging certain aspects of the 2007 rule, including the EPA's definition of a natural event and several statements in the preamble concerning the types of events that could qualify as being eligible for exclusion under the rule provisions.[5] Regarding the definition of a natural event, the D.C. Circuit Court determined that NRDC did not identify its objection during the rulemaking process and, therefore, did not have standing under CAA section 307 to challenge the definition. NRDC also challenged the preamble language addressing high wind events. Because the EPA did not address the subject high wind preamble language in final rule text, the D.C. Circuit Court determined the high wind events section of the 2007 preamble to be a legal nullity.

Air agencies affected by the 2007 rule also raised questions regarding interpretation and implementation. The EPA acknowledges that applying the provisions of the 2007 Exceptional Events Rule has been a challenging process both for the air agencies developing exceptional events demonstrations and for the EPA Regional offices reviewing and acting on these demonstrations. In response to these challenges, in May 2013, after extensive outreach culminating in the EPA issuing a **Federal Register** Notice of Availability [6] seeking broad public review, the EPA finalized the Interim Exceptional Events Implementation Guidance and made these documents publicly available on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*[7] The EPA simultaneously acknowledged the need to consider additional changes through a notice-and-comment rulemaking effort to revise the 2007 Exceptional Events Rule. Informed by feedback received during the development of the Interim Exceptional Events Implementation Guidance [8] and feedback received during listening sessions and best practice conference calls,[9] the EPA issued a notice of proposed rulemaking (NPRM) on November 20, 2015 (80 FR 72840) titled ''Treatment of Data Influenced by Exceptional Events'' (proposed Exceptional Events Rule Revisions) to address certain substantive issues raised by state, local and tribal co-regulators and other stakeholders and to increase the administrative efficiency of the Exceptional Events Rule criteria and process.

Although the EPA has undertaken this notice-and-comment rulemaking effort to provide clarity and increase the administrative efficiency of the Exceptional Events Rule demonstration submittal process, the EPA recognizes that developing some exceptional events demonstrations may still be challenging given the case-by-case nature of each event. For this reason, throughout the preamble to this final action, we provide recommendations for language and analyses to include in demonstration packages (*see,* for example, language in Sections IV.E of this preamble, Technical Criteria for the Exclusion of Data Affected by Events, and IV.F, Treatment of Certain Events Under the Exceptional Events Rule). Additional detail regarding specific recommendations is available in the EPA's guidance documents and on the EPA's exceptional events Web site, which the EPA will update to incorporate the finalized rule changes concurrently with or shortly after promulgating the final rule. The EPA also intends to maintain and update the exceptional events submissions table on its Web site with examples of approved submissions. These examples may help air agencies develop demonstration packages; however, they may not contain the minimum level of data or case-specific analyses necessary for all exceptional events demonstrations of the same event type. The EPA encourages air agencies to consult with their EPA Regional office for further guidance on specific demonstrations.

IV. Final Rule Revisions

This final action supersedes the 2007 Exceptional Events Rule and all natural events and exceptional events data handling guidance developed prior to the 2007 Exceptional Events Rule. This final action also supersedes the 2013 Interim Exceptional Events Implementation Guidance until such time as the EPA can revise these documents to reflect the revisions contained in these Exceptional Events

[2] Previous guidance and policy documents that either implied or stated the need for special treatment of data affected by an exceptional event include:

(i) *Guideline for the Interpretation of Air Quality Standards,* U.S. EPA, OAQPS No. 1.2–008, Revised February 1977. Available from the National Service Center for Environmental Publications through its document search, retrieval and download capabilities at *https://www.epa.gov/nscep.*

(ii) *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* (the Exceptional Events Policy), U.S. EPA, OAQPS, EPA–450/4–86–007, July 1986.

(iii) *Areas Affected by PM–10 Natural Events* (the PM_{10} Natural Events Policy), memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to the EPA Regional offices, May 30, 1996. Available at *http://www.epa.gov/ttn/caaa/t1/memoranda/nepol.pdf.*

(iv) *Interim Air Quality Policy on Wildland and Prescribed Fires,* U.S. EPA. April 23, 1998. Available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/firefnl.pdf.*

(v) *Guideline on Data Handling Conventions for the PM NAAQS,* U.S. EPA, OAQPS, EPA–454/R–98–017, December 1998.

[3] References to ''air agencies'' include state, local and tribal air agencies responsible for implementing the Exceptional Events Rule. The regulatory text in the 2007 Exceptional Events Rule often uses ''State'' to apply to ''air agencies.'' In the context of flagging data and preparing and submitting demonstrations, the role of and options available to air agencies may also apply to federal land managers of Class I areas and other federal agencies managing federal land.

[4] Per the definition at 40 CFR 50.1(l), an *exceedance with respect to a national ambient air quality standard* means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard. Violations of a standard are standard-specific and are determined by applying the standard-specific procedures for air quality data handling identified in the appendices to 40 CFR part 50. For example, per the requirements in 40 CFR part 50, appendix N, an exceedance of the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ occurs when the 24-hour concentration is above 35 $\mu g/m^3$ on a single day. A violation of the 2006 24-hour $PM_{2.5}$ NAAQS occurs when the 3-year average of the annual 98th percentile 24-hour concentrations is above 35 $\mu g/m^3$.

[5] *NRDC* v. *EPA,* 559 F.3d 561 (D.C. Cir. 2009).

[6] 77 FR 39959 (July 6, 2012).

[7] The Interim Exceptional Events Implementation Guidance includes: The *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events,* the *Interim Exceptional Events Rule Frequently Asked Questions* (the Interim Q&A document), and the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (the Interim High Winds Guidance document).

[8] *See* comments in Docket ID No. EPA–HQ–OAR–2011–0887.

[9] The EPA hosted exceptional events listening sessions in August and November of 2013 for interested air agencies, FLMs, other federal agencies, regional planning organizations, non-governmental organizations and other members of the public. The EPA also held conference calls with some air agencies between September 2014 and March 2015 to further discuss exceptional events implementation processes and practices. A summary of these implementation ''best practices'' is available at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*

Rule Revisions. This final action accomplishes the objectives identified in the proposed Exceptional Events Rule Revisions by promulgating rule language accompanied by explanation/interpretation in the preamble and/or presenting non-binding guidance in the preamble.

The public comment period for the proposed revisions to the Exceptional Events Rule closed on February 3, 2016. The EPA received 94 unique, timely comments on the proposed rule revisions. The preamble to this final rule discusses the most significant comments received on the proposal and how the EPA considered them in developing the agency's final revisions to the Exceptional Events Rule. The Response to Comments document that accompanies this final rule provides more detailed responses to comments. The public comments received on the proposal and the EPA's Response to Comments document are available in the docket at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OAR–2013–0572).

As a result of feedback received during the public comment period, we have changed the proposed regulatory text and/or non-binding guidance in the preamble in the following ways:

- Modified the provision for FLMs and other federal agencies to prepare and submit exceptional events demonstrations to include a step for the concurrence of the affected state/tribal air agency(ies);
- Modified the definition of an exceptional event to more clearly address drought conditions;
- Modified the list of regulatory actions included within the scope of the Exceptional Events Rule;
- Revised the provision for reliance on controls in an EPA-approved SIP to satisfy the not reasonably controllable or preventable criterion by also including reliance on controls in FIPs and TIPs;
- Modified the required demonstration elements to support the clear causal relationship criterion by moving the table of analyses from the rule text to the preamble where it will serve as guidance;
- Added regulatory text requiring air agencies, federal land managers and burn managers [10] to collaborate and document a process for working together to protect public health and manage air quality during the conduct of prescribed fires on wildland. Such discussions must include outreach and education regarding general expectations for the selection and application of appropriate BSMP and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate basic smoke management practices;
- Identified intended timelines for the EPA's response in this preamble; and
- Added required regulatory elements for mitigation plans for areas with known, recurring events.

We discuss all of these changes in more detail in this preamble.

A. Applicability of the Exceptional Events Rule: Affected Entities and Pollutants

1. Summary of Proposal

As noted in the proposal, the Exceptional Events Rule applies to all states, to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis, and to tribal air quality agencies operating ambient air quality monitors that produce regulatory data. The proposal also included new provisions to allow FLMs and other federal agencies to prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA. We included these provisions for the following reasons, which we expressed in the proposal. First, the CAA language at section 319(b)(3)(B)(i) provides authority for FLMs to initiate and submit such demonstrations and data exclusion requests in the language that reads, ''the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies.'' Second, FLMs and other federal agencies may operate regulatory monitors [11] and submit collected data to the EPA's AQS database,[12] and emissions from exceptional events could affect these same monitors. Third, allowing FLMs to prepare and submit demonstrations directly to the EPA could expedite the exceptional events demonstration development and submittal process. The EPA solicited comment on our proposal to allow FLMs and other federal agencies to prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA. In addition, the proposal explained that the final rule might modify the provision that provided for FLMs and other federal agencies preparing and submitting exceptional events demonstrations and data exclusion requests directly to the EPA (*see* 80 FR 72848).

The proposal also reiterated the EPA's interpretation that the Exceptional Events Rule applies to all criteria pollutant NAAQS [13] based on the language in CAA section 319(b)(3)(B)(iv), which applies to exceedances or violations of ''the national ambient air quality standards.'' The EPA did not specifically request comment on this statement.

2. Final Rule

The Exceptional Events Rule continues to apply to all state air agencies and to local air quality agencies to which a state has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis. The Exceptional Events Rule also continues to apply to tribal air quality agencies operating ambient air quality monitors that produce regulatory data. All affected air agencies, including tribal air quality agencies, should use the Initial Notification of Potential Exceptional Event process described in more detail in Section IV.G.5 of this preamble, to discuss with their EPA Regional office the most appropriate approach to implementing the provisions of the Exceptional Events Rule.

[10] Throughout this preamble and the associated final rule text, we use the terminology ''burn manager'' to mean the party responsible for supervising a prescribed fire from ignition through fire extinguishing and cleanup, or another party in the same organization who represents, supervises or is supervised by said party and can be a communications pathway to and from such person. Different organizations, states, local agencies and tribes may use the terms burn manager, burn boss, fire manager or another similar term to describe the party with this responsibility. Regardless of the terminology, the actions of the party responsible for prescribed fire management must conform to and be consistent with any applicable local, state or federal laws and regulations, where these laws and regulations exist.

[11] The Ambient Air Quality Surveillance provisions in 40 CFR part 58 include, among other elements, the requirements for monitoring data certification and data submittal and archive in AQS. 40 CFR 58.3 provides that these data reporting requirements specifically apply to state air pollution control agencies and any local air pollution control agency to which the state has delegated authority to operate a portion of the state's monitoring network.

[12] For a description of one network of monitoring sites operated by federal agencies, *see* the 2014 CASTNET (Clean Air Status and Trends Network) Annual Network Plan, available at *https://www3.epa.gov/castnet/docs/CASTNET_Plan_2014_Final.pdf,* which applies to National Park Service (NPS) and Bureau of Land Management (BLM) site managers operating CASTNET monitors.

[13] There are NAAQS for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particle pollution and sulfur dioxide (SO_2). This applicability includes the primary and secondary NAAQS. At present, most of the secondary NAAQS are identical to the primary NAAQS for the same pollutant, so there is no distinction in how the Exceptional Events Rule applies. To date, the EPA has not encountered an exceptional event situation with respect to a non-identical secondary NAAQS.

After considering the public comments, as explained in subsequent paragraphs and the response to comments below, we are finalizing a modified version of our proposal, under which FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA if the affected state/tribal air agency(ies) concurs.[14] Presumably, demonstrations and requests for exclusion prepared and submitted by FLMs or other federal agencies would address prescribed fires or wildfires occurring on federally-owned and managed land that influence concentrations at regulatory monitors either on federally-owned and managed land or at state, local, or tribal regulatory monitors. Although the EPA is deferring the appropriate mechanism for concurrence to the affected state or tribal air agency(ies) in accordance with 40 CFR 50.14(a)(1)(ii)(A)(2), the EPA can envision several acceptable approaches, some of which follow.

- An air agency could provide written authorization to the FLMs or other federal agencies owning land or operating air quality monitoring stations to prepare and directly submit exceptional events demonstrations to the EPA. Any such authorization must conform to and be consistent with any applicable state laws and regulations. The written authorization (*i.e.,* letter from the air agency official responsible for preparing demonstrations) would specify the conditions under which the FLM could submit a demonstration directly to the EPA and whether the FLM could initiate the Initial Notification of Potential Exceptional Event (either with or without including the affected air agency(ies) in this process). The affected air agency would submit a copy of the authorization to the reviewing EPA Regional office either in advance of the demonstration submittal and/or with the Initial Notification of Potential Exceptional Event process associated with a specific event or events. An air agency selecting this option would need to provide the submitting FLM or other federal agency with a case-by-case concurrence in accordance with 40 CFR 50.14(a)(1)(ii)(A)(2), which requires that a demonstration-specific concurrence from the air agency accompany each submittal. The FLM would include the concurrence with its submission to the EPA.
- An air agency could agree, on a case-by-case basis, to allow an FLM or other federal agency to develop and submit a complete demonstration for an event or events directly to the EPA. Under this scenario, the air agency could notify the EPA during the Initial Notification of Potential Exceptional Event process that an FLM will submit demonstration(s) for a particular event(s) or particular types of events, specifying the event type(s), pollutant(s) and date(s). An air agency selecting this option would need to provide the submitting FLM or other federal agency with a case-by-case concurrence, in accordance with 40 CFR 50.14(a)(1)(ii)(A)(2), which the FLM would include with its submission to the EPA.
- The air agency could ask the FLM to prepare the agreed-upon demonstration for submittal to the affected air agency. The FLM would then independently prepare the demonstration and submit it to the affected air agency. The air agency, in turn, could submit the demonstration to the EPA with a cover letter indicating that the FLM or federal agency prepared the demonstration, that the affected state/tribal air agency agrees with the content and the affected state/tribal air agency requests that the EPA review and take action on the submitted demonstration.
- Another option might consist of the air agency and the affected FLM collaboratively developing demonstrations for submittal by the affected air agency. In this scenario, the air agency and the FLM would likely agree to a division of responsibilities for specific analyses or sections of a demonstration.

If an air agency agrees that FLMs or other federal agencies may prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA, then the FLM-prepared demonstrations must meet all of the provisions in the Exceptional Events Rule, including the requirement for a public comment period on a prepared demonstration[15] and the requirements related to schedules and procedures for demonstration submittal that apply to state agencies that operate the affected monitors. Regardless of the approach selected, the EPA encourages discussions between the FLM and the affected state/tribal air agency(ies) similar to those described in the Initial Notification of Potential Exceptional Event process (*see* Section IV.G.5 of this preamble) to ensure that the FLM and the air agency(ies) share a common understanding regarding the potential event, share relevant information and data, and understand the timeline for flagging data in AQS and submitting the demonstration. A number of areas have established local or regional collaboratives whose goals include improving the health of local ecosystems (*e.g.,* wildlands), increasing community resiliency to wildfire, communicating air quality and public health impacts and communicating the results and benefits of prescribed fire management and implementation programs.[16]

Also related to the entities affected by the Exceptional Events Rule, the proposal asserted that, as the single actor responsible for administering air quality planning and management activities within its jurisdictional boundaries, the state, exclusive of tribal lands, is ultimately responsible for submitting exceptional events demonstrations for exceedances that occur at all regulatory monitoring sites within the boundary of the state. While the state can request that FLMs or other federal agencies or local agencies to which a state has authorized relevant responsibilities develop and submit exceptional events demonstrations for events that influence concentrations at regulatory monitors operated by these entities, the state can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within its jurisdictional bounds, including those operated by FLMs, other federal agencies and delegated local agencies. The state retains the authority to decide

[14] We note that any agency, group or individual could submit an exceptional events demonstration. However, the EPA is obligated to consider only those submittals that meet the requirements of this final rule and come from authorized agencies (*i.e.,* all states; local air quality agencies to whom a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; tribal air quality agencies operating ambient air quality monitors that produce regulatory data; and FLMs or other federal agencies to whom the relevant state has granted approval). Further, the EPA cannot take action on material submitted by an unauthorized party.

[15] A public comment opportunity is important prior to submission to the EPA because under the Exceptional Events Rule, the EPA is not required to provide a public comment opportunity prior to concurring or non-concurring with an air agency's request to exclude data. The EPA generally provides a public comment opportunity before using air quality data, with or without such exclusions, in a final regulatory action. States typically provide an opportunity for public comment by posting draft demonstrations on a Web site. Federal agencies could do the same.

[16] *See,* for example, the Fire Memorandum of Understanding (MOU) Partnership, consisting of multiple state and federal forestry agencies, prescribed fire councils and conservation agencies, who work collaboratively with air agencies in California to resolve issues related to managed fire and protection of public health. Additional information available at *http://www.sierraforestlegacy.org/CF_ManagingFire/FireMOU.php* and in comment number EPA–HQ–OAR–2013–0572–0138.

whether to concur with and forward an exceptional events submittal generated by another agency. For example, if a state does not concur with the local agency's, FLM's, other federal agency's or other entity's exceptional events claim, the state can decide not to forward the submittal to the EPA even if the state has authorized the federal or local government agencies (who are also authorized by the CAA to produce and provide data) to prepare and submit demonstrations directly to the EPA. At the suggestion of several commenters, the EPA is adding regulatory language to 40 CFR 50.14(a)(1)(ii) to clarify this point. Where questions arise, the reviewing EPA Regional office can provide assistance and direction as part of the Initial Notification of Potential Exceptional Event process. In addition to requesting that FLMs, other federal agencies or delegated local agencies prepare or assist in the preparation of demonstration analyses, a state can also request the same of industrial facilities operating regulatory monitors experiencing event-influenced exceedances. The EPA cannot act on demonstrations submitted directly by industrial facilities. The authorizing state is responsible, at its discretion, for submitting demonstrations prepared by industrial entities.

Consistent with our proposal, we are also promulgating regulatory language at 40 CFR 50.14(a)(1)(i) that the Exceptional Events Rule applies to the treatment of data showing exceedances or violations of any criteria pollutant NAAQS. AQS retains the capability for air agencies to flag all criteria pollutant data and for the EPA to concur, as appropriate, on requests for exclusion.

3. Comments and Responses

Although three commenters agreed with the EPA's proposal to allow FLMs and other federal agencies to initiate a request for data exclusion if the FLM either operates a regulatory monitor that has been affected by an exceptional event or manages land on which an exceptional event occurred that influenced a monitored concentration at a regulatory monitor, the large majority of commenters disagreed with this proposed provision. State and local air agencies, as well as several regional planning organizations, commented that it is inappropriate for the EPA to allow agencies that are not directly responsible and accountable for managing and/or assuring air quality to submit exceptional event demonstrations or data exclusion requests. Several commenters noted that FLMs and other federal agencies may have different functions and priorities and that the protection of air quality and public health may not be a primary objective. Some of these same commenters noted that while the proposed rule language at 40 CFR 50.14(a)(l)(ii)(A)(2) allowed another agency to initiate a request ''only after discussing such submittal with the State in which the affected monitor is located,'' ''discussing'' does not require ''agreement'' from the state or a requirement that the FLM incorporate the state's feedback into its submittal. These commenters stated that, under the proposed requirements, an FLM could submit a request to exclude data over the objections of the state with primary responsibility to regulate air quality, which could potentially create legal conflicts between agencies. Another commenter suggested allowing FLMs to submit demonstrations only for regulatory monitors owned by the FLM or located on FLM-managed land rather than for state-owned and operated monitors influenced by an event (*e.g.,* fire) on FLM-managed land. Two states and one industry association commenter suggested following an approach allowing, on a case-by-case basis, FLMs to submit demonstrations and requests for data exclusion if the affected state/tribal air agency(ies) agrees and if the FLM works with the affected state/tribal air agency(ies) through the demonstration development and submittal process.

The EPA continues to believe that allowing FLMs to prepare and submit demonstrations directly to the EPA could expedite the exceptional events demonstration development and submittal process because, in many cases, the lands managed and/or owned by federal entities are not entirely within the jurisdictional boundary of a single state or local government and because federal entities may either initiate prescribed fires or fight wildfires on lands managed and/or owned by federal entities. We also recognize that under the CAA, states, exclusive of tribal lands, are primarily responsible for the administration of air quality management programs within their borders, which includes monitoring and analyzing ambient air quality, submitting monitoring data to the EPA, which are then stored in the EPA's AQS database, and identifying measurements that may warrant special treatment under the Exceptional Events Rule. As commenters have noted, and as the EPA recognizes, FLM submittal of exceptional events demonstrations and air agency objectives for air quality management may conflict. Federal land managers do play an important role in helping states and tribes improve the air quality in those areas that do not meet the NAAQS. The General Conformity Rule requires that federal agencies work with state, tribal and local governments in nonattainment and maintenance areas to ensure that federal actions conform to any applicable SIP, FIP or TIP. However, because states and tribes are ultimately responsible for administering air quality management programs within their borders, which could include addressing air quality and health impacts from wildfire emissions, the EPA is finalizing a modified version of our proposal, under which FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA with the agreement of the affected state/tribal air agency(ies). We believe that this approach, which requires the agreement of the affected state/tribal air agency(ies), could encompass all of the alternative approaches noted by commenters representing state, local and regional planning organizations. Deferring the approach to achieve agreement to the affected air agencies provides individual air agencies with the flexibility to account for any state/tribal-specific authorities that may limit an agency's ability to regulate certain types of air quality concerns. Fire plays a critical role in restoring resilient ecological conditions in our wildlands. In addition, the increased use of prescribed fire and managed wildfire can reduce the effects of catastrophic wildfire. The EPA strongly encourages collaboration between the FLMs and other federal agencies and the appropriate state/tribal air agency(ies) during the event identification and demonstration development process regardless of who ultimately submits the demonstration.

Also concerning the entities affected by the Exceptional Events Rule, one commenter asked for clarification regarding whether industrial facilities operating regulatory monitors can submit demonstrations directly to the EPA. Other commenters asked that the EPA clarify whether states and tribes can always submit demonstrations for any monitors within their jurisdictional bounds. These commenters also asked whether the EPA would allow and/or evaluate ''competing'' demonstrations.

The EPA notes in the final rule section of this preamble that while industrial facilities may operate regulatory monitors that experience event-influenced exceedances and, at the request of the state, such facilities may prepare demonstrations for these exceedances, the EPA cannot act on

demonstrations submitted directly by industrial facilities. The CAA language at section 319(b)(3)(B)(i) reads, ''the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies.'' Additionally, the CAA language at 319(b)(3)(B)(iv) requires that the EPA's implementing regulations provide that ''there are criteria and procedures for the Governor of a State to petition the Administration to exclude air quality monitoring data. . . .'' Under the CAA, states, exclusive of tribal lands, are primarily responsible for the administration of air quality management programs within their borders. States can delegate relevant responsibilities for air quality management to local agencies, but the CAA does not provide for delegation of these responsibilities to industrial facilities. Where industrial facilities operate regulatory monitors, the state is ultimately responsible for ensuring that collected data are uploaded into AQS and for verifying the accuracy of these data. Thus, the authorizing state, at its discretion, is responsible for submitting any demonstrations prepared by industrial entities. The EPA has also clarified in the preamble that a state (or tribe) can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within its jurisdictional bounds, including those operated by FLMs, other federal agencies, delegated local agencies, and industrial facilities. We have added regulatory language to 40 CFR 50.14(a)(1)(ii) to clarify this point.

Another commenter noted that CAA section 319(b)(3)(B)(i) provides that ''the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies.'' The commenter maintains that this provision allows federal, state or local government agencies to produce and provide data, but not to prepare and submit demonstrations.

The EPA agrees that the identified CAA language grants specific authority to state, federal and local government agencies to produce and provide data. The EPA also notes, however, that nothing in the CAA language at 319 explicitly restricts federal and local government agencies from submitting demonstrations if the state agrees. Section 319(b)(3)(B)(iv) of the CAA directs the EPA to develop criteria and procedures for the ''Governor of a State to petition the Administrator to exclude air quality monitoring data. . . .'' The EPA's implementing regulatory language at 40 CFR 50.14(b)(1) says that the EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to the EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS. The language ''where a State demonstrates'' has historically been interpreted to mean that only states can initiate the exceptional events process and submit demonstrations. A state may delegate the authority for preparing and submitting demonstrations to local government agencies that are authorized by the CAA to produce and provide data. In this action, the EPA is promulgating regulatory language that authorizes federal agencies to prepare and submit demonstrations if the affected state concurs, on a case-by-case basis, on the preparation and submission of demonstrations by those federal agencies. Submissions by delegated local agencies and/or state-concurred demonstrations by federal agencies have the effect of a state ''demonstration.'' Additionally, the state maintains the ultimate responsibility for submitting exceptional events demonstrations for events influencing concentrations at any regulatory monitor within its jurisdictional bounds.

Two tribal commenters asked the EPA to clarify how the provisions in the Exceptional Events Rule apply to tribes. One of these commenters asked that this clarification include regulatory text to define ''state'' and ''tribe.'' The EPA is not adding regulatory text to define ''state'' and ''tribe,'' but instead intends to apply the definitions set forth in the Tribal Authority Rule (TAR) at 40 CFR 49.2. At 40 CFR 49.2(c), an Indian tribe or tribe is defined as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' Section 40 CFR 49.2(e) defines a state as ''a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.''

We further clarify the applicability to tribes by reiterating the language that appears in Section IV.A.1 of this preamble, which states that the Exceptional Events Rule applies to all states; to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and to tribal air quality agencies operating ambient air quality monitors that produce regulatory data. Throughout the preamble and regulatory language associated with this final action, we use the terminology ''state,'' ''tribe'' and ''air agency'' somewhat interchangeably. Footnote 3 in this document clarifies that references to ''air agencies'' are meant to include state, local and tribal air agencies responsible for implementing the Exceptional Events Rule. The regulatory text in the 2007 Exceptional Events Rule often uses ''State'' to apply to ''air agencies.'' To be an affected entity for purposes of this rule, the air agency must first operate one or more ambient air quality monitors that produce regulatory data. The provisions of this rule apply uniformly to state and tribal air agencies (and to authorized federal and local agencies) that meet this condition. Tribal air quality agencies that operate air quality monitoring networks that produce regulatory data that are affected by emissions from exceptional events should consult with the EPA Regional office prior to addressing the procedures and requirements associated with excluding data that have been influenced by exceptional events. As we have in the past, the EPA will continue to work with tribes in implementing the provisions of the Exceptional Events Rule, including these rule revisions.

We neither solicited nor received comment regarding applying the provisions of the Exceptional Events Rule to the treatment of data showing exceedances or violations of any criteria pollutant NAAQS and we are making no changes to the rule with respect to this issue.

B. Definition and Scope of an Exceptional Event

1. Summary of Proposal

The EPA proposed and solicited comment on the following generally applicable changes to the 2007 Exceptional Events Rule with respect to clarifying what constitutes an exceptional event:

- Revising the definition of exceptional event by including the concept of considering the combined effects of an event and the resulting emissions.
- Removing the ''but for'' element.
- Moving the ''clear causal relationship'' element into the list of criteria that explicitly must be met for data to be excluded.

• Subsuming the ''affects air quality'' element into the ''clear causal relationship'' element.

• Removing the requirement to provide evidence that the event is associated with a measured concentration in excess of ''normal historical fluctuations including background'' and replacing it with a requirement for a comparison of the event-related concentration to historical concentrations.

The proposal provided a detailed rationale for each of these proposed changes, which we summarize here.

With respect to revising the definition of an exceptional event by including the combined effects of an event and the resulting emissions, the proposal noted that a physical event may or may not generate emissions and these emissions may or may not reach a regulatory monitor and result in an exceedance or violation of a NAAQS. Each of these components (*i.e.,* a physical event that generates emissions, transport of event-generated pollution to a monitor, and an exceedance or violation at a regulatory monitor) is necessary for an event to qualify as an exceptional event. The EPA would not consider the physical event (*e.g.,* a high wind or the wildfire) to be an exceptional event unless the resulting event-generated pollution (*e.g.,* particulate matter (PM) or ozone) reached and caused an exceedance or violation at a monitoring location or locations.

The EPA elaborated on this concept by providing several examples, one of which was drought. The proposal stated that while the CAA definition of an exceptional event excludes ''a meteorological event involving high temperatures or lack of precipitation,'' the EPA recognizes that high temperatures and drought conditions can contribute to exceedances and violations caused by other exceptional events, such as high wind dust events. The proposal further noted that if an air agency submits evidence showing that a severe drought that resulted in arid conditions (*e.g.,* lower than typical soil moisture content, decreased vegetation) was combined with an event (*e.g.,* a high wind event) that falls within the CAA definition of an exceptional event and meets all of the requirements, provisions and criteria in the Exceptional Events Rule, then these data could be considered eligible for exclusion under the provisions of the Exceptional Events Rule. The proposal also stated that high temperatures, stagnations and inversions alone would not be eligible for exclusion under the Exceptional Events Rule by the very clear provisions of the CAA. The proposal stated the EPA's belief that Congress intended air agencies to compensate for the effects of high temperature, stagnation and inversions through the development of SIPs.

In our November 2015 action, the EPA proposed to rely more directly upon the statutory requirement at CAA section 319(b)(3)(B)(ii) by removing the regulatory requirement at 40 CFR 50.14(c)(3)(iv)(D) that ''there would have been no exceedance or violation but for the event'' (*i.e.,* the ''but for'' criterion). The proposal explained that in the 2007 Exceptional Events Rule, the EPA derived the ''but for'' criterion from the language at CAA section 319(b)(3)(B)(ii), which requires ''a clear causal relationship . . . between the measured exceedances . . . and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location'' [17] and the requirement that there be ''criteria and procedures for the Governor of a State to petition the Administrator to exclude. . .data that is *directly due* to the exceptional events.'' [18] Air agencies and the EPA have, in some cases, historically interpreted the ''but for'' criterion as implying the need for a strict quantitative analysis of the estimated air quality impact from the event. To clarify the intended approach, the EPA proposed removing the ''but for'' regulatory language and focusing on the ''clear causal relationship'' statutory criterion applied to the specific case, using a weight of evidence approach.

The proposal also modified the regulatory language in 40 CFR 50.14(c)(3)(iv) to more clearly indicate, consistent with the CAA directive, the requirement to ''demonstrate'' versus to merely ''provide evidence'' that a clear causal relationship must exist between the specific event and the monitored exceedance. Also consistent with Congressional intent and air agencies' and the EPA's experience in implementing the 2007 Exceptional Events Rule, the EPA proposed to integrate the phrase ''affected air quality'' into the clear causal relationship criterion. The proposal explained that separately requiring an air agency to provide evidence to support a conclusion that an event ''affects air quality'' is unnecessary in light of a mandatory clear causal relationship showing. The proposal expressed that if an air agency demonstrates that an event has a clear causal relationship to an exceedance or violation of a NAAQS, then the event has certainly affected air quality.

Finally, the EPA proposed to remove the requirement for air agencies to provide evidence that the event is associated with a measured concentration in excess of ''normal historical fluctuations including background'' and replace it with a requirement to compare the event-influenced concentration to historical concentrations. The proposal clarified that an air agency does not need to prove a specific ''in excess of'' fact in developing these comparisons to historical concentrations. The EPA proposed these comparisons to support the clear causal relationship criterion.

The proposal stressed that making these changes would result in returning to the following three core statutory elements of CAA section 319(b) that air agencies must meet when requesting that the EPA exclude event-related concentrations from regulatory determinations:

• The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation,

• The event was not reasonably controllable or preventable, and

• The event was a human activity that is unlikely to recur at a particular location or was a natural event.

We proposed to include these core statutory elements in the revised regulatory definition of an exceptional event.

2. Final Rule

As proposed, and as supported by numerous commenters, we are finalizing and incorporating into the regulatory definition of an exceptional event the following three core statutory elements of CAA section 319(b) that air agencies must meet when requesting that the EPA exclude event-related concentrations from regulatory determinations:

• The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation,

• The event was not reasonably controllable or preventable, and

• The event was a human activity that is unlikely to recur at a particular location or was a natural event.

This section of the final rule preamble focuses on the definition of an

[17] The EPA believes that the terminology ''specific air pollution concentration'' refers to the identified exceedance or violation rather than a specific increment in the measured concentration, which implies quantitative source attribution and a supporting quantitative analysis.

[18] CAA section 319(b)(3)(B)(iv) (emphasis added).

exceptional event particularly as it incorporates these three elements. We discuss additional detail surrounding the individual criteria (*i.e.,* clear causal relationship, not reasonably controllable or preventable and human activity/natural event) in Section IV.E of this preamble, Technical Criteria for the Exclusion of Data Affected by Events.

While we are incorporating the previously identified elements into the definition of an exceptional event, after considering the public comments, as discussed more fully in the following paragraphs, we are finalizing the following slightly modified version of our proposed definition of an exceptional event: *Exceptional event* means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s), is not reasonably controllable or preventable, is an event(s) caused by human activity that is unlikely to recur at a particular location or a natural event(s), and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. It does not include air pollution relating to source noncompliance. Stagnation of air masses and meteorological inversions do not directly cause pollutant emissions and are not exceptional events. Meteorological events involving high temperatures or lack of precipitation (*i.e.,* severe, extreme or exceptional drought) also do not directly cause pollutant emissions and are not considered exceptional events. However, events involving high temperatures or lack of precipitation may promote occurrences of particular types of exceptional events, such as wildfires or high wind events, which do directly cause emissions. We presented this concept in the proposal (*see* 80 FR 72848), and the EPA is codifying it in the final rule to prevent confusion, as explained below.

After considering the public comments received, as discussed as follows, we have included in the revised regulatory definition the concept of ''event'' or ''events'' to convey that one or more events and their resulting emissions could be eligible for consideration in the aggregate under the provisions in 40 CFR 50.14. We have also revised the definitional language to ''monitored exceedance(s) or violation(s)'' to indicate that a single event can cause multiple NAAQS exceedances or violations either occurring on the same day at multiple monitors or occurring at one or more monitors on multiple days. The revised definition also clarifies, at the suggestion of a commenter, our position with respect to ''meteorological events involving high temperatures or lack of precipitation'' (*i.e.,* severe, extreme or exceptional drought). We include the qualifiers ''severe, extreme or exceptional drought'' to distinguish drought categories from abnormally dry conditions. In using this language, we incorporate by reference the conditions described in the U.S. Drought Monitor available at *http://droughtmonitor.unl.edu/* and produced through a partnership between the National Drought Mitigation Center at the University of Nebraska-Lincoln, the United States Department of Agriculture (USDA) and the National Oceanic and Atmospheric Administration (NOAA).

3. Comments and Responses

In considering the three core statutory elements of CAA section 319(b), we note that both the not reasonably controllable or preventable criterion and the human activity/natural event criterion are from the statutory language defining the term ''exceptional event'' at CAA section 319(b)(1)(A). The criterion that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation combines the statutory ''affects air quality'' definitional element at CAA section 319(b)(1)(A) with the ''clear causal relationship'' statutory requirement at CAA section 319(b)(3)(B) and removes the regulatory-only ''but for'' language. Because this section of the final rule preamble focuses on the definition of an exceptional event particularly as it incorporates the statutory elements, we address comments related to the statutory elements here and discuss the application of each of these elements in Section IV.E of this preamble.

Numerous commenters supported, and one commenter representing several environmental groups opposed, the EPA's incorporating the ''affects air quality'' criterion into the clear causal relationship element. Commenters supporting this approach agreed with the EPA's position that if an air agency demonstrates that an event has a clear causal relationship to an exceedance or violation of a NAAQS, then the event has certainly affected air quality and that a submitting air agency does not need to address ''affects air quality'' as a distinct component. The commenter opposing this approach noted that the EPA cannot escape the plain language of the CAA that ''affects air quality'' and ''clear causal relationship'' are two requirements and must be addressed individually. The EPA does not disagree that in the definition of exceptional event, the CAA language at section 319(b)(1)(A)(i) specifically identifies ''affects air quality'' as a defining term. CAA section 319 does not, however, provide any indication regarding how an air agency should demonstrate that an event ''affects air quality.'' Rather, the requirements set forth at CAA section 319(b)(3)(B) indicate that the EPA's implementing regulations shall provide that (i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that are promptly produced and provided by federal, state or local government agencies; (ii) a clear causal relationship must exist between the measured exceedances of a NAAQS and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location; (iii) there is a public process for determining whether an event is exceptional; and (iv) there are criteria and procedures for the Governor of a state to petition the Administrator to exclude air quality monitoring data that are directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the NAAQS. In subsuming the ''affects air quality'' element into the ''clear causal relationship'' criterion we are simply defining the approach by which an air agency must show that the event affected air quality.

Similarly, the large majority of commenters supported, and three commenters representing environmental groups opposed, the EPA's proposal to remove the ''but for'' criterion. The commenters opposing the removal of the ''but for'' criterion explain that the EPA correctly acknowledged in the 2007 rule that the ''but for'' criterion was derived from the following two statutory requirements: (1) CAA section 319(b)(3)(B)(ii), which requires ''a clear causal relationship . . . between the measured exceedances . . . and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location'' and (2) CAA section 319(b)(3)(B)(iv), which requires that the EPA develop ''criteria and procedures for the Governor of a State to petition the Administrator to exclude . . . data that is *directly due* to the exceptional events.'' (Emphasis added.) The commenters argue that the EPA's proposal to rely more directly upon the ''clear causal relationship'' statutory

element effectively ignores the statutory requirement that excluded data be ''. . . *directly due* to the exceptional events.'' The EPA disagrees with the commenters on this point. While we are finalizing our proposal to remove the ''but for'' regulatory requirement, we are retaining the ''direct causal'' statutory language in the regulatory definition of exceptional event. This revised regulatory language, along with our provided example analyses in this preamble (*see* Section IV.E.3 of this preamble) and in our associated guidance documents, more clearly conveys the strength and robustness of our intended weight of evidence approach [19] and removes some of the challenges associated with implementing a strict ''but for'' demonstration.[20] Further, the ''directly due'' concept is represented through the totality of the requirements in the revisions to the Exceptional Events Rule that we are promulgating, including that a demonstration show a ''clear causal relationship'' between ''an event(s) and its resulting emissions'' and ''the monitored exceedance(s) or violation(s).''

Part of promulgating rule text that is consistent with the core statutory element that ''the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation'' involves removing the regulatory requirement in 40 CFR 50.14(c)(3)(iv)(C) that a state must submit evidence that the event is associated with a measured concentration in excess of normal historical fluctuations, including background. We are finalizing our proposal to remove this language and replace it with regulatory text requiring a comparison of the event-influenced concentration to historical concentrations. We discuss comments associated with this revision in Section IV.E.3.c of this preamble.

Multiple commenters supported the EPA's proposal to revise the definition of an exceptional event to include the event and resulting emissions. We have also incorporated the suggestion of one commenter to indicate in regulatory text, through the plural word ''events,'' that an aggregation of events and their resulting emissions could be eligible for consideration under the provisions in 40 CFR 50.14. We discuss the aggregation of events in more detail in Section IV.G.1 of this preamble. We believe that this concept also applies to exceedances and violations, so we extended the use of plural terminology to this part of the exceptional events definition to more clearly acknowledge that an event may cause multiple exceedances (*e.g.,* exceedances at multiple monitors or multiple exceedances at a single monitor) or violations.

Regarding exceedances and violations, one commenter asked the EPA to clarify whether values that are not themselves exceedances or violations, but raise the design value such that the design value exceeds the NAAQS can be considered as exceptional events. The EPA recognizes that events can make an air concentration significantly higher than it would have been in the absence of the event contribution and elevate the 3-year design value for a NAAQS pollutant. However, the concentration values used in calculating a violating 3-year design value could be considered for exclusion under the Exceptional Events Rule only if the concentration itself is an exceedance or results in a violating design value. If the elevated concentration is not itself an exceedance nor does it result in a violating design value, then the value in question could not be considered as an exceptional event. As we explained in the proposal and restate here, while not an exceptional event, retaining such data in the calculation of a design value can elevate the design value and, for a nonattainment area seeking the EPA's approval of an attainment demonstration, make it seem that the area needs more emissions reduction to attain the NAAQS than is actually the case. Because these data are not exceptional events, we do not address exclusion under this rule. We do, however, discuss this scenario in more detail in Section IV.C of this preamble.

Another commenter suggested that, for regulatory clarity, we incorporate our interpretation of ''meteorological events involving high temperatures or lack of precipitation'' (*i.e.,* drought) into regulatory text. We agree with the commenter and have clarified, through the regulatory definition of an exceptional event, the position that we expressed in the proposal preamble, which is that drought alone does not create emissions and therefore does not meet the definition of an exceptional event. Rather, drought can result in arid conditions that can combine with or exacerbate the effects of events that meet the requirements, provisions and criteria of the Exceptional Events Rule.[21] Because there may be many definitions of drought, we also clarify that we are referring to ''severe, extreme or exceptional drought'' as defined by the U.S. Drought Monitor. We are not including other drought categories in this discussion, nor would other drought categories alone be considered exceptional events.

Also related to the definition of an exceptional event, one commenter asked the EPA to include within the definition of an event both short-term and long-term contributors to elevated pollutant concentrations. The commenter further asked the EPA to address the applicability of the Exceptional Events Rule to ''background'' ozone and background pollutant concentrations in general. The EPA does not agree with the commenter's suggestion to add the language or concept of ''short-term and long-term contributors'' to the regulatory definition of an exceptional event. The EPA believes that the definition that we are promulgating could include both short- and long-term contributors provided the contributors meet the operative provisions in the rule. The EPA will review each request under the Exceptional Events Rule on a case-by-case basis using a weight of evidence approach.

With respect to addressing rule applicability to ''background'' ozone, the EPA refers to the recent *Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion.*[22] As defined in this white paper, U.S. background (USB) ozone is

[19] As we indicated in our November 2015 proposal and in the preamble to the 2007 Exceptional Events Rule, an air agency's ''but for'' analysis does not necessarily need to be precise. Rather, we indicated that the EPA would use a holistic ''weight of evidence'' approach in analyzing submitted demonstration packages. The 2007 preamble further explained that a ''weight of evidence demonstration can present a range of possible concentrations, which is not as technically demanding as justifying a specific adjustment to a measured value.'' (*See* 72 FR 13570, March 22, 2007).

[20] Since promulgation of the 2007 rule, the ''but for'' criterion has often been interpreted as implying the need for a strict quantitative analysis to show a single value, or at least an explicitly bounded plausible range, of the estimated air quality impact from the event. As a result, some air agencies began using burdensome approaches to provide quantitative analyses in their exceptional events demonstrations to show that the event in question was a ''but for'' cause of a NAAQS exceedance or violation in the sense that without the event, the exceedance or violation would not have occurred. In many cases, the ''but for'' role of a single source or event is difficult to determine with certainty and it is more often the case that the impact of emissions from events and other sources cannot be separately quantified and distinguished.

[21] Drought can also exacerbate the air quality impact of activities that do not meet the criteria of the Exceptional Events Rule, such as dust from vehicular travel on unpaved roads.

[22] *Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion,* U.S. EPA, December 2015. Available at *https://www.epa.gov/sites/production/files/2016-03/documents/whitepaper-bgo3-final.pdf.*

any ozone formed from sources or processes *other than* U.S. manmade emissions of nitrogen oxides (NO_X), volatile organic compounds (VOC), methane (CH4), and CO.[23] USB ozone does not include intrastate or interstate transport of manmade ozone or ozone precursors. While some sources that contribute to USB (*e.g.,* wildfires, stratospheric intrusions) may be eligible for treatment as exceptional events, other sources of USB would not meet the Exceptional Events Rule criteria. For example, routine or long-term international manmade emissions are not exceptional events because they are caused by human activity that is *likely to recur* at a given location; likewise, routine biogenic VOC emissions are not exceptional events because they are not deviations from normal or expected conditions. Thus despite being natural, they are not ''events.'' The EPA provides additional information regarding the treatment of certain events under the Exceptional Events Rule in Section IV.F of this preamble.

C. Ambient Concentration Data and Data Uses Affected by the Exceptional Events Rule

1. Summary of Proposal

In our November 2015 document, the EPA proposed in regulatory language to interpret the CAA section 319(b) phrase ''determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards'' to encompass determinations of current[24] or historical NAAQS exceedances/violations or non-exceedances/non-violations and determinations of the air quality ''design value'' at particular receptor sites when made as part of the basis for any of the following five types of regulatory actions:[25]

- An action to designate or redesignate an area as attainment, unclassifiable/attainment, nonattainment or unclassifiable for a particular NAAQS. Such designations rely on the existence or lack of a violation at a monitoring site in or near the area being designated.
- The assignment or re-assignment of a classification category (marginal, moderate, serious, etc.) to a nonattainment area to the extent this is based on a comparison of its ''design value'' to the established framework for such classifications.
- A determination regarding whether a nonattainment area has attained a NAAQS by its CAA deadline.
- A determination that an area has had only one exceedance in the year prior to its deadline and thus qualifies for a 1-year attainment date extension, if applicable.
- A finding of SIP inadequacy leading to a SIP call to the extent the finding hinges on a determination that the area is violating a NAAQS.

In proposing this language, the EPA effectively applied the exceptional events process to these related types of determinations and across the NAAQS, which we believe is an appropriate interpretation of the CAA 319(b) phrase ''determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards.'' For the identified types of determinations, the EPA proposed to exclude event-affected data only if an air agency satisfies the procedural (*e.g.,* event identification, opportunity for public comment, demonstration submission) and substantive (*i.e.,* clear causal relationship, not reasonably controllable or preventable, and human activity not likely to recur or natural event) requirements of the exceptional events process. The proposal also repeated the EPA's previous position that once data are excluded under the Exceptional Events Rule, these same data also should be excluded from (i) design value estimates and AQS user reports (unless the AQS user specifically indicates that they should be included), (ii) selecting appropriate background concentrations for prevention of significant deterioration (PSD) air quality analyses and transportation conformity hot spot analyses, and (iii) selecting appropriate ambient data for projecting future year concentrations as part of a modeled attainment demonstration.[26]

The proposal also noted that while data exclusion associated with the five actions in the previously noted bulleted list *must* follow the provisions in the Exceptional Events Rule, there are other actions for which it may be appropriate to exclude data using mechanisms other than the Exceptional Events Rule. The proposal differentiated between these five actions and other actions based on ''past'' versus ''predicted'' exceedances and/or violations. The proposal explained that the five identified actions involve determinations of whether a NAAQS exceedance or violation occurred at an ambient monitoring site at a particular time in the past. We characterized these exceedances or violations as occurring in the ''past'' because the process of determining whether an actual exceedance or violation occurred involves reviewing the ambient air monitoring data collected at monitoring sites over some historical timeframe (*e.g.,* the data have already been collected at the monitors, verified for quality assurance purposes, submitted to AQS, and used in various regulatory calculations). In short, the collected monitoring data provide evidence that an exceedance or violation actually happened. This scenario is different than predicted future NAAQS violations. The proposal explained that predictions of future NAAQS violation(s) generally involve reviewing the historical ambient concentration data that are the evident focus of CAA section 319(b), estimating expected future emissions, and then using both of these data sets as inputs to an air quality modeling tool or other analytical approach that extrapolates these data to predict a future outcome. While science supports, and the EPA relies on, predictions of future NAAQS violations in several parts of the clean air program, such as in the EPA's approval of attainment demonstrations in SIPs, in PSD air permitting programs and in actions to reclassify a moderate PM_{10} or $PM_{2.5}$ nonattainment area to serious,[27] the fact that these predicted future values rely only in part on historical monitoring data implies that a different standard for data exclusion may be appropriate.

For these reasons, the EPA proposed requiring that the five types of determinations that involve data exclusion associated with ''past'' exceedances or violations must follow the provisions in the Exceptional Events Rule. The EPA also indicated our intent

[23] 80 FR 65292 (October 26, 2015).

[24] The term ''current'' denotes the determination at issue in the current analysis. In actual practice, such determinations are based on historical data and thus reflect a past actual condition.

[25] The proposal noted that when one of these determinations is based on a combination of monitoring data and air quality modeling, the criterion requiring that there be a clear causal relationship between the event and a NAAQS exceedance or violation will apply to the combined estimate of air pollution levels rather than on the directly monitored background air quality data. That is, the event would not be required to have caused an actual exceedance or violation at the background ambient monitoring site, but rather to have made the critical difference in the combined estimate of air pollution levels (background plus source impact) resulting in a NAAQS exceedance or violation, because the event increased the background levels that are added to the air quality modeling output.

[26] *See* Question 14a in the *Interim Exceptional Events Rule Frequently Asked Questions.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf.*

[27] Projection of future NAAQS exceedances or violations do not necessarily play a role in reclassification of an ozone nonattainment area to a higher classification level.

to develop a supplementary guidance document, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS,* to describe the appropriate additional pathways for data exclusion for some ''predicted future'' monitoring data applications (*e.g.,* predicting future attainment that is the basis for approval of an attainment demonstration in the SIP for a nonattainment area, preparing required air quality analyses in an application for a PSD permit or preparing required air quality analysis for the purposes of transportation conformity).

2. Final Rule

After considering the public comments we received, as explained more fully in the following paragraphs, we are finalizing language that applies the provisions in the Exceptional Events Rule to the treatment of data showing exceedances or violations of any NAAQS for purposes of the following types of regulatory determinations by the Administrator.

- An action to designate or redesignate an area as attainment, unclassifiable/attainment, nonattainment or unclassifiable for a particular NAAQS. Such designations rely on a violation at a monitoring site in or near the area being designated.
- The assignment or re-assignment of a classification category (marginal, moderate, serious, etc.) to a nonattainment area to the extent this is based on a comparison of its ''design value'' to the established framework for such classifications.
- A determination regarding whether a nonattainment area has attained a NAAQS by its CAA deadline. This type of determination includes ''clean data determinations.''
- A determination that an area has data for the specific NAAQS that qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant.
- A finding of SIP inadequacy leading to a SIP call to the extent the finding hinges on a determination that the area is violating a NAAQS.
- Other actions on a case-by-case basis if determined by the EPA to have regulatory significance based on discussions between the air agency and the EPA Regional office during the Initial Notification of Potential Exceptional Event process.

After considering comments from multiple state and local air agencies, regional planning organizations and industrial commenters that requested an option for using the Exceptional Events Rule for other regulatory determinations, we have added the sixth bullet in the preamble and in the regulatory text to acknowledge that it may be appropriate to use the provisions in the Exceptional Events Rule to exclude data for regulatory determinations not specifically articulated in the first five bullets. We expect that air agencies and the appropriate EPA Regional offices will discuss these case-by-case scenarios as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of this preamble.

Upon further review of the identified determinations by the Administrator, we also realized that the fourth bullet, formerly ''A determination that an area has had only one exceedance in the year prior to its deadline and thus qualifies for a 1-year attainment date extension, if applicable'' applies to attainment date extensions only for PM_{10} as indicated in CAA section 188(d)(2) because ''only one exceedance'' is specific to PM_{10}. Attainment date extensions for other NAAQS have other CAA conditions. Our intent was that this determination would apply to attainment date extensions for all NAAQS and these NAAQS have CAA conditions other than ''only one exceedance.'' As a result, we have revised the language as follows to better convey this concept: ''A determination that an area has data for the specific NAAQS, which qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant.'' Using this approach, a state would be required to demonstrate that a given area had data with respect to the statistical form of that particular standard in the calendar year prior to the applicable attainment date for the area (*i.e.,* for the 1997 24-hour PM_{10} NAAQS, no more than one exceedance of the 24-hour NAAQS and the annual mean concentration of PM_{10} in the area for such year is less than or equal to the standard level). Revising this language also accounts for potential future revisions to the form and level of the NAAQS, data handling provisions and regulatory changes to state implementation plan requirements.

As we indicated in the proposal, we still intend to develop a supplementary guidance document, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS,* which will describe the appropriate additional pathways for data exclusion for some ''predicted future'' monitoring data applications. We have delayed the release of this guidance, however, to allow us to incorporate the content of the final Exceptional Events Rule revisions. We intend to post the draft guidance and instructions for providing public comment on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events* shortly after finalizing these rule revisions. As we noted in the proposal, we intend this guidance to do the following:

- Clarify that data excluded under the procedural and substantive provisions of the Exceptional Events Rule will also be excluded from (i) design value estimates and AQS user reports (unless the AQS user specifically indicates that they should be included), (ii) selecting appropriate background concentrations for PSD air quality analyses and transportation conformity hot spot analyses, and (iii) selecting appropriate ambient data for projecting future year concentrations as part of a modeled attainment demonstration.
- Identify potential pathways for data exclusion for determinations based on ''predicted'' future NAAQS exceedances or violations (*e.g.,* PSD, transportation conformity).
- Identify the scenarios in which the EPA would *not* exclude data, such as when setting priority classifications for emergency plans under 40 CFR 51.150. The EPA believes that implementing the CAA principle at section 319(b)(3)(A) that ''protection of public health is the highest priority'' may necessitate that an air agency address in its emergency plan the appropriate planned response for any elevated concentration known to be possible because it has already been observed even if that elevated concentration is associated with an exceptional event.

3. Comments and Responses

While the majority of commenters agreed with the EPA's proposal that the provisions in the Exceptional Events Rule apply to the enumerated five actions, many of these same commenters urged the EPA *not* to limit the scope of the Exceptional Events Rule to the five actions that we identified in the proposal as comprising ''determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards.'' Commenter suggestions ranged from adding a sixth element to capture other case-by-case actions deemed to be of regulatory significance to specifically listing other potential actions (that is, they suggested adding the following to list of

specifically covered actions: Design value estimates, PSD background determinations, transportation hot spot analyses, future year projections for modeled attainment determinations, clean data determinations (which are included within the third bullet identifying the types of regulatory determinations by the Administrator included within the scope of the Exceptional Events Rule), other actions that rely on design values, monitoring network plans, etc.). The EPA agrees that the list of actions identified in the regulatory text should allow for a case-by-case determination in certain circumstances (*e.g.,* such as when an event is determined during the Initial Notification of Potential Exceptional Events process to have regulatory significance for an action not otherwise identified in the regulatory text) and has added this language to the final regulatory text. The EPA believes that this language could include any of the specific actions identified by other commenters. However, as we noted in the proposal, the CAA does not clearly apply the statutory criteria of section 319(b) to all of the other actions identified by the commenters. Therefore, under certain circumstances, we believe that it may be appropriate to exclude data for some of the other specific actions. Hence, we are not identifying these actions in the regulatory text. Rather, we intend to address them in the additional guidance previously mentioned and discussed further in the following paragraphs.

As indicated, the majority of commenters agreed with the EPA's approach to define those actions that constitute ''determinations by the Administrator.'' A few other commenters, however, indicated that the EPA cannot narrow the scope of the Exceptional Events Rule nor agree to exclude event-affected data from other types of regulatory determinations using another mechanism without first undertaking notice-and-comment rulemaking. The EPA disagrees with this comment. First, neither the CAA language at section 319(b)(3)(B)(iv), which requires regulations allowing a state to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in *determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards,* nor the implementing language in the 2007 Exceptional Events Rule at 40 CFR 50.14(a)(1), which allows air agencies to request exclusions for data showing exceedances or violations of the NAAQS that are directly due to an exceptional event from use in determinations, identify the scope of the word ''determinations.'' Second, identifying the Exceptional Events Rule as the only mechanism by which data may be excluded from regulatory actions may result in unintended consequences. As we have noted previously, an event may make a past air concentration significantly higher than it would have been in the absence of the event contribution. If the event-influenced data do not result in an exceedance or violation, they are not eligible for exclusion under the Exceptional Events Rule. CAA section 319(b) is ambiguous with respect to how to treat an exceptional event that contributed to a past air concentration being higher than it would have been without the event, but the air concentration did not result in an exceedance or violation. The EPA's decision to not apply the Exceptional Events Rule to data that does not exceed or violate a NAAQS is consistent with how the rule has been applied and interpreted and is not inconsistent with CAA section 319(b). However, we acknowledge that retaining the event-influenced data could have regulatory implications that seem contrary to the purpose of CAA section 319(b). For example, retaining such data in the calculation of background concentrations used in air quality analysis for a PSD permit may suggest that there will be a NAAQS violation after construction of a new source and thus could prevent the permitting authority from issuing the permit.[28]

As previously noted, we intend our *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS* to describe the appropriate additional pathways for data exclusion for some ''predicted future'' monitoring data applications. Multiple commenters expressed interest in this guidance and called for its quick release. The EPA recognizes that this guidance is an important supplement to the revisions to the Exceptional Events Rule that we are promulgating and we will work towards the quick release of this document.

Throughout this preamble and in our proposal, we use the term ''weight of evidence'' to describe the process by which we evaluate individual exceptional events demonstrations and air agency requests for data exclusion. Several commenters asked for additional clarification regarding this terminology, either in preamble or in regulatory text. Several other commenters asked that we use the ''more commonly understood'' terminology of ''preponderance of the evidence.'' Another commenter objects to the use of a weight of evidence approach noting that it could lead to incorrectly granted requests for data exclusion.

While we are not adding language to the regulatory text, we are clarifying in this preamble to the final rule that in applying a ''weight of evidence'' approach to reviewing individual exceptional events demonstrations, the EPA believes it is appropriate to consider all relevant evidence and qualitatively ''weigh'' this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, its persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event. Courts have found that it is reasonable for the EPA to use a ''weight of evidence'' analysis when implementing the CAA. *See, e.g., Envtl. Def.* v. *EPA,* 369 F.3d 193 (2d Cir. 2004) (upholding the EPA's approval of a state's attainment demonstration using photochemical grid modeling and a weight of evidence analysis) and *BCCA Appeal Group* v. *EPA,* 355 F.3d 817 (5th Cir. 2003) (finding that the EPA's conclusion that the weight of evidence approach to approving attainment demonstrations was consistent with the CAA, reasonable and entitled to deference). In this context, ''weight'' refers to the relevance of the evidence to the determination and its technical merit, and not to the amount of documentation. The language ''weight of evidence'' is consistent with this approach and consistent with the terminology used in other EPA regulatory actions. ''Preponderance of the evidence'' conveys many of the same concepts as ''weight of evidence,'' but because it is a legal term of art, we are not using that term as part of this rulemaking action. The weight of evidence approach is an appropriate and reasonable approach, which has been used historically and successfully under key CAA programs. The commenter did not present any information showing that this approach is more likely to yield ''incorrect'' decisions than any other evidentiary approach that might be applicable to exceptional events demonstrations.

[28] If a similar event were to occur after completion of construction, the event-affected data could be excluded and thus there would be no ''official'' violation.

D. Definition and Scope of a Natural Event

1. Summary of Proposal

In the 2007 Exceptional Events Rule, the EPA defined a natural event as an event in which human activity plays little or no direct causal role (*see* 72 FR 13580). In our 2015 action, the EPA proposed to revise this definition to include the concept of an event and its resulting emissions and to acknowledge that natural events can recur. The EPA also proposed to include language in the regulatory definition to clarify that anthropogenic emission sources that contribute to the event emissions (and subsequent exceedance or violation) that are reasonably controlled do not play a ''direct'' role in causing emissions. The proposal elaborated on the ''direct causal'' concept by repeating language that first appeared in the preamble to the 2007 Exceptional Events Rule but not in rule text.

In the 2007 rule preamble and the November 2015 proposal, the EPA explained that we generally consider human activity to have played little or no *direct* role in causing an event-related exceedance or violation if anthropogenic emission sources that contribute to the exceedance are reasonably controlled at the time of the event (*see* 72 FR 13563–4 and 80 FR 72844). This is the case regardless of the magnitude of emissions generated by these reasonably controlled anthropogenic sources and regardless of the relative contribution of these emissions and emissions arising from natural sources in which human activity has no role.[29] Thus, the event could be considered a natural event by applying the reasonable interpretation that the anthropogenic source had ''little'' direct causal role. To further illustrate this concept, as we have noted previously, the EPA considers wildfires to be natural events even though some accidental human actions initiate some wildfires and, to some degree, prior land management practices can influence the frequency and scale of wildfires. The EPA believes the interpretation that wildfires are natural events best implements the Congressional intent and is a more appropriate approach than expecting air agencies to determine the initial cause of each wildfire of interest and classifying it as natural or anthropogenic based on that cause. In addition, landowners and managers and government public safety agencies are strongly motivated to reduce the frequency and severity of human-caused wildfires. Our proposal further explained that if anthropogenic emission sources that contribute to the event emissions can be reasonably controllable but reasonable controls were not implemented at the time of the event, then the event would *not* be considered a natural event.

2. Final Rule

After consideration of the public comments and as supported by many commenters, we are finalizing the following definition: ''*natural event* means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.'' In the final regulatory definition that we are promulgating, we are adding the language ''at the same location'' to more clearly indicate that natural events can recur in the same area or at the same location and still be considered as exceptional events. The language we are adding in the definition contrasts the recurrence frequency of natural events with human activities that must be ''unlikely to recur at a particular location'' to be considered to be an exceptional event (*see* CAA section 319(b)(1)(A)(iii)). Although several commenters disagreed with our approach, and stated that a natural event must have no human activity component at all, we are retaining in the regulatory definition the concept that we consider reasonably controlled anthropogenic sources to not play a direct role in causing emissions. We are, however, adding the language ''[f]or purposes of the definition of a natural event'' prior to the language ''anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions'' to clarify that the ''direct causal'' language applies to reasonably controlled anthropogenic sources when considering whether the event is natural. As we have previously stated, we believe that if reasonable controls were implemented on contributing anthropogenic sources at the time of the event and if, despite these efforts and controls, an exceedance occurred, then we would consider the human activity to have played little or no direct causal role in causing the event-related exceedance. Rather, in those cases in which the anthropogenic source has ''little'' direct causal role, we would consider the high wind and the emissions arising from the contributing natural sources (in which human activity has no role) to cause the exceedance or violation. Additionally, the event would *not* be natural if all of the event-related emissions originated from anthropogenic sources or if anthropogenic emission sources that contributed to the event-related emissions could have been reasonably controllable but reasonable controls were not implemented at the time of the event.[30] We discuss the concept of reasonable control in more detail in Section IV.E.2 of this preamble.

3. Comments and Responses

Commenters providing feedback on the natural events section of the proposal generally focused on one of the following concepts: The language in the proposed revised definition of natural event, those event types considered to be natural events and the concept of reasonable controls as it relates to contributing anthropogenic emissions. We address in the explanation of the final rule language in Section IV.D.2 of this preamble those comments related to the definition of natural event. We address the types of natural events in this section and we discuss reasonable controls in Section IV.E.2 of this preamble.

Several commenters asked that we clarify those types of events that could be considered natural events eligible for data exclusion under the Exceptional Events Rule. Commenters specifically asked for clarity regarding earthquakes, lightning and biological emissions. Through our experience implementing the Exceptional Events Rule, we have come to realize that it may be helpful to think of an event in terms of the source of its emissions. If the underlying source is natural and the generated emissions influence a regulatory monitor, then the ensuing event (*i.e.,* event and resulting

[29] For example, if an area affected by a high wind dust event has adequate rules or ordinances for sources of windblown dust (*e.g.,* rules that establish restrictions for operating vehicles on unpaved property, rules that control windblown dust emissions associated with lands disturbed by construction, earthwork and land development) and the air agency can provide evidence of implementation and enforcement, then the EPA would generally consider human activity to have played little or no direct causal role in causing the monitored exceedance or violation.

[30] As we clarify in the final rule discussion in Section IV.F.2.a of this preamble, when considering prevention/control for purposes of exceptional event categorization, a prescribed fire effectively becomes like a wildfire when, for example, the prescribed fire escapes secure containment due to unforeseen circumstances (*e.g.,* a sudden shift in prevailing winds). In these instances, the burn manager would no longer control the path of the fire. Thus, the fact that the initial fire was deliberately ignited should not result in the entire burn (*e.g.,* the duration and extent of the burn) needing to follow the rule requirements for prescribed fires on wildland.

emissions) could be considered a ''natural event'' under the Exceptional Events Rule. Applying this rationale, as we expressed in the 2007 rule and the November 2015 proposal (*see* 72 FR 13565 and 80 FR 72854–72858), the EPA generally considers wildfires, stratospheric ozone intrusions, volcanic and seismic (*e.g.,* earthquake) activities, natural disasters (*e.g.,* hurricanes and tornados) and windblown dust from natural, undisturbed landscapes to be natural events. Natural events, including, but not limited to, those previously identified, and their resulting emissions could be considered under the provisions of the Exceptional Events Rule. Also, as explained in this section, events that include emissions from both natural and anthropogenic sources, such as high wind dust events, can be considered natural events only if reasonable controls have been applied to the contributing anthropogenic sources. Lightning storms occurring close to a regulatory monitor, such that the particular storm notably affects the monitor close in time to the storm might qualify as natural events that could also be exceptional events. However, the ongoing and delayed aggregate impact of many lightning storms that are not proximate to the monitor is not a deviation from normal or expected conditions and thus would not be an exceptional event. Also, routine biological emissions (*e.g.,* including, but not limited to, emissions from vegetation, microbes and/or animals) are not deviations from normal or expected conditions. Thus despite being natural, they are not ''events'' and would not qualify as exceptional events. As is true for all exceptional events determinations, the EPA will consider these events, and other event types not identified here, on a case-by-case basis.

E. Technical Criteria for the Exclusion of Data Affected by Events

As described in Section IV.B of this preamble, the EPA is finalizing provisions to return to the core statutory elements and implicit concepts of CAA section 319(b): That the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event was not reasonably controllable or preventable, and the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. *See, e.g.,* 42 U.S.C. 7619(b)(1). All exceptional events demonstrations, regardless of event type or relevant NAAQS, must address each of these technical criteria. The EPA has posted examples of acceptable demonstrations for various event and pollutant combinations on its Web site at *https://www.epa.gov/air-quality-analysis/exceptional-events-submissions-table*. We will update this Web site as additional examples become available. This section summarizes the EPA's proposed revisions, final regulatory language and public comments regarding each of these technical criteria. Section IV.G of this preamble discusses additional process-related components of exceptional events demonstrations.

1. Human Activity Unlikely To Recur at a Particular Location or a Natural Event

Because Section IV.D of this preamble addresses the definition of a natural event and those event types that can be considered natural events under the Exceptional Events Rule, we focus this section of the preamble on the ''human activity unlikely to recur at a particular location'' portion of the ''human activity unlikely to recur at a particular location or a natural event'' technical criterion. In the final rule description section in this part of the preamble, we provide example conclusory language that air agencies can use in the portion of their exceptional events demonstration that addresses this criterion. This example language applies to both human activity and natural events.

a. Summary of Proposal

Our proposal stated that according to both the statutory and regulatory definitions, an exceptional event must be ''an event caused by human activity that is unlikely to recur at a particular location *or* a natural event'' (emphasis added, *see* CAA section 319(b)(1)(A)(iii) and 40 CFR 50.1(j)). As we noted in the discussion of a natural event in Section IV.D of this preamble, we have come to realize that it may be helpful to think of an event in terms of the source of its emissions. If the underlying source is natural and the generated emissions influence a regulatory monitor, then the ensuing event (*i.e.,* event and resulting emissions) could be considered a ''natural event'' under the Exceptional Events Rule. Under this particular criterion, if the underlying source of emissions is anthropogenic, then the event can only be ''exceptional'' if the original source is ''unlikely to recur at a particular location.'' The proposal noted that neither the CAA nor the 2007 Exceptional Events Rule defined ''unlikely to recur'' or ''at a particular location.'' Therefore, the proposal sought to clarify both of these phrases. In addition to proposing a generally applicable approach for ''unlikely to recur,'' we also proposed specific approaches for wildland fires, notably prescribed fires on wildland (which we discuss in Section IV.F.2 of this preamble), and high wind dust events (which we discuss in Section IV.F.4 of this preamble). The proposal also clarified that under CAA section 319(b) and a provision of the 2007 Exceptional Events Rule that we did not propose to change, air pollution related to source noncompliance is not an exceptional event regardless of its frequency.

We proposed, as guidance, to interpret the unlikely to recur language as follows. If an event type has not previously occurred within a given air quality control region (AQCR) [31] in the 3 years preceding the submittal of an exceptional events demonstration for an event that has occurred recently, the EPA will consider this recent event to be a ''first'' event and will generally consider that event type to be unlikely to recur in the same location.[32] Similarly, if there was one prior event (for which a demonstration may or may not have been submitted) within the 3 years preceding the submittal of an exceptional events demonstration for the recent event, that event type would also generally be considered unlikely to recur in the same location. However, if there have been two prior events of a similar type within a 3-year period in an AQCR, that would generally indicate the third event, for which the demonstration is being prepared (or would be prepared), does not satisfy the ''human activity that is unlikely to recur at a particular location'' criterion and, thus, would not qualify as an exceptional event. The terms ''one prior event'' and ''two prior events'' refer to events that affect the same AQCR, even if they have not affected the same monitor.[33] This proposed guidance is consistent with the approach taken to recurrence in our Interim High Winds Guidance document in which we identified non-recurring events as being less than one event per year in a given area.[34] In the Interim High Winds

[31] 40 CFR part 81, subpart B, Designation of Air Quality Control Regions, defines Air Quality Control Regions.

[32] While we proposed to define event recurrence as occurring in the 3 years preceding the submittal of an exceptional events demonstration, the proposal language should have read in the 3 years preceding the event that is the subject of an exceptional events demonstration. We clarify this 3-year timeframe in the final rule section.

[33] The EPA will consider previously flagged exceedances within AQS with their associated descriptions to be ''events'' regardless of whether the EPA has received or acted on event demonstrations. The EPA also notes that a single event could influence concentrations on multiple days.

[34] *See* footnote 27 in table 2 of *Interim Guidance on the Preparation of Demonstrations in Support of*

Guidance, we did not define ''area'' other than to differentiate areas by attainment status or jurisdiction (*i.e.,* intrastate versus interstate or international). The EPA solicited comment on using an AQCR to define the bounds for an area subject to event recurrence and on whether to incorporate into rule text the benchmark of three events in 3 years.

b. Final Rule

As a result of the feedback from numerous commenters, we are providing clarifications to the ''unlikely to recur at a particular location'' language as guidance in this preamble and not regulatory text. We note here, as guidance, the benchmark of three events in 3 years to define recurrence. We measure the 3-year period backwards from the date of the most recent event (*e.g.,* for an event occurring on May 1, 2016, the 3-year period would be May 1, 2013, through May 1, 2016). As described previously, if there have been two prior events of a similar type (*i.e.,* a similar event type generating emissions of the same pollutant whether flagged or the subject of a demonstration) within a 3-year period in ''a particular location,'' the third event, for which the demonstration is being prepared (or would be prepared), would generally not satisfy the ''human activity that is unlikely to recur at a particular location'' criterion and, thus, would not qualify as an exceptional event. Although under this approach, the third event essentially confirms that the first two events are ''routine,'' an air agency would not likely recognize the routine nature of the first two events until the third occurrence. Also as noted in our proposal, the EPA will consider previously flagged exceedances within AQS with their associated descriptions to be ''events'' regardless of whether the affected air agency has submitted or the EPA has acted on these ''recurring'' event demonstrations. We also note in this final action that the benchmark of three events in 3 years generally applies regardless of an area's designation status with respect to the NAAQS that is the focus of the event demonstration. The EPA could grant exceptions to the benchmark of three events in 3 years benchmark on a case-by-case basis. Several commenters supported, and no commenters opposed, this generally applicable approach.

With regard to the frequency, several commenters asked the EPA to clarify how the concept of recurrence applies to a single event spanning multiple days. First, the EPA notes that for purposes of exceptional events eligibility, the concept of recurrence only applies to ''human activity unlikely to recur at a particular location'' and not to natural events. Natural events can recur. That said, a single event, natural or caused by human activity, can span multiple days and result in an air agency flagging multiple monitor-day values in AQS (*i.e.,* multiple exceedances of a given NAAQS at a single monitor in a single day or multiple NAAQS exceedances at multiple monitors on multiple days). The EPA considers a single discrete event to be one occurrence even if it extends over more than one day. Applying our benchmark of three events in 3 years, for an area experiencing three authorized and deliberately set structural fires in 2 years, the EPA would not consider a third such structural fire in the third year to be an exceptional event.[35] Because prescribed fires on wildland eligible for exceptional events consideration involve igniting and managing the fire according to the provisions set forth in either a Smoke Management Program or using basic smoke management practices, we discuss the unique circumstances associated with the recurrence of prescribed fires on wildland in IV.F.2.

While we proposed, as guidance, to use an AQCR to define the bounds for an area subject to recurrence, in light of the comments received and issues raised therein, we agree that using AQCRs as the only way in which to define the bounds for an area subject to recurrence is not appropriate. Commenters identified the following reasons why an AQCR may not be suitable: AQCRs can be antiquated and inconsistent with current jurisdictional boundaries; AQCRs may be too large (particularly in some areas of the West) for effective analysis of event recurrence; AQCRs could be subdivided by terrain (*e.g.,* mountains or valleys) that could affect the transport and/or chemical interactions of pollutants; pollutant sources and monitors may not fall within the bounds of the same AQCR. Rather than prescribe an approach to define ''a particular location,'' commenters suggested that the EPA Regional offices and the affected air agencies could agree to the bounds of ''a particular location'' as part of regular, on-going conversations and/or as part of the Initial Notification of Potential Exceptional Event process. Commenters suggested that while an AQCR might appropriately define ''a particular location'' in some areas of the country, other areas may determine one of the following to be more suitable: Counties or other political boundaries, core based statistical areas (CBSAs), nonattainment or unclassifiable area boundaries (if applicable), a density metric (*i.e.,* number of events per thousand square miles calculated using the radius around the subject monitor), and/or distance to the monitor as indicated by a defined radius from the subject monitor. We agree that some of the commenters' suggestions may be appropriate in particular cases and we leave it to the EPA Regional offices and to the affected air agencies to consult on how to characterize ''a particular location.''

As stated previously, all exceptional events demonstrations, regardless of event type or relevant NAAQS, must address each of the three technical criteria. We proposed conclusory language associated with the ''human activity that is unlikely to recur at a particular location or a natural event'' criterion and repeat it here as part of the preamble to the final Exceptional Events Rule revisions. When addressing this criterion as part of an exceptional events demonstration, the EPA recommends that the submitting air agency document and discuss the following in a distinct ''human activity/natural event'' section of the demonstration: The type/source of event (*e.g.,* a particular type of chemical spill or other industrial accident, fire in a particular type of structure, lightning-ignited wildfire, etc.), clearly identify whether the event is natural or was a human activity that is unlikely to recur at a particular location, the resulting emissions (*e.g.,* characterized in terms of the pollutant and magnitude, if applicable/available), and the documented frequency of the event in the prior 3 years (or other appropriate timeframe as agreed with the reviewing EPA Regional office).[36]

Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule. U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf.*

[35] A deliberately set structural fire that has been authorized by a responsible government agency is clearly not a natural event. We are not offering guidance at this time on whether accidentally set structural fires or arson-set structural fires should be considered natural or anthropogenic events. We do note, however, that wildfires on wildland initiated by accident or arson are considered natural events, and on a case-by-case basis this treatment for wildfires may bear on the appropriate treatment of accidental and arson-set structural fires.

[36] The frequency of event recurrence is important for both natural and anthropogenic events. For anthropogenic events, frequency can determine whether the event satisfies the ''human activity unlikely to recur at a particular location or a natural event'' criterion. For a natural event, the frequency

Continued

The air agency should then affirmatively state that in characterizing the event, it has satisfied the ''human activity unlikely to recur at a particular location or a natural event'' criterion.

2. Not Reasonably Controllable or Preventable

As noted in the proposal, because CAA section 319(b) does not restrict the applicability of the not reasonably controllable or preventable criterion to certain types of events, this CAA criterion, and the implementing Exceptional Events Rule language, applies to both events caused by human activity and to natural events. This section discusses the criterion in general terms. We discuss the criterion's specific applicability to fire events on wildland in Section IV.F.2 of this preamble and to high wind dust events in Section IV.F.4 of this preamble.

a. Summary of Proposal

The EPA proposed to codify in regulatory language key aspects of the ''not reasonably controllable or preventable'' criterion to reduce uncertainty for air agencies and other parties. Specifically, we proposed and solicited comment on the following revisions to the Exceptional Events Rule to indicate that:

- The not reasonably controllable or preventable criterion has two prongs, prevention and control. An air agency must demonstrate that an event was both not reasonably preventable and not reasonably controllable.
- An event is not reasonably preventable if reasonable measures to prevent the event were applied at the time of the event.
- An event is not reasonably controllable if reasonable measures to control the impact of the event on air quality were applied at the time of the event.
- The reasonableness of measures is case-specific and is to be evaluated in light of information available at the time of the event.
- Air agencies do not need to provide case-specific justification to support the ''not reasonably controllable or preventable'' criterion for remote, large-scale, high-energy and/or sudden high wind dust events, such as ''haboobs.''
- Provided the air agency is not under an obligation to revise the SIP, the EPA would consider (*i.e.,* give deference to) enforceable control measures implemented in accordance with a state implementation plan, approved by the EPA within 5 years of the date of a demonstration submittal, that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to event-related emissions.
- Air agencies do not need to provide case-specific justification to support the ''not reasonably controllable or preventable'' criterion for emissions-generating activity that occurs outside of the boundaries of the state (or tribal lands) within which the concentration at issue was monitored.

In addition to the identified revisions, the proposal also discussed and solicited feedback on the role of an EPA-approved SIP in nonattainment, maintenance, unclassifiable and attainment areas; prior communications regarding expectations for reasonable controls; prospective agreements regarding assessments of reasonable controls; and components of a not reasonably controllable or preventable showing within a demonstration. We summarize our proposed positions on these topics in the following paragraphs.

The proposal stated that while we would defer to the enforceable control measures in attainment plan SIPs applying to maintenance and nonattainment areas, we would not give this same deference to infrastructure SIPs developed for attainment, unclassifiable/attainment and unclassifiable areas. We differentiated attainment plan SIPs and infrastructure SIPs by the fact that attainment plan SIPs must include an attainment demonstration and reasonably available control measures (RACM), best available control measures (BACM),[37] and other requirements,[38] which together constitute an assessment of reasonable controls. Infrastructure SIPs typically rely on maintenance and attainment SIPs to demonstrate compliance with the key infrastructure elements. Therefore, the EPA proposed that the underlying SIPs, which would themselves include the control measures, be the relevant SIPs for exceptional events demonstrations.

The proposal also recognized that regulations and an area's planning status are often evolving and changing, that these changes can span several years and involve multiple rounds of formal and informal communications between the affected air agency and the EPA, and that these changes could ultimately result in an air agency's adoption of new control measures, which, for exceptional events purposes, could constitute ''reasonable'' controls. Acknowledging that these conversations could inform what the air agency knew at the time of the event and thus could influence a case-specific assessment of the not reasonably controllable or preventable criterion, the EPA solicited comment on methods to definitively identify the status of communications and planning efforts (*e.g.,* formal correspondence or other documentation, timelines for responding) and whether this approach would be more appropriately addressed through rule language.

First appearing in the Interim High Winds Guidance, the proposal repeated the suggestion that an air agency could prospectively assess and determine that the controls in place for a particular type of event, or a planned enhancement of those controls, are sufficient to meet the not reasonably controllable or preventable criterion, and then obtain the EPA's review and concurrence of this assessment prior to more events of that type occurring. The proposal expressed the EPA's belief that this prospective approach would reduce disagreements that might otherwise occur over later retrospective assessments.

The proposal also solicited comment on recommending as either guidance or rule the following components that an air agency should include within the not reasonably controllable or preventable showing in a demonstration: (1) Identify the natural and anthropogenic sources of emissions causing and contributing to the event emissions, including the contribution from local sources, (2) identify the relevant SIP or other enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable.[39] In identifying natural and anthropogenic sources, we clarified that the air agency should assess both

can determine whether a mitigation plan is necessary (*see* Section V of this preamble).

[37] BACM applies to attainment plans for serious PM_{10} or $PM_{2.5}$ areas.

[38] Marginal ozone nonattainment areas are exceptions because they are not required to submit attainment demonstrations.

[39] The EPA generally expects evidence that the controls determined to be reasonable, if any, were effectively implemented and appropriately enforced. This assessment of local sources should include a review and description of any known nearby facility upsets or malfunctions that could have resulted in emissions of the relevant pollutant(s) that influenced the monitored measurements on the day(s) of the claimed events. In the case of a high wind dust event, for example, for the identified potentially contributing local sources, the analysis should explain how significant dust emissions occurred despite having reasonable controls in place (*e.g.,* that controls were overwhelmed by high wind), if appropriate.

potentially contributing local/in-state and upwind sources.

b. Final Rule

After considering the public comments we received, we are finalizing the following not reasonably controllable or preventable elements, all of which contain associated regulatory language.

- The not reasonably controllable or preventable criterion has two prongs, prevention and control. An air agency must demonstrate that an event was both not reasonably preventable and not reasonably controllable.
- An event is not reasonably preventable if reasonable measures to prevent the event were applied at the time of the event.
- An event is not reasonably controllable if reasonable measures to control the impact of the event on air quality were applied at the time of the event.
- The reasonableness of measures is case-specific and is to be evaluated in light of information available as of the date of the event.
- Air agencies do not need to provide case-specific justification to support the ''not reasonably controllable or preventable'' criterion for emissions-generating activity that occurs outside of the boundaries of the state (or tribal lands) within which the concentration at issue was monitored.[40]

In addition, as a result of commenter feedback as explained more fully in subsequent paragraphs, we are promulgating in regulatory text the following revised versions of elements that we proposed for the not reasonably controllable or preventable criterion:

- Provided the appropriate federal, state or tribal air agency is not under an obligation to revise the SIP or FIP or TIP for an attainment or maintenance area for the event-related pollutant, the EPA would consider (*i.e.,* give deference to) enforceable control measures implemented in accordance with such a SIP or FIP or TIP, approved by the EPA within 5 years of the date of the event, that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP or FIP or TIP to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to the monitored exceedance or violation.[41] If the appropriate air agency is under an obligation to revise its implementation plan with respect to the specific enforceable control measures applicable to the exceptional events demonstration due to a SIP call pursuant to CAA section 110(k)(5), the EPA will evaluate on a case-by-case basis the control measures in place to determine whether emissions were reasonably controlled at the time of the event.
- When addressing the ''not reasonably controllable or preventable'' criterion within an exceptional events demonstration, air agencies should: (1) Identify the natural and anthropogenic sources of emissions causing and contributing to the monitored exceedance or violation, including the contribution from local sources,[42] (2) identify the relevant SIP, FIP or TIP or other enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable.[43]
- Air agencies do not need to provide case-specific justification to support the ''not reasonably controllable or preventable'' criterion for large-scale and high-energy high wind dust events, such as ''haboobs.'' (We discuss the characteristics of these events in Section IV.F.4 of this preamble.)

In addition, we repeat in this final action our suggestion that an air agency can prospectively assess and determine that the controls in place for a particular type of event, or a planned enhancement of those controls, are sufficient to meet the not reasonably controllable or preventable criterion, and then obtain the EPA's review and concurrence of this assessment prior to the occurrence of similar events (*i.e.,* a similar event type generating emissions of the same pollutant). This prospective approach would reduce disagreements that might otherwise occur over later retrospective assessments. Although air agencies have not historically pursued this option, it is our intent going forward to work with any air agency expressing an interest in pursuing this approach. Air agencies interested in this process should contact their reviewing EPA Regional office.

c. Comments and Responses

While some commenters supported the EPA's stated position in the proposal that the not reasonably controllable or preventable criterion consists of two prongs (*i.e.,* control and prevention), other commenters asserted that the statutory criterion and the implementing language in the 2007 rule is ''not reasonably controllable *or* preventable'' (emphasis added). Commenters disagreeing with the EPA's position claim that the EPA's interpretation is contrary to the CAA and that the EPA lacks authority to contravene the precise statutory language in the implementing regulatory language by interpreting the CAA to mean that an exceptional event must be both not reasonably controllable *and* not reasonably preventable.

As previously noted, we maintain that the criterion consists of two factors: Prevention *and* control and that to qualify as an exceptional event, the event must satisfy both factors. CAA section 319(b)(1)(A)(ii) is ambiguous regarding whether ''not reasonably controllable or preventable'' requires a demonstration to show both criteria, or one or the other. In adopting our interpretation, we have applied a valid rule of inference known as De Morgan's law, which recognizes that the negation of a disjunction is the conjunction of the negations. Stated simply, ''not (A or B)'' is the same as ''(not A) and (not B).'' *See, e.g., State* v. *Nelson,* 842 NW.2d 433, at 440–41 (Minn. 2014) (finding it reasonable to apply De Morgan's law to

[40] Under the CAA, the EPA generally considers a state (not including areas of Indian country) to be a single responsible actor. Accordingly, neither the EPA nor the 2007 Exceptional Events Rule provides special considerations for *intra*state scenarios when an event in one county affects air quality in another county in the same state, assuming that the event occurs on land subject to state authority (versus tribal government authority). The EPA expects controls appropriate for the designation status of the county (or portion of the county) in which the emissions originate.

[41] Under CAA section 110(c), the EPA is required to issue and enforce a federal implementation plan if a state fails to develop, adopt and implement an adequate SIP. States may also choose to adopt the federal plan as an alternative to developing their own plan. If a federal plan is implemented in a state, the state may still, at a later date submit a plan to replace the federal plan either in whole or in part. States may take over the administrative and enforcement aspects of a federal plan rather than leaving it to the EPA. Similarly, under the TAR at 40 CFR 49, tribes can develop their own plans (*i.e.,* tribal implementation plans) to implement the CAA provisions. Rather than develop their own TIPs, tribes can request that the EPA develop a FIP.

[42] In specifying ''local'' sources, we mean those sources that are both within the jurisdiction of the state or tribe and that are in the vicinity of or are located upwind of the monitor with the recorded exceedance or violation. ''Local'' sources could include, but are not limited to, large point sources (*e.g.,* large industrial sources, electric power plants, airports, etc), nonpoint sources (*e.g.,* residential heating, asphalt paving, etc.), mobile sources (*e.g.,* both on- and off-road vehicles, construction equipment, trains, and vessels), natural sources or biogenic sources (*e.g.,* off-gassing from soil, animals and vegetation).

[43] The EPA recognizes that air agencies have various methods of ensuring source compliance and various methods of permitting and enforcement. We do not expect nor would *all* agencies necessarily need to have enforcement records for *all* events. However, agencies should make a general showing that they are enforcing controls to a reasonable degree (not necessarily on the particular day of the event). If an air agency identifies several categories of anthropogenic sources as significant or likely contributors to an event, the air agency should also describe in the demonstration the means used to determine compliance with reasonable control requirements for each category.

statutory interpretation); *Schane* v. *Int'l Bhd. Of Teamsters,* 760 F.3d 585, 589–92 (7th Cir. 2014) (applying De Morgan's law to address a pension plan dispute, focusing on the context in which the ''not . . . or'' phrase was used). Applied to CAA section 319(b)(1)(A)(ii), an exceptional event means an event that is both not reasonably controllable and not reasonably preventable. The legislative history supports this logical reading of the statutory language. Congress provided the following rationale for promulgating the exceptional events provisions: ''Events such as forest fires or volcanic eruptions, should not influence whether a region is meeting its Federal air quality goals.'' S. Rep. No. 109–53, at Sec. 1618 (2005) and S. Rep. No. 108–222, at Sec. 1618 (2004). The examples used in the legislative history—forest fires and volcanic eruptions—are *both* not reasonably controllable *and* not reasonably preventable.

This interpretation is also supported by the intent of CAA section 319(b), which identifies the limited circumstances in which it is appropriate to exclude from certain regulatory decisions air monitor data clearly caused by an exceptional event balanced with the CAA's goal of protecting human health and the environment. The language ''not reasonably controllable'' clearly implicates controls, as does ''preventable,'' since an event may be ''preventable'' by mitigating the conditions under which the event occurs—*i.e.,* by applying controls. Thus, consideration of the circumstances of the event and possible application of controls is appropriate in both contexts, and a separate analysis is required for ''not reasonably controllable'' and ''not reasonably preventable.''

We note that the commenters who disagree with the EPA's interpretation failed to identify any scenarios or provide any examples of why it is problematic for the EPA to require that an exceptional event must be both not reasonably controllable *and* not reasonably preventable. While some air agencies that have submitted demonstrations have argued that the ''or'' in this criterion allows them to choose between showing either prevention or control of the event-related emissions, this type of ''or'' selection is contrary to the emphasis of CAA section 319(b) on the protection of public health and the exclusion of data associated with emissions from ''exceptional events.'' The CAA as a whole, and section 319(b) in particular, is premised on the idea that states should undertake reasonable actions to control emissions and protect public health. Exemptions and exceptions apply in addition to, rather than in place of, reasonable controls. The CAA does not allow air agencies to avoid applying reasonable controls to address emissions simply because other factors also contribute to those emissions. For example, for a high wind event, applying ''or'' might suggest that because the wind is not preventable, the agency has no obligation to address reasonable controls (*e.g.,* the application of water to stockpiles of wood chips) that could reduce emissions in the case of such an event. For prescribed fire, the use of ''or'' could allow an air agency to argue that a fire is not reasonably preventable because of the safety or ecosystem benefits that would be foregone if the fire were not applied, so the emissions and air quality impacts from the fire do not need to be reasonably controlled through the application of basic smoke management practices. Another example of when applying ''or'' would be problematic is a situation in which a developer could intentionally set fire to forested land to clear it for development, as that event would be preventable but possibly not controllable; such an event should not be considered an exceptional event. In contrast, elsewhere in the preamble to these final rule revisions we explain that some events may be neither preventable nor their air quality impacts to be controllable to any degree, such as potential increases in SO_2 concentrations associated with volcanic eruptions, and thus would qualify as exceptional events.

These final rule revisions present that what is ''reasonable'' for purposes of ''not reasonably controllable or preventable'' should consider the technical knowledge available to the air agency at the time of the event. While this concept was supported by some commenters, others maintain that ''controllable'' is forward looking rather than backward looking and that air agencies should anticipate future events and implement controls and measures to account for potential future impacts.

We agree with the commenters that a prospective approach to assessing what might constitute ''reasonable controls'' could be helpful in some cases, particularly for areas experiencing recurring events. Therefore, we have modified our proposal as it relates to mitigation for areas experiencing historically documented or known seasonal events. We discuss these concepts in Section V of this preamble. We disagree, however, with the commenters' forward-looking approach as it applies to other situations. As we noted in the proposal, an air agency ''caught by surprise'' by an event of a given type (or by an unexpected number of such events in a period over which NAAQS compliance is evaluated, typically 3 years) should not be expected to have implemented the same controls prior to an event as an air agency that has been aware that events of a certain type occur with regularity and cause NAAQS exceedances or violations. The EPA anticipates that nonattainment (or maintenance) areas have technical information needed to understand those measures that constitute reasonable control of anthropogenic sources in their jurisdiction for recurring events of the type(s) that cause or contribute to nonattainment (or that did previously). In contrast, the EPA generally does not expect areas identified as attainment, unclassifiable/attainment or unclassifiable for a NAAQS to have the same understanding or to have adopted the same level of event-relevant controls as areas that are nonattainment (or maintenance) for the same NAAQS. Also, if an area has been recently designated to nonattainment but is still developing its SIP and has not yet reached a deadline to implement controls, the EPA expects the level of controls that is appropriate for that planning stage.[44]

As noted previously, the EPA proposed, and is finalizing in rule language, that an air agency does not need to provide case-specific justification to support the ''not reasonably controllable or preventable'' criterion for emissions-generating activity that occurs outside the boundaries of the state (or tribal lands) within which the concentration at issue was monitored. While the majority of commenters supported this provision, other commenters noted that it is inconsistent with the plain language of CAA section 319, which requires that an event be not reasonably controllable or preventable and does not distinguish based on the origin of emissions associated with the event.

A review of the legislative history, and the language of section 319, as well as the purpose and intent of the CAA as a whole, reveals that Congress did not likely intend to deny a downwind state

[44] The CAA provides different timeframes for developing and implementing SIPs depending on the NAAQS and the nonattainment area's classification (*e.g.,* severity of the nonattainment problem). The EPA recognizes that within the SIP development and implementation process, some measures may be implemented relatively quickly (*e.g.,* transportation conformity, new source review) whereas other programs, such as development or rules for particular source types, can take time and involve state legislative processes.

or tribe relief in the form of data exclusion within the context of the Exceptional Events Rule for emissions that state or tribe has no authority to control. *See, e.g.,* H.R. Rep. No. 109–203 (2005) and CAA section 319(b)(1). As we expressed in the proposal, it is not reasonable to expect the downwind air agency (*i.e.,* the state or tribe submitting the demonstration) to have required or persuaded the upwind state, tribe, or foreign country to have implemented controls on sources sufficient to limit event-related air concentrations in the downwind state or tribal lands. In fact, Congress explicitly addressed interstate pollution transport in CAA sections 110(a)(2)(D)(i) and (ii), which we discuss in more detail in Section IV.F.1 of this preamble. There is no evidence that Congress intended for such efforts to be repeated in the context of exceptional events. We note, however, that we do expect the submitting (downwind) air agencies to assess potential contribution from local/in-state sources within their jurisdiction and submit evidence and statements supporting the other exceptional events criteria (*i.e.,* clear causal relationship and human activity unlikely to recur or a natural event) in their demonstrations for events that originate outside of their jurisdictional bounds.

Regarding the origin of emissions, several commenters asked that the EPA clarify how ''outside of jurisdiction'' applies to emissions from ocean-going vessels (*e.g.,* container ships and large tankers that are regulated by international treaties) and international natural and anthropogenic emissions. Although the EPA would consider emissions from ocean-going vessels regulated by international treaties as well as other international emissions (regardless of whether they are natural or anthropogenic in origin) to be emissions originating outside of the jurisdiction of the affected air agency and these emissions would therefore satisfy the not reasonably controllable or preventable criterion, these same emissions would only qualify for treatment under the Exceptional Events Rule if they also satisfy the clear causal relationship criterion and the human activity unlikely to recur at a particular location or a natural event criterion. In these scenarios, emissions from ships regulated by international treaty and international emissions from routine anthropogenic activity would not satisfy the human activity unlikely to recur at a particular location criterion because they are both routine and occur frequently in the same area (*e.g.,* the port or coastline). International emissions originating from a natural, event-based sources (*e.g.,* wildfire, volcanic activity) or from human activities unlikely to recur at a particular location (*e.g.,* industrial explosions) are more likely to qualify as exceptional events. As we have stated multiple times in this preamble, to qualify for data exclusion under the provisions of the Exceptional Events Rule, an event must satisfy all of the technical and administrative requirements under the rule.

The proposed rule revisions contained regulatory language allowing air agencies to defer to the control measures included in an attainment or maintenance SIP, approved by the EPA within 5 years of the date of a demonstration submittal, that addresses the event-related pollutant and contributing sources, to satisfy the requirement for reasonable controls. While the overwhelming majority of commenters, representing state, local, regional planning organizations and industry, supported this presumption, a few commenters disagreed with this provision noting that the EPA should not universally defer to SIP measures, but rather should assess the not reasonably controllable or preventable criterion on a case-by-case basis. Commenters supporting deference asked the EPA to consider the following revisions: (1) Measure the sufficiency of SIP requirements from the date of the event rather than the date of demonstration; (2) include reliance on measures in FIPs and/or TIPs in addition to those in SIPs; (3) include reliance on BACMs in air quality permits that are designed to control anthropogenic industrial sources; and (4) expand the reliance to include infrastructure SIPs (with or without Natural Events Action Plans (NEAP) or other mitigation plans).

We individually address these general comments and specific suggestions for revision in the following paragraphs. We maintain, as supported by many commenters and as opposed by a few, that deference to enforceable control measures implemented in accordance with an attainment or maintenance SIP (or FIP or TIP), is appropriate provided the timeframe for deference is limited and provided the SIP addresses the pollutant and the sources potentially contributing emissions to the exceedance or violation that is the subject of the exceptional events demonstration. SIPs demonstrate that the state has the basic air quality management program components in place to implement a new or revised NAAQS by identifying the emission control requirements that state will rely on to attain/maintain these NAAQS. In developing its SIP according to the provisions of CAA section 110(a), a state must identify and assess those sources of emissions that are contributing to the state's air pollution problem, identify appropriate controls, identify contingency measures, address provisions for demonstrating reasonable further progress, identify permitting requirements, and satisfy other requirements. When a nonattainment area reaches attainment, it may be redesignated to maintenance area status if it has implemented all applicable nonattainment area requirements and obtains the EPA's approval for a maintenance plan for a 10-year period. Thus, in both maintenance and nonattainment areas with approved attainment plan SIPs, the air agency and the EPA, with input from the public, will have considered what controls are necessary and reasonable to provide for attainment, based on information available at the time of plan development and approval. Because the attainment/maintenance SIP development process includes the identification and assessment of those sources of emissions that are contributing to the state's air pollution problem, which could include event-related emissions, it is appropriate to rely on the measures in the SIP as constituting reasonable controls for purposes of exceptional events demonstrations just as it is reasonable to rely on the measures in the SIP as constituting reasonable controls for emissions sources. We do, however, agree with the commenters that deference to the control measures in an attainment or maintenance SIP should not be open-ended. We discuss limitations to this deference in the following paragraphs, including deference for a limited timeframe (*i.e.,* 5 years).

As suggested by commenters, we have changed the language in this provision to be 5 years from the date of the ''event'' rather than the date of ''demonstration submittal'' as we proposed. We believe that it is reasonable and appropriate to make this change to ensure that the exceptional events process is implemented in a manner consistent with the CAA. We also agree with commenters that ''5 years from the date of the event'' is the more appropriate time-frame given that we are promulgating requirements in 50.14(b)(8)(i)–(iv), which also rely on the date of the event.

As we noted in this preamble, we also agree with commenter recommendations that we defer to enforceable control measures

implemented in accordance with an attainment or maintenance SIP, FIP or TIP. We have included these implementation plans in the regulatory text. We agree that FIPs and TIPs provide the same level of assessment of control measures during the development and approval process as attainment/maintenance SIP process previously described and that the only difference between these plans lies in the agency developing the plan and the agency to whom the plan applies, neither of which impact whether the measures contained in the plans constitute reasonable controls for purposes of exceptional events demonstrations. For several reasons, however, we do not agree that we should universally extend this same deference to BACM or fugitive dust control plans contained in air quality permits. First, control measures in air quality permits may or may not be EPA-approved and evaluated using the same rigor as controls in a SIP, FIP or TIP. Second, the best available control measures in an air quality permit apply to the permit holder and not to all sources potentially contributing emissions to a monitored exceedance or violation. While we are not deferring to BACM controls in air quality permits, we encourage air agencies to identify these measures in the collection of controls that they determine constitute ''reasonable'' controls for purposes of addressing the not reasonably controllable or preventable criterion.

The EPA disagrees with the suggestion from a few other commenters to defer to provisions in infrastructure SIPs to satisfy the not reasonably controllable or preventable criterion. CAA sections 110(a)(1) and 110(a)(2) require every state to develop and submit to the EPA an ''infrastructure SIP'' for each NAAQS within 3 years of the promulgation of a new or revised NAAQS. While infrastructure SIPs address a number of CAA requirements, including the requirement to identify emission limits for specific pollutants, infrastructure SIPs are not required to include attainment or maintenance demonstrations and are not required to demonstrate that the controls on particular sources are ''reasonable.'' Thus, the EPA-approved infrastructure SIPs do not necessarily constitute an assessment of those controls that are reasonable to have in place to address air quality impacts from particular types of events that may become the focus of exceptional events demonstrations. As with measures in air quality permits, while we are not deferring to measures identified in infrastructure SIPs to universally satisfy the not reasonably controllable or preventable criterion, we encourage air agencies to identify measures in infrastructure SIPs, NEAPs, mitigation plans, SMP and prospective assessments of reasonable controls in the collection of controls that they determine constitute ''reasonable'' controls for purposes of addressing the not reasonably controllable or preventable criterion. We note that provisions in these plans could, on a case-by-case basis with the proper showing, satisfy the not reasonably controllable or preventable criterion.

We are promulgating rule language that the timeframe for attainment/maintenance SIP deference is 5 years from the date of the SIP approval measured to the date of an event at issue. We solicited comment on whether and what other timeframes might be appropriate for this deference. In responding to this specific solicitation for feedback, commenters provided a range of options for SIP deference including 3 years, 5 years, 10 years, reliance on the SIP until a new NAAQS is adopted or until the EPA disapproves or calls the SIP, and, as previously noted, no reliance on the SIP because any such deference is inappropriate. One commenter noted that a deference timeframe of 3 years is more consistent with design value averaging and the timeframe. We previously suggested in the 2013 Interim Exceptional Events Implementation Guidance, and other commenters argued, that 10 years is consistent with the timeframe for maintenance plan updates. The EPA considered this information and is now promulgating, as proposed, a deference timeframe of 5 years. After reviewing feedback received during the comment period, we retain our proposed language that 5 years represents a reasonable timeframe during which (1) the control measures in a current SIP (or FIP or TIP) address all event-relevant sources of current importance, (2) the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP (or FIP or TIP) are the same measures that are known and available at the time of a more recent event, and (3) the conditions in the area have not changed in a way that would affect the approvability of the same SIP (or FIP or TIP) if it newly needed the EPA's approval. Additionally, as we discuss in Section IV.E.3 of this preamble, we encourage the use of 5 years of data when developing analyses to support the clear causal relationship criterion because we believe that 5 years of ambient air data represent the range of ''normal'' air quality. Using a 3-year period of deference might mask (or accentuate) the range of ''normal'' air quality, while using a 10-year deference timeframe could overlook new emissions sources, relevant control measures and control measure technologies, and other changes in the affected area that could influence the approvability of a SIP (or FIP or TIP).

We also note that in establishing a period of deference of 5 years, we are not implying that in periods longer than 5 years, the controls in a SIP automatically become inappropriate or insufficient. Rather, we are saying that in cases where the SIP was approved more than 5 years prior to the date of the event (and the air agency is not under an obligation to revise the SIP), because of the passage of time, the SIP controls should not be presumed to satisfy the not reasonably controllable or preventable criterion. In such a case, the air agency should complete a case-specific assessment of the reasonableness of controls to satisfy the not reasonably controllable or preventable criterion. This case-by-case assessment would include the following components, which we are promulgating as rule text: (1) Identify the natural and anthropogenic sources of emissions causing and contributing to the monitored exceedance or violation, including the contribution from local sources, (2) identify the relevant SIP or other enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable. As we identified earlier in this preamble, when we specify ''local'' sources, we mean those sources that are both within the jurisdiction of the state or tribe and that are also in the vicinity of or are located upwind of the monitor with the recorded exceedance or violation. ''Local'' sources could include, but are not limited to, large point sources (*e.g.,* large industrial sources, electric power plants, airports, etc), nonpoint sources (*e.g.,* residential heating, asphalt paving, etc.), mobile sources (*e.g.,* both on- and off-road vehicles, construction equipment, trains, and vessels), natural or biogenic sources (*e.g.,* off-gassing from soil, animals and vegetation).

We identified in the proposal these three components of a case-by-case assessment of the not reasonably controllable or preventable criterion and solicited comment on including these components as regulatory language. One commenter supported this suggestion, and, as a result, we are promulgating associated rule text. Although no

commenters opposed including the components as rule text, a number of commenters asked that we clarify our expectations with respect to these components. We do so here.

When identifying the sources of emissions causing and contributing to the monitored exceedance or violation, the air agency should first discuss the scope of the analysis with the reviewing EPA Regional office. This scope will be determined on a case-by-case basis considering the specifics of the individual event. For example, if an air agency claims that an event was regional in nature, then the area of focus for the not reasonably controllable or preventable criterion would likely be the county or counties involved in the ''region.'' If an affected air agency claims that an exceedance or violation was caused by an event originating in a nearby state, then the air agency would include in its assessment the area and the potentially contributing sources located between the subject upwind source and the affected monitor. Once the air agency and the EPA determine the appropriate area of analysis, the air agency should identify, within the area of analysis, those stationary, mobile (if applicable) and area sources and any other natural sources that emit the pollutant or precursors that are the subject of the demonstration.[45] In doing this, the air agency should include, for ''major'' point sources,[46] the facility name, the distance of the facility to the affected monitor, and emissions in terms of tons per year (tpy) of the pollutant in question. Air agencies may identify other point sources and area sources by category.

For each source category and/or individual source, if appropriate, the air agency should identify applicable control measures in the SIP or in other state rules or ordinances and provide a statement as to why these controls are reasonable.[47] In addition to the SIP, state rules or local ordinances, air agencies could also identify control measures in individual permits, NEAPs, SMP, other mitigation plans, or USDA/Natural Resources Conservation Service (NRCS)-approved Best Management Practices (BMPs) (discussed in more detail in Section IV.F.2.b of this preamble). The air agency may also consider recent Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) determinations in the affected area or in another area with similar sources or other appropriate measures. This assessment should include a review and description of any known instances of source noncompliance (*e.g.,* nearby facility upsets or malfunctions, failure to comply with applicable rules such as vacant lot stabilization or moisture requirements for area sources) that could have resulted in emissions of the relevant pollutant(s) that influenced the monitored measurements on the day(s) of the claimed events. The air agency would then identify the implementation status of these controls and provide evidence of enforcement. As we indicated earlier, the EPA generally expects evidence that the controls determined to be reasonable, if any, were effectively implemented and appropriately enforced.

After addressing these components and in concluding that they have shown that reasonable measures to control the impact of the event on air quality were applied at the time of the event and that the event was therefore not reasonably controllable, the air agency should then apply the concept that if a set of control measures *should reasonably have been in place* for emission sources that contribute to the event emissions, then those controls *must* have been in place for the event to satisfy the not reasonably controllable or preventable criterion. To do this, the air agency should ask the following questions: (1) Do the control measures in the current SIP (or other programs) address all event-relevant sources of current importance? (2) Are the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP the same measures that are known and available at the time of the more recent event? and (3) Have the conditions in the area changed in a way that would affect the approvability of the same SIP if it newly needed the EPA's approval? In our view an event is ''not reasonably controllable'' if an exceedance or violation occurs even when reasonable controls were actually in place and any further control would have been beyond what was reasonable. As indicated in these rule revisions, the EPA intends to consider these aspects when applying the concept of ''reasonable controls'' on anthropogenic sources.

The EPA notes that there are several instances in which this step-wise approach to addressing the not reasonably controllable or preventable criterion is not necessary. This analysis is *not* required when an air agency can rely on deference to control measures contained in a SIP (or FIP or TIP). It is also not required for exceedances or violations caused by events whose emissions are solely from natural sources (*e.g.,* wildfire; stratospheric ozone intrusions; windblown dust from natural, undisturbed landscapes; large-scale and high-energy high wind dust events, volcanic activity) as demonstrated by satisfying the clear causal relationship (discussed in more detail in Section IV.E.3 of this preamble). In these cases, after addressing the clear causal relationship criterion, the air agency should affirmatively state that the not reasonably controllable or preventable criterion is satisfied by the fact that the natural event was of a character that could not have been prevented and could not have been controlled and that there were no contributions of event-related emissions from anthropogenic sources as demonstrated in the clear causal relationship showing. To clarify, once an air agency has satisfied the clear causal relationship criterion and has shown that the subject exceedance or violation was caused by an event whose emissions are solely from natural sources, then the not reasonably controllable criterion applies only to emissions from natural sources/event and not to local sources. And, for natural sources, air agencies can satisfy

[45] A recent emissions inventory could serve as a starting point when identifying sources of emissions within a given area of analysis. Air agencies should also consider other sources that potentially contribute to event-related emissions that may not be the focus of routine annual inventories, which are often required by federal, state or local rules for only a specific set of sources or pollutants.

[46] The term ''major'' can vary by pollutant and NAAQS and affected air agencies should discuss the expectation during the initial notification of a potential exceptional event process. Generally, however, we would consider ''major'' to be the thresholds used in the initial area designations process for the NAAQS in question. For example, for $PM_{2.5}$, major point sources are those whose sum of PM precursor emissions ($PM_{2.5}$ + NO_X + SO_2 + VOC + NH_3) are greater than 500 tpy based on the most recent National Emissions Inventory (NEI) or SIP inventory.

[47] To clarify, the EPA does not need to formally approve an air agency's rules and SIP before reasonable controls are officially in place for an exceptional events determination. These final rule revisions and final rule preamble indicate that we will defer to controls in a SIP/FIP/TIP approved by the EPA within 5 years of the date of the event provided the controls are specific to the pollutant and contributing anthropogenic sources. Thus, a SIP/FIP/TIP approved within 5 years of an event satisfies reasonable controls, but an area could also satisfy the not reasonably controllable or preventable criterion a number of other ways as discussed in this preamble. We also note that if an air agency has a record of other controls that are not yet part of a SIP/FIP/TIP (as could be the case for an attainment, unclassifiable/attainment or unclassifiable area or for a nonattainment or maintenance area undergoing SIP planning or revision process) but that are implemented and enforced and not just contemplated, that we would consider these controls to be SIP/FIP/TIP controls.

the criterion with a statement similar to that in the following example.

Consider, as an example, a stratospheric ozone intrusion event. Stratospheric intrusions are by nature not reasonably controllable or preventable. If an air agency has shown in the clear causal portion of its demonstration that ozone transported from the stratospheric ozone intrusion overwhelmingly caused each of the identified exceedances, then it has shown these are natural, intrusion events and controls on anthropogenic sources are irrelevant. The air agency can include the following statements in its demonstration:

The analysis shows that ozone transported via a stratospheric ozone intrusion caused each of the identified exceedances in [Section A] of this demonstration. We conclude that the event identified should be considered a natural, stratospheric ozone intrusion event. (An air agency may include this type of conclusory language in the natural events section of the demonstration.)

The analysis shows that ozone transported via a stratospheric ozone intrusion caused each of the identified exceedances in [Section A] of this demonstration. We conclude that the event in question was a stratospheric ozone intrusion event and thereby an unpreventable and uncontrollable natural event, and therefore not reasonably controllable or preventable. (An air agency may include this type of conclusory language in the not reasonably controllable or preventable portion of the demonstration.)

The proposal also discussed and solicited feedback on the role of prior communications regarding expectations for reasonable controls. The proposal indicated that the EPA would consider communications between the EPA and the air agency when assessing ''reasonableness'' as part of assessing the technical information available to the air agency at the time the event occurred and what *should reasonably have been in place* at the time of the event for anthropogenic emission sources that contribute to the event emissions. We noted that because regulations and an area's planning status are often evolving and changing and because these changes and iterative discussions often include issues regarding appropriate controls, including what controls would constitute ''reasonable'' controls for exceptional events purposes, we solicited comment on what form of communication would be most effective in conveying the EPA's views to the affected air agency and whether this approach would be most appropriately addressed through guidance or regulatory text. Although one commenter responding to this specific solicitation for comment indicated that our decision should be promulgated in rule text, the majority of commenters indicated that expectations in guidance were appropriate. These commenters suggested that any formal communication notifying an air agency of specific expectations regarding reasonable controls that should be, but are not yet, included in the SIP (or FIP or TIP) would be sufficient to override the deference to existing SIP (or FIP or TIP) controls. Commenters noted that such communications, either electronic or in hard copy, come from an authorized person within the EPA and be transparent and publicly available. One commenter suggested that the ''authorized'' person be the Regional Administrator. The EPA agrees with commenters that we would consider as sufficient any formal communication notifying the affected air agency of SIP (or FIP or TIP) deficiencies with respect to those controls that constitute reasonable controls for the sources and pollutants that are contained within the SIP (or FIP or TIP) and are the subject of an exceptional events demonstrations.[48] These communications can be conveyed electronically or in hard copy and come from any person within the EPA who is authorized to make such decisions. Generally, these authorized persons could be branch chiefs, air program managers, air division directors or the equivalent highest manager who exclusively oversees air programs, or regional administrators.

Related to these communications regarding expectations for reasonable controls, the proposal invited comment on whether there should be a grace or grandfathering period before a SIP (or FIP or TIP) call involving a relevant NAAQS that would effectively end the deference that applied prior to the SIP (or FIP or TIP) call. If an event were to occur during such a grace period, the existing SIP (or FIP or TIP) controls would still be given the deference. Several commenters supported, and no commenters opposed, incorporating this concept into regulatory language, noting that agencies should be given time to enact appropriate control measures after the EPA has identified this need. Commenters also noted that the timeframe for enacting these measures often depends on the widely-varying state/area-specific administrative requirements. In many cases, state and local agencies are prohibited by state law from enacting ''stricter than federal'' controls unless required by a federal action such as a nonattainment designation or SIP call. Therefore, in most circumstances, when a SIP (or FIP or TIP) revision is required, such as when new regulations must be incorporated or when an area receives a new designation, we think it is reasonable that agencies be given time to enact appropriate control measures after the need to do so has been identified and justification is in place to satisfy state laws. However, in some circumstances, the requirement to revise particular emission control measures in an implementation plan might be pursuant to a SIP call under CAA section 110(k)(5), which represents a determination by the EPA that the control measures in the existing implementation plan are substantially inadequate. In the proposal, the EPA acknowledged that such SIP calls might necessitate different treatment and took comment on that issue (*see* 80 FR 81878). After fully considering the issue, including comments received, we have determined that in such cases involving a SIP call, we do not think it would be reasonable for an air agency to continue to rely on those deficient measures in an exceptional events demonstration. Accordingly, we are including regulatory text that extends the deference to emission control measures contained in a SIP that is subject to a revision requirement to the due date for a required SIP revision. However, the regulatory text also explains that when the control measures applicable to the exceptional events demonstration are subject to a SIP call under CAA section 110(k)(5), the EPA will evaluate on a case-by-case basis the control measures in place to determine whether emissions were reasonably controlled at the time of the event.

3. Clear Causal Relationship Supported by a Comparison to Historical Concentration Data

a. Summary of Proposal

The EPA proposed to revise the 2007 Exceptional Events Rule language related to the clear causal relationship criterion as follows:

- To move the ''clear causal relationship'' element into the list of criteria that explicitly must be met for data to be excluded

[48] The EPA acknowledges that not all SIP (or FIP or TIP)-related communications would negatively impact deference to the control measures contained within the SIP (or FIP or TIP). For example, if the EPA issued a letter notifying an air agency that its existing SIP (or FIP or TIP)-approved controls appear to meet a new SIP (or FIP or TIP) requirement (*i.e.,* BACM for the 2008 Ozone NAAQS would also be BACM for 2015 Ozone NAAQS), this same correspondence could support continued use of those controls as ''reasonable'' for exceptional events purposes.

- To subsume the ''affects air quality'' element into the ''clear causal relationship'' element
- To remove the ''but for'' element
- To remove the term ''historical fluctuations'' and replace it with text referring to a comparison to historical concentrations,
- To clarify that the comparison to historical concentrations is not a fact that must be proven
- To clearly identify in regulatory language the types of analyses that are necessary and sufficient in a demonstration to address the comparison to historical concentrations

As noted in the proposal, CAA section 319(b)(3)(B)(ii) requires that ''a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.'' The clear causal relationship criterion establishes causality between the event and a measured exceedance or violation of a NAAQS. If the actual effect of the event were small, it may be very difficult to distinguish the effect of the event with sufficient confidence because many other factors could have produced similar effects. As with the other exceptional events criteria, the EPA has used a weight of evidence approach when reviewing analyses to support a causal relationship between an event and a monitored exceedance or violation.

Showing that an event and elevated pollutant concentrations occurred simultaneously may not establish causality. The clear causal relationship section of an exceptional events demonstration should include analyses showing that the event occurred and that emissions of the pollutant of interest resulting from the event were transported to the monitor(s) recording the elevated concentration measurement(s). The last three of the bullets, summarized here, relate to analyses associated with demonstrating that a clear causal relationship exists between the event-related emissions and the monitored exceedance or violation (*i.e.,* they relate to the technical treatment of data, which is the subject of this section of the preamble). We discussed our proposed rationale for the first three bullets in Section V.B.1 of this preamble, Definition and Scope of an Exceptional Event.

The EPA proposed to remove the regulatory language in the 2007 Exceptional Events Rule that ''[t]he event is associated with a measured concentration in excess of normal historical fluctuations, including background'' and replace it with text referring to a comparison to historical concentrations. Our intent with the original language in the 2007 rule was to require air agencies to present event-influenced concentration data along with historical data and to quantify the difference, if any, between the event and the non-event concentrations thus supporting the weight of evidence within the clear causal relationship determination. We indicated in our November 2015 proposal that the phrase ''in excess of normal historical fluctuations, including background'' is vague and provides no additional value to historical concentration comparisons. Rather than use this language, we proposed that every exceptional events submittal must include a demonstration of a clear causal relationship between the event-related emissions and the monitored exceedance or violation as supported by a comparison to historical concentration data.

To support the clear causal relationship generally, we proposed example analyses and guidance, shown in Table 1, as being appropriate for most event types.[49]

TABLE 1—EXAMPLE CLEAR CAUSAL RELATIONSHIP EVIDENCE AND ANALYSES

Example of clear causal relationship evidence	Types of analyses/information to support the evidence
Comparison to Historical Concentrations	Analyses and statistics showing how the observed event concentration compares to the distribution or time series of historical concentrations of the same pollutant.
Occurrence and geographic extent of the event	Special weather statements, advisories, news reports, nearby visibility readings, measurements from regulatory and non-regulatory (*e.g.,* special purpose, emergency) monitoring stations throughout the affected area, satellite imagery.
Transport of emissions related to the event in the direction of the monitor(s) where the measurements were recorded.	Wind direction data showing that emissions from sources identified as part of the ''not reasonably controllable or preventable'' demonstration were upwind of the monitor(s) in question, satellite imagery, monitoring data showing elevated concentrations of other pollutants expected to be in the event plume.
Spatial relationship between the event, sources, transport of emissions and recorded concentrations.	Map showing likely source area, wind speed/direction and pollutant concentrations for affected area during the time of the event, trajectory analyses.
Temporal relationship between the event and elevated pollutant concentrations at the monitor in question.	Hourly time series showing pollutant concentrations at the monitor in question in combination with wind speed/direction data in the area where the pollutant originated/was entrained or transported.
Chemical composition and/or size distribution (for $PM_{2.5}$ to PM_{10}) of measured pollution that links the pollution at the monitor(s) with particular sources or phenomenon.	Chemical speciation data from the monitored exceedance(s) and sources, size distribution data.
Comparison of event-affected day(s) to specific non-event days.	Comparison of concentration and meteorology to days preceding and following the event, comparison to high concentration days in the same season (if any) without events, comparison to other event days without elevated concentrations (if any), comparison of chemical speciation data.

[49] For purposes of summarizing example clear causal relationship analyses in one place, the EPA has included an entry for the comparison to historical concentrations showing in Table 1. The EPA notes that although the Interim High Winds Guidance and the Interim Q&A document discussed the comparison to historical concentrations showing, neither of these guidance documents presented this showing as part of the clear causal relationship. *See* specifically *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf* and *Interim Exceptional Events Rule Frequently Asked Questions.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf.*

We noted that we do not expect nor would all air agencies necessarily need to include all of the evidence and analyses identified in Table 1, but rather to use available information to build a weight of evidence showing. The proposal also noted that the EPA expects nonattainment areas to have more sophisticated air quality prediction tools, in some cases these tools include photochemical or regression models and modeling experience. Depending on the case-by-case nature of the event, these tools may be beneficial, particularly in situations where the causality between the event and a measured exceedance of a NAAQS is not clearly established with evidence and analyses identified in Table 1.

As we have noted previously, the EPA's mission includes preserving and improving, when needed, the quality of our nation's ambient air to protect human health and the environment. The EPA accomplishes this by developing the NAAQS for criteria pollutants, evaluating the status of the ambient air as compared to these NAAQS using data collected in the national ambient air quality monitoring network established under the authority of section 319(a) of the CAA, and by overseeing the states' programs to improve air quality, as needed. Thus, ambient air quality data are fundamental to the CAA and the protection of public health. Data exclusions must also be consistent with the CAA. The ''comparison to historical concentration'' portion of the clear causal relationship criterion shows how the event-influenced data compare to other non-event related air quality data.

To clarify our expectations for the ''comparison to historical concentrations'' portion of the clear causal relationship showing, we proposed the evidence and analyses shown in Table 2 as rule text to indicate types of statistics, graphics and explanatory text regarding comparisons to past data. The proposed rule language also indicated that the analyses described in Table 2 are sufficient to satisfy the rule's requirement regarding the comparison to historical concentration data and that the submitting air agency does not need to prove any specific threshold or ''in excess of'' fact.

As with other evidence in an exceptional events demonstration submittal, the EPA will use a weight of evidence approach in reviewing submitted demonstrations and will consider the ''clear causal relationship'' information, including the comparison to historical concentrations showing, along with evidence supporting the other Exceptional Events Rule criteria.

b. Final Rule

After considering the public comments as described in the following text, many of which supported our proposed approach, we are finalizing as proposed and revising the regulatory requirement that the demonstration to justify data exclusion must include a demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation. We are also finalizing a modified version of our proposal that the demonstration include analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times to support the clear causal relationship criterion. The modification to the language within 40 CFR 50.14(c)(3)(iv)(C) retains the statement that the Administrator shall not require an air agency to prove a specific percentile point in the distribution of data. We note, in response to comments, that ''proving'' a specific percentile point is different than ''determining'' a specific percentile point. Also in response to commenter feedback, we have removed the regulatory table identifying the specific analyses associated with the comparison to historical concentrations and included a revised version of the proposed table (*see* Table 2) in this preamble as guidance. Although the table includes several changes and clarifications suggested by commenters, we have retained the proposed analysis that involves ''determining'' the percentile ranking of the concentration in question because this assessment provides perspective for the clear causal showing.

TABLE 2—EVIDENCE AND ANALYSES FOR THE COMPARISON TO HISTORICAL CONCENTRATIONS

Historical concentration evidence	Types of analyses/supporting information [a]
1. Compare the concentrations on the claimed event day with past historical data.	• Provide the data in the form relevant to the standard being considered for data exclusion. • Present monthly maximums of the NAAQS relevant metric (*e.g.,* maximum daily 8-hour average ozone or 1-hr SO_2) vs presenting monthly or other averaged daily data as this masks high values for the most recent 5-year period that includes the event(s).[b] • Alternatively, if informative, include separate plots for each year (or season).[c] • *See* examples at *https://www.epa.gov/sites/production/files/2015-05/documents/ideasforshowingeeevidence.pdf* and Question 3 in the Interim Q&A document provides additional detail.[d]
2. Demonstrate spatial and/or temporal variability of the pollutant of interest in the area.	• Prepare one or more time series plots showing the concentrations of the pollutant of interest at the affected monitor and nearby monitors. • Compare concentrations on the claimed event day with a narrower set of similar days by including neighboring days at the same location (*e.g.,* a time series of two to three weeks) and/or other days with similar meteorological conditions (possibly from other years) at the same or nearby locations with similar historical air quality along with a discussion of the meteorological conditions during the same timeframe.[e]
3. Determine percentile ranking	• Determine 5-year percentile of the data requested for exclusion on a per monitor basis. • Determine the annual ranking of the data requested for exclusion. This assessment may be potentially helpful to show when the non-event concentrations during the year with the exclusion request were lower than surrounding years.
4. Plot annual time series to show the range of ''normal'' values (*i.e.,* Display Interannual Variability) [f].	• Prepare a time series plot covering 12 months (or all months in which the data were collected) overlaying at least 5 years of monitoring data from the event-influenced monitor to show how monitored concentrations compare at a given time of year and/or coincide with the subject event. This plot will display the non-event variability over the appropriate seasons or number of years. • For annual comparisons, use the daily statistic (*e.g.,* maximum daily 8-hour average, or maximum 1-hour) appropriate for the form of the standard being considered for data exclusion.

TABLE 2—EVIDENCE AND ANALYSES FOR THE COMPARISON TO HISTORICAL CONCENTRATIONS—Continued

Historical concentration evidence	Types of analyses/supporting information [a]
5. Identify all ''high'' values in all plots	• Label ''high'' data points as being associated with concurred exceptional events, suspected exceptional events, other unusual occurrences, or high pollution days due to normal emissions (provide evidence to support the identification when possible). • Include comparisons omitting known or suspected exceptional events points, if applicable.
6. Identify historical trends (optional if this trends analysis provides no additional ''weight'').	• Describe how pollutant concentrations have decreased over the 5-year window, if applicable. • Identify and discuss trends due to emission reductions from planning efforts and/or implementing emission control strategies. • Identify and discuss trends or other variability due to meteorology or economics of an area. • If appropriate, create a plot to show how a downward trend in pollutant concentrations over the 5-year historical data record obscures the uniqueness of the event-related concentration.
7. Identify diurnal or seasonal patterns	• Show how the diurnal or seasonal pattern differs due to the event, if the event causes a change from typical diurnal/seasonal patterns.

[a] While the EPA recommends using 5 years of data in analyses to support the comparison to historical concentrations, we recognize that there may be exceptions to using 5 years of data such as when 5 years of data are not available for a given monitor or in case-by-case analyses such as those for prescribed fire on wildlands.

[b] Section 8.4.2.e of appendix W (proposed revisions at 80 FR 45374, July 29, 2015) recommends using 5 years of adequately representative meteorology data from the National Weather Service (NWS) to ensure that worst-case meteorological conditions are represented. Similarly, for exceptional events purposes, the EPA believes that 5 years of ambient air data, whether seasonal or annual, better represent the range of ''normal'' air quality than do data from shorter periods.

[c] ''Season'' can be pollutant and area specific. For example, the EPA defines ozone monitoring seasons in Table D–3 to Appendix D of Part 58: ''Ozone Monitoring Season by State.'' These seasons include, but may be longer than, an area's typical photochemical ozone season. For exceptional events purposes, an area may want to include both the typical photochemical ozone season and the ''season'' in which the event happened (if they are different). Similarly, the ''season'' for PM may be in the winter (for areas influenced by wood smoke). The general concept behind ''seasonal'' analyses is to compare the season of anthropogenic pollutant generation to the season in which the event occurred.

[d] *Interim Exceptional Events Rule Frequently Asked Questions.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf.*

[e] If an air agency compares the concentration on the claimed event day with days with similar meteorological conditions from other years, the agency should provide information regarding any changes in wind patterns or sources of emissions of the pollutant(s) of concern in the area, including increases or reductions in the emissions inventory, or other known source of emissions information, that could affect the concentration of the pollutant(s) of concern during the exceptional event. If an air agency compares the concentration on the claimed event day to days immediately preceding and following the event day, the air agency should discuss and compare the meteorology on those days.

[f] The EPA does not intend to identify a particular historical percentile rank point in the seasonal or annual historical data that plays a critical role in the analysis or conclusion regarding the clear causal relationship.

In summarizing the clear causal relationship section of its demonstration, the air agency should conclude with this type of statement: ''On [day/time] an [event type] occurred which generated pollutant X or its precursors resulting in elevated concentrations at [monitoring location(s)]. The monitored [pollutant] concentrations of [ZZ] were [describe the comparison to historical concentrations including the percentile rank over an annual (seasonal) basis]. Meteorological conditions were not consistent with historically high concentrations, etc.'' and ''In addition to the comparison to historical concentrations showing, analyses X, Y and Z support Agency A's position that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation and thus satisfies the clear causal relationship criterion.''

c. Comments and Responses

As indicated previously, numerous commenters supported revising the regulatory language from ''event is associated with a measured concentration in excess of normal historical fluctuations, including background'' to ''a comparison to historical concentrations.'' Commenters supportive of the proposal agreed with the EPA's position that the phrase ''in excess of normal historical fluctuations, including background'' is vague and provides no additional value to historical concentration comparisons. Commenters representing the environmental community urged the EPA to maintain the ''in excess of normal historical fluctuations, including background'' language included in the 2007 rule, arguing that removing this language simply because it is unclear effectively weakens clean air protections. The EPA does not see this change to the rule text as weakening the CAA protections. An analysis of measured concentrations, which inherently includes background, and evidence that supports a comparison to historical concentrations is still required to support the demonstration of the clear causal criterion for the data exclusion request to qualify as an exceptional event. Thus, the ''comparison to historical concentrations'' showing is not less stringent than the ''in excess of normal historical fluctuations, including background'' showing because the technical analysis remains robust.

Commenters generally supported requiring a historical concentrations showing as part of the clear causal relationship criterion. Several of these commenters suggested that the EPA include the proposed regulatory table identifying these historical concentrations analyses as guidance in the preamble rather than in regulatory text. Commenters offering this suggestion stated that because some of the identified analyses are required and others are optional, they are not universally applicable and are therefore best presented as guidance. As indicated in the final rule discussion, the EPA agrees with this approach and is removing the table from the final rule language and retaining it as guidance, with changes, in this preamble.

A number of other commenters provided feedback regarding the details of the clear causal relationship criterion, particularly asking that we lessen or remove certain analyses. Although we address these comments here and/or in the Response to Comments document that accompanies this final rule, we note that CAA section 319(b)(3)(B) requires the EPA to promulgate regulations, which ''at a minimum'' provide that exceptional events must be ''demonstrated by reliable, accurate

data.'' The requirement for a ''demonstration'' necessarily imposes data-driven analyses.

One commenter requested that the EPA eliminate what is now Table 2 in this preamble from both rule and guidance because the EPA did not provide an acceptable range of percentiles or a process/methodology to determine whether the historical concentrations showing had been satisfied. In response to this commenter, the EPA notes that comparisons to historical concentrations help build a weight of evidence showing for the clear causal relationship criterion and add perspective to other analyses that air agencies may use in their clear causal showing. A demonstration may be less compelling if some evidence is inconsistent with the description of how the event caused the exceedance. For example, if an air agency describes an event as a *regional* dust storm or wildfire, then the EPA anticipates that most or all monitors within the same *regional scale* would be similarly affected by the event. That is, the EPA expects that the demonstration elements and factors (*e.g.,* clear causal relationship, reasonable controls, meteorology, wind speeds) would also support the case for a *regional* event. Comparison of concentrations and conditions at other monitors could thus be very important for the demonstration of a clear causal relationship. Alternatively, eliminating plausible non-event causes may also support a causal relationship between the event and the elevated concentration. In response to the commenter's request to eliminate the showing based on a lack of information about an acceptable range of percentiles or a process/methodology to determine whether the criterion has been satisfied, the EPA points to language in this section of the preamble and rule text that provides such criteria by indicating that the analyses described in Table 2 are sufficient to satisfy the rule's requirement regarding the comparison to historical concentration data and that the submitting air agency does not need to prove any specific threshold or ''in excess of'' fact (*see* 40 CFR 50.14(c)(3)(iv)(C)).

In response to other specific comments regarding the analyses in Table 2, two commenters noted that a comparison involving 5 years of data is an inappropriate time for the comparison to historical concentrations. As we note in footnote ''a'' to Table 2, we believe that 5 years of ambient air data, whether seasonal or annual, better represent the range of ''normal'' air quality than do data from shorter periods. We recognize, however, that some monitors do not have 5 years of data and/or may have periods of invalid data. The EPA recognizes that there may be exceptions to using 5 years of data. One commenter suggested that an appropriate comparison to historical concentrations for prescribed fires may involve ''visual observations and/or modeled impacts based on biomass consumption or other ecological parameters'' rather than comparisons using 5 years of monitoring data. The commenter explains that while we were not measuring air quality impacts 100 years ago, current fuel models may be used to estimate the area's fire history and, thus, historical concentrations influenced by smoke. The EPA agrees that the commenter's comparative analysis for prescribed fire on wildland could supplement the comparison to historical concentrations using monitoring data as part of the clear causal relationship showing. The EPA acknowledges that current fuel models could incorporate a timeframe for comparison that is longer than 5 years and could incorporate contributions from both prescribed fire and wildfire. We further note that such modeling could support the clear causal relationship by showing that a given observed ambient concentration is similar to concentrations associated with past fires.[50] Such modeling, however, is not a substitute for the comparison to historical concentrations using monitoring data. The title of CAA section 319(b) is ''Air quality monitoring data influenced by exceptional events.'' The language at section 319(b)(3)(B)(ii) requires that ''a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.'' Monitoring data are at the core of the rule. Generally, the form of most primary NAAQS (carbon monoxide and lead excluded) relies on 3 years of data. Regulatory determinations associated with these NAAQS employ data from regulatory monitors. Therefore, if an exceptional event influences a regulatory monitor that produces data, which will be used for a regulatory decision, 3 years of data will be available. Comparisons of monitored event-influenced data to modeled data, which are inherently predicted or estimated, do not carry the same weight under a weight of evidence approach. Additionally, because these monitoring data are readily available and accessible, these analyses are also relatively easy to produce.

In the same table, commenters asked for clarification regarding ''seasonal'' analyses. In response to this comment, the EPA has added a new footnote clarifying that ''season'' can be pollutant and area specific. For example, the EPA defines ozone monitoring ''seasons'' in 40 CFR part 58, appendix D, Table D–3, ''Ozone Monitoring Season by State.'' These seasons include, but may be longer than, an area's typical photochemical ozone season. For exceptional events purposes, an area may want to include both the typical photochemical ozone season and the ''season'' in which the event happened (if they are different). Similarly, the ''season'' for PM may be in the winter (for areas influenced by wood smoke). The general concept behind ''seasonal'' analyses is to compare the season of anthropogenic pollutant generation to the season in which the event occurred.

Continuing with additional requested clarifications regarding Table 2, another commenter asked that we clarify the language ''time horizon.'' As a result of the modifications to this table, we no longer use this term. Another commenter asks that we revise the language in footnote ''e'' to Table 2, which reads ''. . . the agency should also verify and provide evidence that the area has not experienced significant changes in wind patterns, and that no significant sources in the area have had significant changes in their emissions of the pollutant of concern'' to ''. . . the agency should provide information regarding any changes in wind patterns or sources of emissions of the pollutant(s) of concern in the area, including increases or reductions in the emissions inventory that could affect the pollutant concentration during the exceptional event.'' The EPA agrees that the suggested language better conveys our intent to require details of any changes rather than evidence of lack of changes. We have incorporated the commenter's suggested language with the following revision into the footnote in Table 2 of this preamble: ''. . . the agency should provide information regarding any changes in wind patterns or sources of emissions of the pollutant(s) of concern in the area, including increases or reductions in the emissions inventory, or other known source of emissions information, that could affect the concentration of the

[50] While this comparison contributes to plausibility, it does not necessarily mean that in the subject case, the exceedance or violation was not caused by some other source or factor. The comparison to actual historical concentrations on days not affected by fire can make this point.

pollutant(s) of concern during the exceptional event.''

In response to a commenter's request to clarify that the burden on the air agency does not change with moving the ''clear causal relationship'' element into the list of criteria that explicitly must be met for data to be excluded, we affirm that the burden does not increase. In our rule revisions, we have clarified that air agencies must address all three of the core statutory elements and implicit concepts of CAA section 319(b) (*i.e.,* the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event was not reasonably controllable or preventable and the event was caused by human activity that is unlikely to recur at a particular location or was a natural event) in an exceptional events demonstration. Prior to these rule revisions, the elements ''affects air quality,'' ''not reasonably controllable or preventable,'' and ''human activity unlikely to recur at a particular location or a natural event'' were included in the definition of an exceptional event, while the requirement at 40 CFR 50.14(c)(3)(iv) that a ''demonstration to justify data exclusion shall provide evidence'' included addressing the exceptional events definitional requirements, ''clear causal relationship,'' ''historical fluctuations'' and ''but for.'' Based on our experience implementing the rule, it is more clear to explicitly include all of the elements in a single place in the regulatory language.

F. Treatment of Certain Events Under the Exceptional Events Rule

The preamble of the November 2015 proposal stated that air quality data affected by the following event types are among those that could meet the definition of an exceptional event and qualify for data exclusion provided all requirements of the rule are met: (1) Chemical spills and industrial accidents, (2) structural fires, (3) terrorist attacks, (4) volcanic and seismic activities, (5) natural disasters and associated cleanup, and (6) fireworks.[51] We did not propose any changes to the definition of exceptional event to address these event types nor did we intend to imply that these are the only event types that could be considered for data exclusion under the Exceptional Events Rule. We simply repeated these event categories because they were specifically identified and discussed in the preamble to the 2007 Exceptional Events Rule and we wanted to acknowledge our continued belief that the identified events could be considered ''exceptional.'' The AQS database contains a more detailed list of other events that may also be identified for consideration. The EPA will consider other types of events on a case-by-case basis.

Based on our implementation experience, our proposal, and commenter feedback, the following sections clarify details for other potential exceptional events categories: Transported pollution, wildland fires (including wildfires and prescribed fires), stratospheric ozone intrusions, and high wind dust events. We discuss each of these event categories in the following sections of this preamble.

Several commenters provided feedback on the EPA's list of identified, but not discussed, potential exceptional events. One commenter noted that fireworks cannot be an exceptional event. This comment is beyond the scope of this rulemaking because we did not propose to change our consideration of fireworks under the Exceptional Events Rule and did not open this issue for comment (*see* additional explanation in footnote 51).

Another commenter asked why the EPA added as an explanation for the ''chemical spills and industrial accidents'' event type the following footnote: ''A malfunction at an industrial facility could be considered to be an exceptional event if it has not resulted in source noncompliance, which is statutorily excluded from consideration as an exceptional event, *see* CAA 319(b)(1)(b)(iii), and if it otherwise meets the requirements of the Exceptional Events Rule.'' While we are deleting the footnote in this final action, we note that we added the footnote to the proposal to clarify the position stated in previous EPA guidance[52] that limited noncompliance of local sources can be expected from time to time as a result of process upsets or malfunctioning control equipment. These events are usually classified as ''upsets'' or ''malfunctions'' as defined by the applicable State or local agency regulations, or they may be considered a violation of applicable emission or opacity limits. If these events are caused by upsets or malfunctions, they should be so noted and reported to the appropriate control agency. If they constitute a violation, legal remedies are available to relevant parties. In summary, if a malfunction is caused by or results in source noncompliance, then the resulting emissions *cannot* be considered for exclusion under the Exceptional Events Rule in light of the plain language of CAA section 319(b)(1)(B)(iii). However, if the malfunction was *not* caused by nor did it result from source noncompliance (*e.g.,* it resulted from an act of nature, such as a lightning strike) AND if the resulting emissions caused a NAAQS exceedance or violation AND if it otherwise meets the requirements of the Exceptional Events Rule, then the emissions from the malfunction could be considered for exclusion under the provisions of 40 CFR 50.14.

1. Transported Pollution

We did not propose any new guidance or specific regulatory language addressing the transported pollution that could be considered for exclusion under the Exceptional Events Rule. Rather, the proposal discussed the provisions within the CAA that provide regulatory relief for, or otherwise regulate, transported pollution and identified the circumstances under which air agencies can use these provisions. While our focus in this action is the Exceptional Events Rule (CAA section 319(b)), we also discuss transport under other CAA sections for context (*i.e.,* 179B (International Transport), 182(h) (Rural Transport Areas), 110(a)(2)(D)(i)(I) (Interstate Transport) and 126 (Interstate Transport)). We are finalizing the language from our proposal with additional clarifications resulting from commenter feedback as guidance in this preamble.

a. Transported Pollution Within the Exceptional Events Rule

To be considered for data exclusion, transported pollution must meet all of the Exceptional Events Rule criteria. Specifically, transported pollution must be event-related AND be either natural or caused by a human activity unlikely to recur at a particular location (*see* 40 CFR 50.14(c)(3)(iv)(E)). Human activities unlikely to recur at a particular location could include some of the event types mentioned in the introduction to this section of this preamble, such as chemical spills, industrial accidents, or terrorist activities. Routine emissions generated by and transported from anthropogenic sources are not

[51] Of these noted event types, the regulatory language at 40 CFR 50.14 only specifically addresses fireworks. We did not propose any revisions to the exclusion at 40 CFR 50.14(b)(2) for fireworks that are demonstrated to be significantly integral to traditional national, ethnic or other cultural events.

[52] *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* (the Exceptional Events Policy), U.S. EPA, OAQPS, EPA–450/4–86–007, July 1986.

exceptional events.[53] Additionally, transported emissions from natural sources must be event-related (*e.g.,* wildfires, stratospheric ozone intrusion, Saharan dust) versus ongoing on a daily basis to qualify for data exclusion under the Exceptional Events Rule. Natural emissions that occur every day and contribute to background levels, such as routine biogenic emissions of ozone precursors from vegetation and soils, do not meet the definition of an exceptional event because they are not deviations from normal or expected conditions. Despite being natural, they are not ''events.''

In most cases, of the previously identified CAA sections, the mechanisms in the Exceptional Events Rule provide the most regulatory flexibility in that air agencies can use these provisions to seek relief from designation as a nonattainment area.[54] Because the Exceptional Events Rule may be used during the initial area designations process and may make a difference in an attainment versus a nonattainment decision, the EPA believes that the Exceptional Events Rule will often be the most appropriate mechanism to use when addressing transported emissions from out-of-state natural events or events due to human activity that is unlikely to recur at a particular location.

If an air agency determines that the Exceptional Events Rule is the most suitable approach to address contributions from event-related transported emissions, then the air agency must consider the source(s) of emissions contributing to the exceedance or violation to determine how to address individual Exceptional Events Rule criteria, specifically the not reasonably controllable or preventable criterion and the human activity unlikely to recur or a natural event criterion.

Under the CAA, the EPA generally considers a state (not including areas of Indian country) to be a single responsible actor. Accordingly, neither the EPA nor the 2007 Exceptional Events Rule provides special considerations for *intra*state scenarios when an event in one part of a state, such as a county or air district, affects air quality in another part of the same state, assuming that the event occurs on land subject to state authority (versus tribal government authority). For cases involving intrastate transport, the state or local air agency should evaluate whether contributing event emissions from those parts of the state located between the subject upwind source and the affected monitor were not reasonably controllable or preventable. Section IV.E.2 of this preamble discusses the not reasonably controllable or preventable criterion in more detail. Because there may be special considerations regarding air agencies' authority to regulate activity on federally-owned and managed lands (*e.g.,* national parks within the state), states and tribes should discuss with the appropriate FLM or other federal agency and their EPA Regional office early in the development of an exceptional events demonstration if they believe that sources on federally-owned and managed land contributed event-related emissions to a degree that raises issues of reasonable control.

*Inter*state and international transport events are different than *intra*state events. As noted in Section IV.E.2 of this preamble and in the final regulatory language at 40 CFR 50.14(b)(8)(vii), the EPA maintains that it is not reasonable to expect the downwind air agency (*i.e.,* the state or tribe submitting the demonstration) to have required or persuaded the upwind foreign country, state or tribe to have implemented controls on sources sufficient to limit event-related emissions in the downwind state. As with any demonstration, the submitting (downwind) state should identify all natural and anthropogenic contributing sources of emissions (both local/in-state and out-of-state) to show the causal connection between an event and the monitored exceedance or violation. Although the downwind state must still assess potential contribution from in-state sources as discussed in Section IV.E.2 of this preamble, we are finalizing regulatory language at 40 CFR 50.14(b)(8)(vii) that the event-related emissions that were transported in the downwind state are ''not reasonably controllable or preventable'' for purposes of data exclusion. If the event-related emissions are international in origin and affect monitors in multiple states or regions, the EPA may assist affected agencies in identifying approaches for evaluating the potential impacts of international transport and determining the most appropriate information and analytical methods for each area's unique situation.

As with all exceptional events demonstrations, the EPA will evaluate the information on a case-by-case basis based on the facts of a particular exceptional event including any information and arguments presented in public comments received by the state in its public comment process or by the EPA in a notice-and-comment regulatory action that depends on the data exclusion.

b. Other Transport Mechanisms Within the CAA

In the following paragraphs, we discuss other provisions within the CAA that provide regulatory relief for, or otherwise regulate, transported pollution and identify the circumstances under which air agencies can use these provisions.

- *CAA section 179B, International Transport*—CAA section 179B allows states to consider in their attainment demonstrations whether a nonattainment area might have met the NAAQS by the attainment date ''but for'' emissions contributing to the area originating outside the U.S. This provision addresses sources of emissions originating outside of the U.S. and provides qualifying nonattainment areas some regulatory relief from otherwise-applicable additional planning and control requirements should the area fail to reach attainment by its deadline. It does not provide a pathway for regulatory relief from designation as a nonattainment area; rather, CAA section 179B applies following the initial area designations process.
- *CAA section 182(h), Rural Transport Areas*—CAA section 182(h) authorizes the EPA Administrator to determine that certain ozone nonattainment areas can be treated as rural transport areas, which provides relief from more stringent requirements associated with higher nonattainment area classifications (*i.e.,* ozone classifications above Marginal). Under CAA section 182(h), a nonattainment area may qualify as a Rural Transport Area if it does not contain emissions sources that make a significant contribution to monitored ozone concentrations in the area or in other areas, and if the area does not include and is not adjacent to a Metropolitan Statistical Area. Generally, an area qualifies as a Rural Transport Area because it does not contribute to its own or another area's nonattainment problem; rather, ozone exceedances are due to transported emissions, which could be international, interstate or

[53] An example of routine emissions generated by and transported from anthropogenic sources might include emissions of ozone precursors or directly emitted particulate matter (or PM precursors) from one state or foreign country's power plants transported into another state or the U.S. The CAA provides other mechanisms like 179B (for international transport) or 110(a)(2)(D) and/or 126 (for interstate transport) to address these types of emissions.

[54] The CAA section 179B (International Transport) and CAA section 182(h) (Rural Transport Areas) apply following, or concurrent with, the initial area designations process.

intrastate in origin. The Rural Transport Area determination can be made during or after the initial area designations and classifications process.

• *CAA section 110(a)(2)(D)(i)(I), Interstate Transport*—CAA section 110(a)(2)(D)(i)(I) requires states to develop and implement SIPs to address the interstate transport of emissions from sources within their jurisdiction. Specifically, this provision requires each state's SIP to prohibit ''any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will significantly contribute to nonattainment'' of any NAAQS in another state, or which will ''interfere with maintenance'' of any NAAQS in another state. When the EPA promulgates or revises a NAAQS, each state is required to submit a SIP addressing this interstate transport provision as to that NAAQS within 3 years. The EPA interprets this interstate transport provision to address anthropogenic sources of emissions from other states, and not to address natural sources of emissions.

• *CAA section 126, Interstate Transport*—CAA section 126 provides states [55] and political subdivisions with a mechanism to petition the Administrator for a finding that ''any major source or group of stationary sources emits or would emit any air pollution in violation of the prohibition of CAA 110(a)(2)(D)(i).'' [56] Where the EPA grants such a petition, an existing source may operate beyond a 3-month period only if the EPA establishes emissions limitations and compliance schedules to bring about compliance with CAA section 110(a)(2)(D)(i) as expeditiously as practicable, but no later than 3 years after such finding. Similar to our interpretation for CAA section 110(a)(2)(D)(i), the EPA interprets the reference to ''major source or group of stationary sources'' in CAA section 126 to refer to anthropogenic sources of emissions from other states. The EPA's interpretation is that this provision is not intended to address natural sources of emissions.

c. Comments and Responses

Several commenters asked that the EPA clarify how the provisions in the Exceptional Events Rule apply to background ozone concentrations and longer duration emissions sources such as biogenics, lightning and international transport. We provide some clarification in this section of the preamble, but also refer to the discussion in Section IV.B.3, which discusses rule applicability to background ozone.

Commenters also asked for clarification regarding assessing ''event-related emissions that originate outside of the boundaries of the state within which the concentration at issue was monitored'' for purposes of the not reasonably controllable or preventable criterion. As discussed in Section IV.E.2 of this preamble, the state or local air agency should evaluate whether contributing event emissions from those parts of the state located between the subject upwind source and the affected monitor were not reasonably controllable or preventable.

Another commenter suggests that where meteorological conditions play a pronounced role in transporting extra-jurisdictional emissions, those emissions would not prevent classification as a natural event. The commenter notes that because recurring natural events may qualify as exceptional events under the Exceptional Events Rule, international event-related emissions, because they are transported by recurring natural meteorological mechanisms, could also be exceptional events even if the source of emissions in another country is anthropogenic. The commenter continued that if the EPA does not consider all international emissions to be ''natural events,'' then the data associated with international emissions could still qualify for exclusion under the Exceptional Events Rule in those instances in which the magnitude of transported emissions or the resulting concentrations are ''unusual.'' As we have noted, over the course of implementing the Exceptional Events Rule, we have come to realize that an event needs to be defined by the source of the emissions. If the underlying source is a natural event (*e.g.,* wildfire) and the emissions influence a regulatory monitor, then it can be considered for exclusion under the Exceptional Events Rule. If the underlying source is anthropogenic then it can only be considered under the Exceptional Events Rule if the emissions from the original source is unlikely to recur at a particular location. The meteorological processes that result in pollutant transport are ongoing and thus not an event, even though their influence on ambient concentrations at a particular time and location may be observed only occasionally and thus seem ''event-like.''

2. Wildland Fires

The proposal noted that fires on wildland can play an important ecological role across the nation, benefiting those plant and animal species that depend upon natural fires for propagation, habitat restoration and reproduction. The proposed rule also noted the large contribution that wildfire can make to air pollution (including periodic high $PM_{2.5}$ and PM_{10}, and VOC and NO_X, which are precursors to $PM_{2.5}$, PM_{10} and ozone) and wildfire's potential threat to public safety. The proposal further recognized that these adverse effects can be mitigated through management of wildland vegetation, including planned prescribed fires and letting some wildfires proceed naturally (typically those with lower fire intensity and severity).

The proposal also recognized, consistent with the EPA's past practice, that both wildfires and prescribed fires, under certain circumstances, can be considered exceptional events. The preamble to the 2007 Exceptional Events Rule, however, used unclear or undefined fire-related terminology, making the preparation of some fire-related demonstrations particularly challenging. Recognizing some of these unique challenges associated with fires on wildland, we proposed a number of fire-related revisions to the Exceptional Events Rule for wildfires and prescribed fires that occur on wildland.[57]

These revisions included proposed regulatory language for certain fire-related definitions, clarification and associated regulatory text related to using SMP and BSMP to satisfy exceptional events demonstration and program implementation elements, and new Exceptional Events Rule provisions to specifically address prescribed fire exceptional events issues. We provide additional detail in the separate sections on wildfires (Section IV.F.2.a of this preamble) and prescribed fire (Section IV.F.2.b of this preamble).

As we implement the changes we are promulgating in this regulatory action,

[55] Tribes with treatment as a state authority (under the TAR) for CAA section 126 could also use this CAA provision.

[56] The text of CAA section 126 codified in the United States Code cross references CAA section 110(a)(2)(D)(ii) instead of section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to section 110(a)(2)(D)(i), *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

[57] While we proposed, and are finalizing, provisions only for fires that occur predominantly on wildland, we did not intend to restrict wildfires on other types of land from receiving similar treatment as wildfires on wildland. In addressing the not reasonably controllable or preventable criterion in a demonstration for a wildfire that is not on wildland, air agencies should state that available resources were reasonably aimed at suppression and avoidance of loss of life and property and that no further efforts to control air emissions from the fire would have been reasonable.

we remain committed to working with federal, state, local, tribal and private land owners/land managers and state, tribal and local air quality agencies to effectively manage prescribed fire use to reduce the impact of catastrophic wildfire-related emissions on ozone, PM_{10} and $PM_{2.5}$.

a. Wildfires

Summary of Proposal. The EPA proposed the following guidance, clarifications and rule revisions to assist air agencies preparing exceptional events demonstrations for wildfires.

(i) *Definition of wildland and wildfire.* The EPA proposed to codify in regulatory language the definition of ''wildland'' by using the October 2014 National Wildfire Coordinating Group (NWCG) Glossary of Wildland Fire Terminology [58] definition that a wildland is ''an area in which human activity and development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.'' As noted in the proposal, wildland can include forestland,[59] shrubland,[60] grassland [61] and wetlands.[62] This proposed definition of wildland includes lands that are predominantly wildland, such as land in the wildland-urban interface.[63] [64]

The proposed definition for wildland considered the types of human intervention that could affect whether a land is considered a ''wildland'' and stated that the presence of fences to limit the movement of grazing animals, or of infrastructure to provide water to grazing animals, would not prevent a land area from being wildland. The proposal further clarified that cultivated cropland (*i.e.,* a field that is plowed or disked or from which crops are removed on an annual or more frequent basis) is not wildland and land areas on which nursery stock is grown to marketable size (*e.g.,* Christmas tree farms) are generally not wildland unless they are ''wild'' in terms of a having only limited human entrance and intervention for management or removal purposes thereby resulting in a complex ecosystem. The proposed rule indicated that managed timberlands [65] could be considered wildland if they have a complex ecosystem affected by only limited human entrance and intervention. We invited comment on incorporating these examples of land use types into the regulatory definition of wildland.

We also proposed in regulatory text, the following definition of ''wildfire,'' a ''wildfire is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions; or a prescribed fire that has been declared to be a wildfire. A wildfire that predominantly occurs on wildland is a natural event.''

(ii) *Not reasonably controllable or preventable.* As proposed and as with other natural events, the ''not reasonably controllable or preventable'' criterion applies to wildfires. The proposed rule articulated that because wildfires on wildland are unplanned, fire management agencies generally have either no advanced notice or limited and uncertain notice of wildfire ignition and location. In addition, many areas of wildland are very remote and rugged, and thus not easily reached and traversed. These factors generally limit preparation time and on-site resources to prevent or control the initiation, duration or extent of a wildfire. Also, by their nature, catastrophic wildfires typically present some risk of property damage, ecosystem damage and/or loss of life (of the public or firefighters), which is a strong motivation for appropriate suppression and control efforts. The EPA believes that land managers and other fire management entities have the motivation and the best information for taking action to reasonably prevent and limit the extent of wildfires on wildland, thus also controlling the resulting emissions. Therefore, the EPA believes that it is not useful to require air agencies to include in their individual wildfire exceptional events demonstrations descriptions of prevention and control efforts employed by burn managers/wildfire responders to support a position that such efforts were reasonable. The EPA therefore proposed in regulatory language a rebuttable presumption that every wildfire on wildland satisfies the ''not reasonably controllable or preventable'' criterion unless evidence in the record demonstrates otherwise and that satisfying this criterion for wildfires on wildland would involve referencing the appropriate regulatory citation in the demonstration. The proposal further indicated that in situations in which a fire manager could have suppressed or contained a wildfire but allowed the fire to continue burning through an area with a current, in-place land management plan calling for restoration through natural fire or mimicking the natural role of fire, that we would expect the fire manager to employ appropriate BSMP as described in Section IV.F.2.b of this preamble when possible.

(iii) *Coordinated communications.* As stated in the proposal, regardless of the considerations for wildfires, the EPA urges land managers and air agencies to coordinate, as appropriate, in developing plans and appropriate public communications regarding public safety and reducing exposure in instances where wildfires are potential exceptional events and contribute to exceedances of the NAAQS. Coordinated efforts can help air agencies satisfy the Exceptional Events Rule obligation at 40 CFR 51.930 that air agencies must provide public notice and public education and must provide for implementation of reasonable measures to protect public health when an event

[58] National Wildfire Coordinating Group. Glossary of Wildland Fire Terminology, PMS 205. October 2014. We are retaining our proposed definition of the wildland although the NWCG has revised its October 2014 glossary. The October 2015 glossary, which became available after the November 2015 exceptional events proposal, is available at *http://www.nwcg.gov/glossary-of-wildland-fire-terminology.*

[59] Forestland is land on which the vegetation is dominated by trees or, if trees are lacking, the land shows historic evidence of former forest and has not been converted to other uses. Definition available at *https://globalrangelands.org/glossary.*

[60] Shrubland is land on which the vegetation is dominated by shrubs. Definition available at *https://globalrangelands.org/glossary/.*

[61] Grassland is land on which the vegetation is dominated by grasses, grass like plants, and/or forbs. This definition has changed since the EPA proposed the definition of grassland. We are retaining the proposed definition. The current Global Rangelands definition is available at *https://globalrangelands.org/glossary.*

[62] Wetlands, as defined in 40 CFR 230.3(t), means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

[63] The wildland-urban interface is the line, area or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. The term describes an area within or adjacent to private and public property where mitigation actions can prevent damage or loss from wildfire. *See,* Glossary of Wildland Fire Terminology, PMS 205. October 2014. We are retaining our proposed definition of the wildland and our proposed description of the wildland-urban interface although the NWCG has revised its October 2014 glossary. The October 2015 glossary, which became available after the November 2015 exceptional events proposal, is available at *http://www.nwcg.gov/glossary-of-wildland-fire-terminology.*

[64] We would generally treat a large prescribed fire in a wildland-urban interface area as a prescribed fire on wildland, subject to the prescribed fire provisions described in this document. We do not expect a small prescribed fire in an interface area (*e.g.,* a prescribed fire ignited by a single landowner on his/her personal property) to generate emissions that would raise exceptional events issues.

[65] Timberland is land on which the natural potential vegetation is forest. It may be managed primarily for the production and harvest of timber. Definition available at *https://globalrangelands.org/glossary/.*

occurs.[66] Also, when wildfire impacts are frequent and significant in a particular area, land managers, land owners, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively to take steps to minimize fuel loading in areas vulnerable to fire.[67] Fuel load minimization steps can consist of both prescribed fire and mechanical treatments, such as using mechanical equipment to reduce accumulated understory.

Final Rule. We are finalizing, as proposed, for the reasons discussed in our proposal and herein, and as supported by several commenters, the following definition of wildland: ''*Wildland* means an area in which human activity and development are essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.'' In finalizing this definition, we are retaining, as guidance, the proposed examples of land use types and types of human intervention that are considered wildland (or not) in the preamble of this final rule. Many commenters supported this approach while others preferred incorporating land use types and specifically allowable types of structures (*e.g.,* fences to limit the movement of grazing animals) into the regulatory definition. We have determined that because the presented land use types and clarifications regarding allowable structures and human intervention are only examples, and not an all-inclusive list of all lands that could be considered ''wildland,'' guidance is more appropriate for these details than rule. We also clarify, at the request of one commenter, that we would generally consider lands like state and national parks and wildlife refuges (provided they are primarily wild and natural and provided hunting, if allowed, is limited) to be wildland. We are not including the modifications suggested by several commenters that would change the phrase ''development is essentially non-existent'' to ''development is limited in scope.'' First, the language ''limited in scope'' in the phrase ''development is limited in scope'' is subjective and would create additional uncertainty and ambiguity, which is not intended in this action. Additionally, when considering the term ''wildland,'' the word ''wild,'' by definition, implies a natural, uncultivated or uninhabited region. Conversely, ''development'' implies growth, construction and, potentially, groupings of buildings. Modifying the definition as proposed by the commenters could be interpreted to mean that parcels of land with some empty space between groupings of buildings (*e.g.,* cultivated and inhabited areas) could be wildland. This is not our intent. Another commenter suggested that because ''wild'' implies minimal ongoing ecological impacts from human activity and not an infrequent presence of humans and their structures that we change the regulatory definition to ''wildland means an area where the impact on the ecosystem from human development and agriculture is essentially nonexistent, except for widely separated roads, railroads and power lines.'' While we agree with the commenter's perspective regarding very limited human impact on the ecosystem, we believe that the definition we are promulgating conveys similar intent and will have the same practical effect.

Also related to the definition of wildland, several states asked that we specifically address prescribed fires on cultivated cropland and other agricultural lands. As we proposed and as we are finalizing in this rule, the fire-related provisions apply specifically to fires that occur predominantly on wildland. Air agencies contemplating preparing fire-related exceptional events demonstrations for fires not on wildland, should consult with their reviewing EPA Regional office. The EPA will review submitted demonstrations on a case-by-case basis considering the specific merits of each event.

Comments and Responses. After consideration of the public comments, we are finalizing a modified version of our proposed definition of wildfire: ''*Wildfire* is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.'' The final revised definition includes ''a prescribed fire that has developed into a wildfire'' instead of the proposed language ''a prescribed fire that has been declared to be a wildfire.''

Some commenters supported the original proposed definition, but others recommended deleting the phrase ''a prescribed fire that has been declared to be a wildfire'' from the definition because they disagree with allowing burners to ''declare'' a prescribed fire to be a wildfire. Commenters noted that burn managers might make such a declaration for reasons other than their unanticipated inability to control the deliberately ignited fire. We note that the proposed definition of wildfire did not require that the objective be to put out such a fire for it to meet the definition. When an unplanned fire on wildland does not threaten catastrophic consequences (*e.g.,* consequences to public health, safety or property) and when the wildfire is burning on land that would otherwise be identified for ecosystem management (*e.g.,* fuels management through prescribed burning), it may be appropriate to allow the fire to continue burning under managed conditions. This fire management scenario was not our intended focus in proposing the ''declaration'' language. Rather, as stated in the proposal, ''a prescribed fire that has been declared to be a wildfire'' refers to specific instances in which the conditions of a particular prescribed fire have developed in an unplanned way such that its management challenges are essentially the same as if it were a wildfire. The federal, state and tribal wildland fire management community uses the terminology ''prescribed fire declared wildfire'' to describe the infrequent and significant instances when meteorological and/or other environmental conditions, resource availability, or other unforeseen circumstances lead the burn manager to make such a declaration to protect the health and safety of fire management staff and the public. For example, if the prescribed fire has escaped secure containment lines and requires suppression along all or part of its boundary or if it no longer meets the resource objectives (*e.g.,* smoke impact, flame height). It was not our intention to allow categorical re-definition of some types of prescribed fire to be wildfires. Our intent was to clearly identify those fires that could be considered wildfires and those that would be considered prescribed fires. In doing this, we also identified the applicable demonstration requirements under the Exceptional Events Rule. That is, wildfires and prescribed fires on wildland have different requirements for exceptional events demonstrations based on the practicality of prevention/control (*i.e.,* the approach to addressing the not reasonably controllable or preventable criterion) and on the natural versus anthropogenic origin of the fire (*i.e.,* the human activity that is unlikely

[66] 72 FR 13575 (March 22, 2007).

[67] One example of this collaborative approach is the evolving interagency Wildland Fire Air Quality Response Program, which has developed resources to help address and predict smoke impacts from wildfires to reduce public exposure to wildfire smoke. Additional information is available in the docket for this action (*see* EPA–HQ–OAR–2013–0572, Wildland Fire Air Quality Response Program).

to recur or a natural event). When considering prevention/control for purposes of exceptional event categorization, a prescribed fire effectively becomes like a wildfire when, for example, the prescribed fire escapes secure containment due to unforeseen circumstances (*e.g.,* a sudden shift in prevailing winds). In these instances, the burn manager would no longer control the path of the fire. Thus, the fact that the initial fire was deliberately ignited should not result in the entire burn (*e.g.,* the duration and extent of the burn) needing to follow the rule requirements for prescribed fires on wildland. Given these potential circumstances, we proposed to rely on the burn manager's (or another individual familiar with the circumstances of the fire) declaration that the prescribed fire has become a wildfire. Because many commenters expressed concern with the ''declaration'' language, we have changed the phrase to ''a prescribed fire that has developed into a wildfire,'' by which we mean that has developed in an unplanned way such that its management challenges are essentially the same as if it had been initiated by an unplanned ignition.'' We believe that this revised language conveys our original intent. In showing that a prescribed fire ''hasdeveloped into a wildfire,'' air agencies should include the following documentation when addressing the ''human activity unlikely to recur at a particular location or a natural event'' criterion in their demonstration: (1) News reports or notifications to the public characterizing the nature of the fire and (2) the demonstration submitter's explanation of the origin and evolution of the fire.

All commenters providing feedback on the EPA's proposal to grant a rebuttable presumption that every wildfire on wildland satisfies the ''not reasonably controllable or preventable'' criterion unless evidence in the record demonstrates otherwise agreed with the EPA's proposed regulatory language. We have therefore finalized the provision at 40 CFR 50.14(b)(4) that the ''Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from wildfires caused a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Provided the Administrator determines that there is no compelling evidence to the contrary in the record, the Administrator will determine every wildfire occurring predominantly on wildland to have met the requirements . . . regarding the not reasonably controllable or preventable criterion.''

b. Prescribed Fires

The proposal stated, and this final rule repeats, the EPA's recognition that use of prescribed fire on wildland can influence the occurrence, severity, behavior and effects of catastrophic wildfires and benefit the plant and animal species that depend upon natural fires for propagation, habitat restoration and reproduction, as well as a myriad of ecosystem functions (*e.g.,* carbon sequestration, maintenance of water supply systems and endangered species habitat maintenance). The EPA formally recognized in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* [68] that federal, state, local, tribal and private land owners/land managers use prescribed fire on wildland to achieve some of these resource benefits, to correct the undesirable conditions created by past wildfire suppression management strategies and to reduce the risk of catastrophic wildfires to the public.

Summary of Proposal. The EPA proposed the following guidance, clarifications and rule revisions to assist air agencies preparing exceptional events demonstrations for prescribed fire on wildland.

(i) *Definition of a prescribed fire.* We proposed to adopt in rule language a modified version of the then-current NWCG-recommended definition of a prescribed fire: ''[A]ny fire intentionally ignited by management actions in accordance with applicable laws, policies and regulations to meet specific land or resource management objectives.'' In this definition, ''management'' refers to the owner or manager of the land area to which prescribed fire is applied. The proposal replaced the original NWCG language ''specific objectives'' with ''specific land or resource management objectives.''

(ii) *Events caused by human activity.* We proposed regulatory language stating that prescribed fires are events caused by human activity and, therefore, to be considered an exceptional event, every prescribed fire demonstration must address the ''human activity unlikely to recur at a particular location'' criterion.

(iii) *Unlikely to recur at a particular location.* The proposed rule set forth generally applicable guidelines to clarify both ''unlikely to recur'' and ''at a particular location.'' In this action, we discussed these guidelines for most events caused by human activity in Section IV.E.1 of this preamble, but we also clarified that specific approaches apply for prescribed fires on wildland, which we discuss here.

Our proposed rule indicated that when characterizing the ''human activity that is unlikely to recur at a particular location'' criterion, a demonstration for a prescribed fire on wildland could use one of two benchmarks to describe the expected frequency of prescribed fires on wildland: [69] (1) The natural fire return interval as articulated in the 2007 preamble or (2) the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem. The proposal also stated that multi-year land or resource management plans prepared by the land management agency or any private property owner generally include documentation of these established fire intervals. Considering these two concepts, we proposed rule text that considered a demonstration's referencing of a multi-year land or resource management plan [70] (and including either a copy or an internet link to the plan) with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species that also identifies the subject area as a candidate for prescribed fire to be dispositive evidence that a particular fire conducted in accordance with such a plan satisfies the ''unlikely to recur at a particular location'' criterion. The proposal noted that referencing a fire management plan for tribal or private lands that has been reviewed and certified by the appropriate fire and/or resource management professionals and agreed to and followed by the land owner/manager can also satisfy the ''unlikely to recur at a particular location'' criterion.

(iv) *Not reasonably controllable or preventable.* The proposed rule stated that, consistent with current practice and 2007 preamble and rule language, the EPA considers it appropriate for air agencies to rely on an in-place and implemented state-certified SMP or on a burn manager's use of BSMP that

[68] *Interim Air Quality Policy on Wildland and Prescribed Fires.* U.S. EPA. April 23, 1998. Available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/firefnl.pdf.*

[69] The EPA will assess benchmarks for the expected frequency of prescribed fires not on wildland on a case-by-case basis.

[70] These plans could also include fire management plans, prescribed fire on wildland management plans, landscape management plans or equivalent public planning documents.

minimize emissions and control impacts, in lieu of a state-certified SMP, to satisfy the controllability prong of the ''not reasonably controllable or preventable'' criterion. We also proposed that, provided there is no compelling evidence to the contrary in the record, an air agency could rely upon, comply with and reference a multi-year land or resource management plan for a wildland area with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire to satisfy the preventability prong of the ''not reasonably controllable or preventable'' criterion. We provide further context from our proposed action in the paragraphs that follow.

Because the 2007 Exceptional Events Rule used the terms SMP and BSMP without defining them, our proposed rule provided clarity. With respect to a SMP, the proposal noted that at a minimum, a state-certified SMP would include provisions for (i) authorization to burn, (ii) minimizing air pollutant emissions, (iii) smoke management components of burn plans, (iv) public education and awareness, (v) surveillance and enforcement, and (vi) program evaluation. We also indicated that ''certification'' requires that a responsible state or delegated local agency certify in a letter to the Administrator of the EPA, or a Regional Administrator, that it has adopted and is implementing a SMP. We solicited comment on incorporating these SMP elements into rule text language.

The proposal continued the discussion of SMP by noting that states with certified SMP typically have robust communications between officials concerned with air quality impacts and officials and members of the public who use prescribed fire. These groups communicate during the development of the SMP, during the day-to-day burn authorization process and in the periodic review and potential revision of the SMP. For these reasons, the EPA proposed to accept the testimony of the air agency submitting the exceptional events demonstration that the SMP is being implemented, provided that prior to the EPA's acting on a demonstration, the record contains no clear evidence to the contrary.

The proposed rule provided similar detail for BSMP by identifying in the rule text six BSMP as being generally appropriate, and generally endorsed and followed by federal, state and local agencies and private landowners, for exceptional events purposes for prescribed fires on wildland as well as for other prescribed fires. The six BSMP (*i.e.,* evaluating smoke dispersion conditions, monitoring effects on air quality, recordkeeping/maintaining a burn or smoke journal, communicating, considering emission reduction techniques, and sharing the airshed) came from guidance on BSMP for prescribed fires provided by the USDA Forest Service and USDA NRCS.[71] The proposal noted that while the BSMP are broadly stated, burn managers use site-specific considerations to select the exact actions of each type and apply them to specific burn projects. The EPA proposed to accept as evidence of the use of BSMP the burn manager's statement that he or she employed applicable BSMP for a prescribed fire. The proposal noted that documentation of evidence could consist of a copy of the routine post-burn report or a letter prepared by the burn manager. While the EPA asserted in the proposal that we would work collaboratively with other federal agencies to make post-burn reports available to the air agencies that need them, we also encouraged land managers and other organizations employing prescribed fire to work with states and tribes to develop an efficient process to coordinate fire planning activities, issue public health advisories, if needed, and share relevant fire-related documentation, including pre-and post-burn reports.

The proposal provided similar detail with respect to addressing the ''prevention'' prong of the ''not reasonably controllable or preventable'' criterion stating that because prescribed fires are intentionally ignited, clarifying preventability is particularly relevant. The proposal noted that because both SMP and BSMP generally apply to the planning, execution and follow-up once the decision has been made to ignite a burn, they, therefore, do not specifically address prevention or deciding *not* to burn. The proposal stated that an affected agency should conclude a prescribed fire to be not reasonably preventable based on the benefits that would be foregone if the fire were not conducted. We articulated ''forgone benefits'' as those objectives in a multi-year fire management plan that establish, restore and/or maintain a sustainable and resilient wildland ecosystem. The proposed regulatory text intended to rely on the benefits in these plans as satisfying the not reasonably preventable prong of the not reasonably controllable or preventable criterion provided there is no compelling evidence to the contrary in the record when the EPA approves the associated exceptional events demonstration. The proposal provided additional detail regarding the development of these multi-year land or resource management plans.

The proposal also removed the phrase ''and must include consideration of development of a SMP'' from the sentence of the existing text of 40 CFR 50.14(b)(3) that in the 2007 Exceptional Events Rule read, ''If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.''

Final Rule. We are finalizing in regulatory language, as proposed and for the reasons discussed in our proposal and herein, the following definition of prescribed fire: A ''prescribed fire is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.''

We are also finalizing our proposal that a prescribed fire can satisfy the human activity unlikely to recur at a particular location criterion if certain requirements are met and provided there is no compelling evidence to the contrary in the record. Specifically, the air agency must describe the actual burn frequency, but may rely on either the natural fire return interval or the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan[72] with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire. As we noted in the proposal, the EPA understands that multi-year plans incorporate factors relevant to identifying and selecting the areas and times under which management will

[71] USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, *http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046311.pdf.*

[72] On a case-by-case basis, in the absence of a multi-year plan, the EPA would also consider a prescribed fire on wildland conducted on a fire return interval established according to scientific literature to satisfy the not reasonably controllable or preventable criterion provided the prescribed fire was also conducted with the objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and conducted in compliance with either a state-certified SMP or BSMP. This case-by-case approach is similar to the approach currently used under the 2007 Exceptional Events Rule.

initiate a specific prescribed fire. We also recognize that evaluating the behavior and results of prior prescribed fires aids in determining the frequency and need for future prescribed fire in a given area. Thus, we acknowledge that a multi-year plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species may include general targets for the frequency of prescribed fire use and that management may deviate from the general plan due to unexpected differences between planned and actual fire behavior, landscape or ecosystem characteristics, fuel loading patterns and weather patterns. As a result, when the EPA reviews an exceptional events demonstration for a prescribed fire conducted under a wildland management plan, we intend to compare the actual time pattern of prescribed fires on the land with the pattern described in the applicable multi-year plan in a general way, rather than treating the multi-year plan as containing a specific schedule to which management must adhere. For example, if the wildland management plan identified an approximate 5-year burn interval, the EPA would not disapprove a demonstration if the burn occurred on a 4-year or a 6-year interval, provided, of course, that the demonstration met all other Exceptional Events Rule criteria. Also, as we discussed in more detail in the proposal and consistent with our recognition of the ecosystem benefits of prescribed fire, ''sustainable and resilient wildland ecosystem'' could include maintaining a regenerated forest in a healthy condition able to withstand and/or diminish the effects of catastrophic wildfire.

We are finalizing our proposed regulatory language that a prescribed fire must be conducted under an adopted and implemented certified SMP or must have used appropriate BSMP to satisfy the controllable prong of the not reasonably controllable or preventable criterion. As we indicated in the proposal, ''certification'' requires that a responsible state or delegated local agency certify in a letter to the Administrator of the EPA, or a Regional Administrator,[73] that it has adopted and is implementing a SMP.[74] Past certifications provided to the EPA through this process are sufficient to meet the ''certified'' SMP language in this final action. An air agency with a current SMP that has not been certified according to this process could pursue certification of its existing SMP. SMPs that have been incorporated into a SIP are ''certified.'' We are retaining Table 3, which identifies generally appropriate BSMP, in the regulatory text. To the proposed version of the table, we have added a footnote to indicate that the listing of BSMP is not intended to be all-inclusive. Burn managers can consider other appropriate BSMP as they become available due to technological advancement or programmatic refinement. While not in regulatory text, we also incorporate into this final rule preamble, as guidance, Table 4, which includes example content for a burn report. The preamble to this final rule identifies burn reports as one example of documentation that air agencies can use in their exceptional events demonstrations for prescribed fires to show the implementation of BSMP. After incorporating commenter feedback into the descriptions of some of these components, we are retaining in the preamble, as guidance, the following components of a certified SMP:[75]

- Authorization to Burn—Includes a process for authorizing or granting approval to manage prescribed fires on wildland within a region, state or on Indian lands and identifies a central authority responsible for implementing the program. The authorization process could, but is not required to, include burn permits or other forms of instruction for conducting burns that consider air quality and the ability of the airshed to disperse emissions.
- Minimizing Air Pollutant Emissions—Encourages wildland owners/managers to consider and evaluate alternative treatments to fire, but if fire is the selected approach to follow appropriate emission reduction techniques.
- Smoke Management Components of Burn Plans—If the smoke management program requires burn plans, then the burn plan should include the following components: Actions to minimize fire emissions, approaches to evaluate smoke dispersion, public notification and exposure reduction procedures, and air quality monitoring.
- Public Education and Awareness—Establishes the criteria for issuing health advisories when necessary and procedures for notifying potentially affected populations.
- Surveillance and Enforcement—Includes procedures to ensure compliance with the terms of the SMP.
- Program Evaluation—Provides for periodic review by interested stakeholders of the SMP effectiveness and program revision as necessary. A review of effectiveness should consider the role of prescribed fire in meeting the goals in a multi-year or resource management plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species. Effectiveness reviews should also consider air quality impacts as well as any received post-burn reports, which may describe implemented contingency plans due to smoke impacts or use of BSMP and recommendations for future improvements. SMP procedures for re-evaluation should address a frequency of review (*e.g.,* every 3 to 5 years, or as needed); participants in the review process (*e.g.,* original program developers to include land owners/managers, air quality managers, the public, etc.); and program objectives over the review period (*e.g.,* acres burned, anticipated/desired future acres burned, needed modifications).

[73] As discussed in more detail in Section IV.G.7 of this preamble, concurrent with these rule revisions, the EPA has revised the delegation of authority for exceptional events decision making to allow for redelegation from the EPA Regional Administrator to the Regional Air Division Director or equivalent highest manager who exclusively oversees air programs. If an EPA Regional office elects to pursue redelegation, then a state could ''certify'' its SMP by sending a letter to the delegated official in the EPA Regional office.

[74] The EPA anticipates that any person within an air agency responsible for submitting exceptional events demonstrations or SIP revisions could also be responsible for certifying a Smoke Management Program.

[75] The EPA is adapting the language associated with the six basic components of a certifiable SMP from the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires.* Although states may have developed and implemented a certified SMP that addresses prescribed fire not on wildland, this regulatory action focuses on the elements of a certified SMP as applied to managing smoke from prescribed fires on wildland. In this context, the EPA expects burn managers to consider actions and approaches where appropriate.

TABLE 3—SUMMARY OF BASIC SMOKE MANAGEMENT PRACTICES, BENEFIT ACHIEVED WITH THE BSMP, AND WHEN IT IS APPLIED [a]

Basic smoke management practice [b]	Benefit achieved with the BSMP	When the BSMP is applied—before/during/after the burn
Evaluate Smoke Dispersion Conditions	Minimize smoke impacts	Before, During, After.
Monitor Effects on Air Quality	Be aware of where the smoke is going and degree it impacts air quality.	Before, During, After.
Record-Keeping/Maintain a Burn/Smoke Journal.	Retain information about the weather, burn and smoke. If air quality problems occur, documentation helps analyze and address air regulatory issues.	Before, During, After.
Communication—Public Notification	Notify neighbors and those potentially impacted by smoke, especially sensitive receptors.	Before, During.
Consider Emission Reduction Techniques	Reducing emissions through mechanisms such as reducing fuel loading can reduce downwind impacts.	Before, During, After.
Share the Airshed—Coordination of Area Burning.	Coordinate multiple burns in the area to manage exposure of the public to smoke.	Before, During, After.

[a] The EPA believes that elements of these BSMP could also be practical and beneficial to apply to wildfires for areas likely to experience recurring wildfires.

[b] The listing of BSMP in this table is not intended to be all-inclusive. Not all BSMP are appropriate for all burns. Goals for applicability should retain flexibility to allow for onsite variation and site-specific conditions that can be variable on the day of the burn. Burn managers can consider other appropriate BSMP as they become available due to technological advancement or programmatic refinement.

TABLE 4—ELEMENTS THAT MAY BE INCLUDED IN BURN PLANS AND POST-BURN REPORTS FOR PRESCRIBED FIRES SUBMITTED AS EXCEPTIONAL EVENTS

Element	Burn plan	Post-Burn report
Fire Name [a]	Include	Include.
Permit number (if appropriate)	Include	Include.
Latitude/longitude and physical description	Include	Include.
Date of burn, ignition time and completion time (duration of burn).	Include	Include.
AQI status on burn day, if available (both in the vicinity of the fire and in the affected upwind area).	Predicted	Actual.
Acres burned	Planned	Actual (blackened).
Description of fuel loading	Estimated	Actual (tons consumed).
Meteorological data (weather conditions, wind speed and direction, dispersion).	Predicted conditions (including predicted dispersion).	Actual conditions (including actual dispersion).
Smoke Impacts	Anticipated smoke impacts	Observed or reported smoke impacts (include nature, duration, spatial extent and copies of received complaints).
BSMP actions to reduce impacts	Expected BSMP actions	Actual BSMP actions.
Recommendations for future burns in similar areas		Include.
Analytics (modeled/actual fire spread, satellite imagery and analysis, webcam/video, PM/ozone concentrations over the course of the fire).		Include.

[a] The "Fire Name" should be unique and referenced, to the greatest extent possible, in all exceptional events-related documentation, including the event name in AQS. The fire name could simply consist of the county, state, and date in which the burn occurred (*e.g.,* County X, State Y Prescribed Fire on Date Z) if no other name has been assigned.

Also as proposed, and for the previously summarized reasons, we are removing the phrase "and must include consideration of development of a SMP" from the sentence that in 40 CFR 50.14(b)(3) of the 2007 Exceptional Events Rule that read, "If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP."

With respect to the not reasonably preventable prong of the not reasonably controllable or preventable criterion, after considering public comments, we are finalizing our reliance on a multi-year land or resource management plan for a wildland area with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire.

While our proposal encouraged all agencies and managers/owners involved in land, air quality and fire management to communicate and collaborate regarding fire use practices in general and plans for specific prescribed fires with use of BSMP, we did not propose to require this communication. Commenters provided both general and specific feedback related to the EPA's encouragement of these collaborative fire communications. From a holistic perspective, commenters noted that a shared understanding regarding the goals of a specific prescribed fire helps both air quality and land managers meet their respective air quality objectives and land and resource management objectives. Some state and regional planning organization commenters also responded that it is inappropriate to allow federal land managers, who are not directly accountable for managing air quality, to independently make decisions for which air agencies are responsible. As we have noted previously in this preamble, federal land managers do play an important role

in helping states and tribes improve the air quality in those areas that do not meet the NAAQS. Regardless of whether the provisions in the General Conformity Rule [76] apply, commenters specifically asked the EPA to ensure that burn managers using BSMP consult with the air agency or air agencies within whose jurisdiction the burn is being conducted regarding the selection and use of BSMP to ensure that those BSMP are appropriate and address local air quality and public health issues. Some land managers have offered the counter-perspective that pre-burn approval on a fire-by-fire basis could consume resources from all parties and have no practical effect regarding actual measures taken before, during or after a fire. These same land managers also articulated that requiring extensive pre-burn discussions between burners and air agencies could have the unintended result of burners not using BSMP.

The EPA must balance the concerns raised by the states during the comment period on the NPRM with the concerns identified by other federal agencies with which we have consulted in the development of this action. To effect this balance, the EPA is incorporating preamble language and rule text that requires that air agencies, federal land managers and other agencies as appropriate, periodically discuss with the burn managers operating within their jurisdiction and document the process by which air agencies and land managers will work together to protect public health and manage air quality impacts during the conduct of prescribed fires on wildland. Consistent with operational protocols within the fire management community, these discussions must include outreach and education regarding general expectations for the selection and application of appropriate BSMP and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate BSMP. As with other components of this final rule, we are not defining the mechanism by which air agencies and land managers will conduct and document these discussions nor are we prescribing the full scope of these discussions. Rather, we are finalizing regulatory text that, after an initial implementation period, the EPA will not concur with a request to exclude data that have been influenced by a prescribed fire on wildland if the air agency(ies), federal land managers and burn managers have not discussed and documented a process that includes outreach and education regarding general expectations for the selection and application of appropriate BSMP and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate BSMP. The initial implementation period is defined as 2 years from the effective date of this action. This time will allow air agencies and land managers to develop and incorporate the collaboration process into operational management.

The EPA expects that the mechanism under which these discussions are conducted and documented could be formal, such as a Memorandum of Understanding or an Interagency Agreement, or it could be a letter agreement. Similarly, in indicating that discussions occur ''periodically,'' we mean that discussions could occur annually at the beginning of a burn season, prior to initiating burns on identified tracts of land, or on some other identified frequency. We do not expect discussions prior to each prescribed fire on wildland. The EPA also expects that discussions will include outreach and education regarding general expectations for the selection and application of appropriate BSMP and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate BSMP and not the initiation or timing of the prescribed fire (except in those cases where a BSMP specifies certain factors related to the timing). Not all BSMP are appropriate for all burns. Goals for applicability should remain flexible to allow for onsite variation and site-specific conditions that can be variable on the day of the burn. Where states have an existing, documented process or program under which air agencies, federal land managers, state fire agencies and other entities engage with burn managers regarding the protection of public health and air quality and general expectations for the selection, application and benefits of appropriate BSMP, they may rely upon and reference this process or program when addressing the not reasonably controllable or preventable criterion for an exceptional events demonstration for a prescribed fire.

Also related to air agency and land manager collaboration, we have clarified the regulatory language at 40 CFR 50.14(b)(3)(ii)(A) to require that when a NAAQS exceedance or violation occurs when a prescribed fire is employing an appropriate BSMP approach that the air agency and the burn manager conduct a retrospective review of the prescribed fire event and the employed BSMP to ensure the protection of air quality and public health and progress towards restoring and/or maintaining a sustainable and resilient wildland ecosystem. Either the air agency or the burn manager could initiate such a retrospective review. This regulatory language previously indicated that the ''State must undertake a review of its approach. . . .'' The added regulatory text clarifies our intent in using the term ''approach.'' We are also requiring that if the prescribed fire becomes the subject of an exceptional events demonstration, the demonstration must include documentation of the post-burn review. The EPA may be unable to concur on a demonstration that does not include documentation of the post-burn review. Together, the regulatory language at 40 CFR 50.14(b)(3)(ii) now requires both proactive discussions focused on education and outreach regarding BSMP and a ''lessons learned'' review of events that occur with the use of BSMP. We note that this required collaborative proactive and retrospective approach does not affect any land manager's ability to conduct a prescribed fire, only whether a prescribed fire conducted after the effective date of this action is eligible for consideration as an exceptional event. The mandatory provisions for these required discussions do not apply where a burner is operating under a developed and implemented certified SMP.

Comments and Responses. The EPA received many comments expressing agreement with the EPA's recognition of the importance of prescribed fire on wildland and welcoming continued dialogue among state, tribal and local air agencies, the EPA and other federal agencies to ensure that land managers have adequate available tools to manage ecosystem development and restoration and manage wildland vegetation, including use of planned prescribed fires and letting some wildfires proceed naturally, and to ensure that use of these tools is protective of public health and does not result in unhealthy air. No commenters disagreed with this objective, but, as described in the following paragraphs, some commenters provided feedback regarding applying the specific aspects of prescribed fire on wildland to the exceptional events process.

Some commenters supported the proposed definition of prescribed fire, while others offered suggestions for revision. Several commenters recommended that we include within the regulatory definition the concept

[76] The General Conformity Rule requires that federal agencies work with state, tribal and local governments in nonattainment and maintenance areas to ensure that federal actions conform to any applicable SIP, FIP or TIP.

that prescribed fire on wildland must be conducted using either SMP or BSMP principles. While we agree that either a SMP or BSMP are required for a prescribed fire to be eligible for consideration under the Exceptional Events Rule, as indicated in this preamble and in the regulatory text at 40 CFR 50.14(b)(3)(ii)(A), we have not added either SMP or BSMP to the regulatory definition of a prescribed fire because to do so would have the effect of excluding from the definition of prescribed fire those deliberately ignited fires that do not use BSMP or SMP. That is, we would not have terminology to define intentionally ignited fires not using BSMP or SMP, which the land management community refers to as prescribed fires. We believe that promulgating a regulatory definition that is substantively different than the common usage would create confusion. Moreover, the definition of prescribed fire that we are promulgating combined with the specific exceptional events provisions for prescribed fire on wildland (*e.g.,* the requirement that the fire must have been conducted under a SMP or have BSMP applied) will achieve the same goal as the suggested revision to the definition of prescribed fire.

Another commenter suggested that the definition of prescribed fire also include the caveat that that ''applicable laws, policies, and regulations'' (1) actually exist (2) are enforceable by or through delegated authority from the state air quality management entity, and (3) are intended to adequately control emissions and impacts at all downwind locations. We have not incorporated the commenter's suggested language. Under the CAA, states, exclusive of tribal lands, are primarily responsible for the administration of air quality management programs within their borders. As the responsible entity, states promulgate laws and regulations, where needed, and ensure they are followed and are enforceable (states also develop policies, but policies are generally not enforceable). We note that in some states, legislation gives the leadership of fire management to a forestry or public safety agency rather than to an air agency. As pointed out by one commenter, the EPA cannot mandate that states grant air agencies the authority or purview to regulate or enforce public health and safety. We can, however, require coordination as a condition for the EPA's approval for the exclusion of event-influenced ambient data, which is what we have done with the regulatory language at 40 CFR 50.14(b)(3)(ii)(A).

As previously noted, after considering public comments, we are finalizing that to satisfy the human activity unlikely to recur at a particular location criterion, the air agency may rely on either the natural fire return interval or the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire. While a few commenters agreed with the language as proposed, several commenters asked for clarification regarding recurrence and the development of land management plans. Specifically, commenters asked how the recurrence frequency identified in land management plans as being needed to achieve land management goals or defined by the natural fire return interval compares to the recurrence frequency generally established for the human activity unlikely to recur at a particular location criterion. In discussing the concept of recurrence in Section IV.E.1 of this preamble, we note that the general benchmark for recurrence (*i.e.,* three events in 3 years) does not apply to prescribed fires. Rather than using this general benchmark for prescribed fire on wildland, we are promulgating in 40 CFR 50.14(b)(3)(iii), that recurrence for prescribed fires is defined by either the natural fire return interval or the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire. Thus, the recurrence frequency for prescribed fire is specific to the ecosystem and resource needs of the affected area. Several additional commenters requested that we codify language allowing either the natural fire cycle or the fire frequency needed to meet ecological objectives to be defined by scientific literature. We are not codifying the concept that recurrence can be defined by scientific literature, but we are including this clarification in the final rule preamble.[77] Two additional commenters asked that we clarify how an event spanning multiple days counts towards recurrence. As we discuss in Section IV.E.1 of this preamble, the EPA recognizes that a single event, natural or caused by human activity (to include prescribed fire events), can span multiple days and result in an air agency flagging multiple monitor-day values in AQS (*i.e.,* multiple exceedances of a given NAAQS at a single monitor in a single day or multiple NAAQS exceedances at multiple monitors on multiple days). The EPA considers a single discrete event to be one occurrence.

Commenters also asked for clarification regarding the development of land and resource management plans. Specifically, commenters note that while the description and content of the plans identified in the preamble to our proposed rule may be appropriate for federal agencies, the description and content of land and resource management plans was not appropriate for private landowners who burn at the landscape level. Commenters asked that we clarify that prescribed fires undertaken by private landowners or on lands managed by multiple parties that are consistent with their management plans be considered under the exceptional events process. We disagree with the commenters on this point. The existence of identified objectives in a state or private management plan may not be sufficient under the exceptional events process. Rather, the stated objectives must include those identified in this rule. The EPA is promulgating regulatory provisions that describe the process and requirements by which emissions from prescribed fires on wildland causing an exceedance or violation of a NAAQS can be considered for exclusion under the Exceptional Events Rule. In finalizing these rule revisions, our intent is to clearly articulate the components needed to satisfy the statutory requirements under CAA section 319(b) and the Exceptional Events Rule. It is not our intent to exclude specific event types or scenarios from consideration. Rather, the EPA will review each event on a case-by-case basis considering the merits of each specific case. We recognize that addressing the prescribed fire-related components may be more difficult in some states than others (or more difficult for some land areas within a state than other land areas within the same state) because of the

[77] As a general matter, this preamble provides non-binding guidance and recommendations for satisfying specific rule criteria. This does not mean that these recommendations are the only way to address a given issue. The preamble guidance only precludes other approaches when the rule language identifies a specific condition as being necessary to satisfy a given requirement.

state legislative authority for fire management or because of the nature and management/ownership of lands considered to be wildland. We further recognize that successfully implementing these rule revisions will require the coordination, cooperation and compromise of all involved parties, including federal, state, local, tribal, and private land owners/land managers; state, tribal and local air quality agencies; and the EPA.

Commenters provided a similar level of detailed feedback regarding the not reasonably controllable or preventable criterion. Most commenters agreed with the EPA's now final provision that, to be considered under the provisions of the Exceptional Events Rule, prescribed fires must be conducted under an adopted and implemented certified SMP or using appropriate BSMP. One commenter asked that we clarify in rule text that if a certified SMP is in place for an area, then all prescribed fires conducted in the area must first comply with the provisions in a SMP. In response to the commenter's suggestion, we note in this preamble that if a state has adopted and implemented a certified SMP, then a prescribed fire on lands included within the scope of the SMP should be conducted under the terms of the SMP. We note, however, that some SMP may allow individual burners to voluntarily adhere to the terms of the SMP. If this is the case, or in situations in which a state has developed, but not implemented, a SMP, then burn managers may use BSMP to address the provisions of the Exceptional Events Rule. States are responsible for implementing and ensuring conformance with the terms of their SMP.

Our proposal solicited comment on whether to include SMP elements in the final rule revisions as rule text. We received comments supporting retaining the SMP elements in the preamble as guidance, and we received other comments supporting including the SMP elements in regulatory language. As previously noted in this preamble, we are retaining the SMP elements in the preamble as guidance. When the SMP elements were developed for the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires,* the language reflected actions consistent with addressing three types of wildland fire (*i.e.,* wildfire, prescribed fire and wildland fire use fire). Fire terminology now recognizes two types of wildland fire: Wildfire and prescribed fire. We chose not to include provisions in regulatory text that do not reflect current terminology. Additionally, in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires,* we recommended that all state-certified SMP include the six identified elements. However, because the elements were only recommended versus being required, not all states adopted all six elements. Requiring the six SMP elements in the rule text could result in some states needing to revise their SMP. Where a state has incorporated the SMP into a SIP, the effects of including the SMP elements in the final rule text could include revising the SIP if the state intends to rely on the SMP path to address the controllable prong of the not reasonably controllable or preventable criterion. As we note in this preamble, based on commenter feedback, we have slightly modified the descriptions of some of these components. For example, several commenters noted that the authorization to burn component appears to attempt to require burn permits. We have clarified that while this component must include a process for authorizing or granting approval to manage prescribed fires on wildland, this authorization process may or may not include burn permits.[78] Also in response to commenter feedback, we have clarified the program evaluation component including ''periodic review'' by interested stakeholders of the SMP effectiveness and program revision as necessary.

Several commenters expressed support for our proposal to remove the phrase ''and must include consideration of development of a SMP'' from the sentence that in 40 CFR 50.14(b)(3) of the 2007 Exceptional Events Rule that read, ''If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.'' As we noted in the proposal, while the EPA supports states considering the development of a SMP when an event occurs while using BSMP, we believe states have had many opportunities to develop SMP since 2007. The language in the 2007 rule effectively requires an ongoing consideration to develop a SMP every time a prescribed fire causes a NAAQS exceedance or violation that merits exclusion as an exceptional event. We do not believe Congress intended this ongoing consideration to be a requirement under CAA section 319(b). We maintain that when air agencies observe NAAQS exceedances or violations attributed to a prescribed fire, air agencies should consider a wide range of alternatives including, but not limited to, the development of a SMP or more frequent or intensive use of BSMP to minimize smoke impacts. In addition, we believe that a SMP is most appropriate when multiple parties wish to employ prescribed fire at about the same time in the same airshed, which is a more narrow situation than specified in the sentence we proposed to remove. For these reasons, as supported by commenter feedback, we are removing the language from the rule text.

Four states and one national organization agreed with our proposal to include BSMP in rule text. One national forestry association indicated its preference to include BSMP in the preamble as guidance. As noted, we are including the table identifying BSMP in regulatory text. While not in regulatory text, we are also incorporating into this final rule, as guidance in the preamble, Table 4, which includes example content in a burn report. Although one commenter asked that this table be included in regulatory text, we are not doing this because the table provides example content of a burn report, which is only a single example of the type of documentation that air agencies can use in their exceptional events demonstrations for prescribed fires to show the implementation of BSMP. It is not our intent to convey as required documentation either burn reports or the identified content.

Several commenters supported, and no commenters opposed, the presumption that a prescribed fire should be considered not reasonably preventable based on the benefits that would be foregone if the burn did not take place. As we have noted, we have incorporated this concept into the final rule preamble and finalized associated regulatory text, which allows states to rely on a multi-year land or resource management plan for a wildland area with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire to satisfy the preventability prong of the not reasonably controllable or preventable criterion.

3. Stratospheric Ozone Intrusions

The section of the proposal addressing exceedances due to

[78] By ''burn permit,'' we mean a document or communication saying that a particular party may conduct a prescribed fire in a particular area on a particular day or range of days. Acceptable alternative approaches to burn permits include communicating more broadly where and when landowners may conduct prescribed fires. However, we do not consider a program that authorizes prescribed fire across broad areas throughout an entire season with no regard for meteorological or pollution conditions on specific days to be a SMP.

stratospheric ozone intrusions did not propose any new guidance or specific regulatory language. Rather, it provided a general (meteorological) description of stratospheric ozone intrusions, indicated that stratospheric ozone intrusions are purely natural events, and provided general guidance on applying the Exceptional Events Rule criteria when preparing demonstrations for stratospheric ozone intrusion events. Because we intend to develop a supplementary guidance document, *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Stratospheric Ozone Intrusions,* which will apply the final rule provisions to the development of demonstrations for stratospheric ozone intrusion events and will include example analyses, conclusion statements and technical tools that air agencies can use in their demonstrations, we are not repeating in this final action the language that appeared as guidance in the proposal. We intend to post the draft guidance and instructions for providing public comment on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events* shortly after finalizing these rule revisions.

After consideration of the public comments, as discussed more fully in the paragraph that follows, we are finalizing a rule provision related to satisfying the not reasonably controllable or preventable criteria for stratospheric ozone intrusions. While the not reasonably controllable or preventable criterion applies to natural events, the EPA has stated that air agencies generally have no obligation to specifically address reasonable controls if the event was natural. We applied this concept when proposing (and, in this action, finalizing) a categorical presumption of not reasonably controllable for wildfires that would involve referencing the appropriate regulatory citation in the demonstration. The proposal preamble repeatedly acknowledges that, similar to wildfires, stratospheric ozone events are purely natural events. The proposal also stated in the not reasonably controllable or preventable section that ''In these cases [volcanic releases of SO_2 and stratospheric ozone intrusions], the air agency should affirmatively state that the not reasonably controllable or preventable criterion is satisfied by the fact that the natural event was of a character that could not have been prevented or controlled and that there were no contributions of event-related emissions from anthropogenic sources.'' As a natural outgrowth of our proposal, and as specifically suggested by one commenter, we are extending this categorical presumption to satisfying the not reasonably controllable or preventable criterion to stratospheric ozone intrusion events by promulgating regulatory language at 40 CFR 50.14(b)(6).

4. High Wind Dust Events

a. Summary of Proposal

The EPA proposed as guidance in the preamble and/or as changes to regulatory text concepts and language that first appeared in the Interim High Winds Guidance document. These changes included adding regulatory definitions for high wind dust events and a high wind threshold, determining the scenarios under which a high wind dust event could be considered ''natural'' for purposes of the Exceptional Events Rule, identifying that remote, large-scale, high-energy and/or sudden high wind dust events, such as ''haboobs,'' would generally satisfy the not reasonably controllable or preventable criterion with streamlined documentation, and incorporating best management practices (*i.e.,* soil conservation management practices) as reasonable controls. We solicited comment on all of these concepts and discuss each in more detail in the following paragraphs.

Definition of an Event. Consistent with the EPA's proposed revision of the regulatory definition of an exceptional event to include both the event and its associated resulting emissions, the EPA proposed to define a high wind dust event as an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site. We also proposed, consistent with the nullified language in the 2007 Exceptional Events Rule preamble, the PM_{10} Natural Events Policy and the Interim High Winds Guidance, to define high wind dust events in the rule text as ''natural events'' in cases where windblown dust is entirely from natural sources or where all significant anthropogenic sources of windblown dust have been reasonably controlled.

High Wind Threshold. To facilitate clearer expectations regarding the level of evidence needed to demonstrate not reasonably controllable or preventable, the EPA proposed to codify in rule language the definition of ''high wind threshold'' as the minimum threshold wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event. The EPA proposed to accept a threshold of a sustained wind of 25 mph for areas in the western U.S. provided this value is not contradicted by evidence in the record when we reviewed a demonstration. The proposal noted that if we received specific information based on relevant studies that suggest a different high wind threshold for an identified area, the EPA would notify the affected air agency so that the agency may consider basing its demonstration on that threshold value. The proposal also indicated that the EPA would consider such information as part of the weight of evidence analysis for a submitted demonstration. As we had previously articulated in the Interim High Winds Guidance, the proposal stated that air agencies could, as an alternative to the 25 mph high wind threshold, identify and use an area-specific high wind threshold that is more representative of local/regional conditions.

The proposal explained that we would use the high wind threshold concept when assessing the not reasonably controllable or preventable criterion for all high wind dust exceptional events demonstrations except for those events in which the source of the emissions is entirely natural (*i.e.,* windblown dust from natural undisturbed lands) or where a large-scale and high-energy high wind dust event generates emissions that cause an exceedance or violation. In the case of a large-scale and high-energy high wind dust event, no assessment of reasonable controls is needed to satisfy the controllability prong of the ''not reasonably controllable or preventable'' criterion.

Large-Scale and High-Energy High Wind Dust Events. The EPA proposed rule language to apply a general approach when considering reasonableness of controls for remote, large-scale, high-energy and/or sudden high wind dust events, such as ''haboobs'' in the southwest where sustained wind speeds can exceed 40 mph and generate walls of dust several miles wide and more than a mile high. The proposed rule text provided that if an event met the criteria for a large-scale and high-energy event, then it would be considered not reasonably preventable or controllable. Therefore, a demonstration limited to such event(s) will not need to substantively address this criterion.

Best Management Practices. The EPA solicited comment on whether, as part of the assessment of local sources and reasonable controls, USDA/NRCS-approved BMPs constitute sufficient reasonable controls in any or in all high wind event-affected areas and whether these measures should therefore be

specifically and categorically identified in preamble or rule language as constituting reasonable controls. The preamble repeated the EPA's previous guidance that USDA/NRCS-approved BMPs designed to effectively reduce fugitive dust emissions and prevent soil loss in agricultural applications could be included in the collection of controls determined to constitute reasonable controls for wind-blown dust events in areas in which they have been implemented.[79] Although the EPA has addressed the sufficiency of BMPs in decisions on individual exceptional events demonstrations when the BMPs were part of a SIP-approved BACM determination, we have not previously addressed whether or not BMPs individually or in some combination with each other constitute sufficient reasonable controls nationally or in any particular types of areas.

b. Final Rule

After consideration of the public comments received, and for the reasons discussed in our proposed rule section and response to such comments, we are finalizing regulatory language defining high wind dust events and high wind threshold; determining the scenarios under which a high wind dust event could be considered ''natural'' for purposes of the Exceptional Events Rule; identifying that large-scale and high-energy high wind dust events, such as ''haboobs,'' would generally satisfy the not reasonably controllable or preventable criterion with streamlined documentation; and providing guidance related to incorporating best management practices (*i.e.,* conservation management practices) as reasonable controls.

Definition of an Event. We are promulgating, as proposed, that a high wind dust event is an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site. No commenters opposed this definition.

Also as proposed, we are promulgating regulatory text that we consider high wind dust events as ''natural events'' in cases where windblown dust is solely from natural sources or where all significant anthropogenic sources of windblown dust have been reasonably controlled.[80] While we discuss this concept (and related comments and responses) in more detail in Section IV.D of this preamble, we note here that this long-standing policy was first established in the PM_{10} Natural Events Policy, which provided that:

> Ambient PM_{10} concentrations due to dust raised by unusually high winds will be treated as due to uncontrollable natural events under the following conditions: (1) The dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM).[81]

High Wind Threshold. We are also promulgating, as proposed, that the definition of a high wind dust threshold is the minimum threshold wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event. No commenters opposed this definition. In concert with this definition, we are also finalizing a modified version of our proposed regulatory text that we will accept a threshold of a sustained wind of 25 mph for areas in the western U.S. provided this value is not contradicted by evidence in the record when we review a demonstration. Several commenters supported this definition either as proposed or with the clarification that air agencies could develop as an alternative to the 25 mph high wind threshold, their own area-specific high wind threshold that is more representative of local/regional conditions. Although we included this language in the proposal preamble, we did not include this language in the proposed regulatory text. We are including this language in the final regulatory text as a result of commenter feedback.

We also repeat language from the proposal that any area-specific high wind threshold should be representative of conditions (*i.e.,* sustained wind speeds[82]) that are capable of overwhelming reasonable controls (whether RACM, BACM or other) on anthropogenic sources and/or causing emissions from natural undisturbed areas. The threshold was not intended to represent the minimum wind speed at which *any* level of emissions could occur (*e.g.,* aerodynamic entrainment), but rather the wind speed at which significant emissions begin to occur due to reasonable controls on disturbed soil or the natural wind resistance of undisturbed areas becoming overwhelmed. We further note that we included guidance on both threshold development and determining wind speeds in the Interim High Winds Guidance.[83] While we believe this guidance is still appropriate with respect to determining wind speed characteristics and developing a wind speed threshold, we intend to revise the guidance to incorporate the provisions of this final action. We note that areas with Natural Events Action Plans that include a high wind threshold that meets the criteria identified in the Interim High Winds Guidance may be able to use the previously developed threshold as an area-specific high wind threshold. The proposal also accepted information on different high wind thresholds for identified areas (*see* 80 FR 72878). After evaluating comments advocating that the EPA consider area-specific high wind thresholds, the EPA is codifying this provision in the final rule. The EPA recognizes, however, that there are likely to be limited situations in those areas in the western U.S.[84] where this threshold applies in which exceptional events occur at wind speeds

[79] *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf* and *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_guidememo_130510.pdf.*

[80] As identified in Section IV.D of this preamble, the EPA will generally consider human activity to have played little or no *direct* role in causing emissions of the dust generated by high wind for purposes of the regulatory definition of ''natural event'' if contributing anthropogenic sources of the dust are reasonably controlled, regardless of the amount of dust coming from these reasonably controlled anthropogenic sources, and thus the event could be considered a natural event. In such cases, the EPA believes that it would generally be a reasonable interpretation to find that the anthropogenic source had ''little'' direct causal role. If anthropogenic sources of windblown dust that are reasonably controllable but that did not have those reasonable controls applied at the time of the high wind event have contributed significantly to a measured concentration, the event would not be considered a natural event.

[81] *Areas Affected by PM–10 Natural Events* (the PM_{10} Natural Events Policy), memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to the EPA Regional offices, May 30, 1996.

[82] Section 6.3.2.2 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf* for details on the calculation of sustained wind speed. Generally, the EPA will accept that high winds could be the cause of a high 24-hour average PM_{10} or $PM_{2.5}$ concentration if there was at least one full hour in which the hourly average wind speed was above the area-specific high wind threshold.

[83] *See* Appendices A2 and A3 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf* for additional information on the development of a high wind threshold.

[84] *See* rule language that we are promulgating at 40 CFR 50.14(b)(5)(iii).

less than 25 mph.[85] Air agencies should consult with their EPA Regional office when developing alternate high wind thresholds for a particular area.

The EPA will continue to consider an area's high wind threshold when reviewing demonstrations for events in a nonattainment or maintenance area where the EPA has approved a SIP, TIP or FIP within 5 years of the date of the event. For a demonstration in such a case, the not reasonably controllable criterion hinges only on implementation of the control measures in the SIP, TIP or FIP, not on the content of those measures. For events with sustained wind speeds above the high wind threshold that occur simultaneously with high monitored PM concentrations, it is very plausible that SIP, TIP or FIP controls were being implemented and the high PM concentrations resulted from emissions generated by sources in the area despite implementation of those controls. Conversely, for events with sustained wind speeds below the high wind threshold, it becomes more plausible that there may be noncompliance with control measures or that anthropogenic sources unrelated to the event (*e.g.,* dust from traffic for a special event) are contributing to the exceedance. Therefore, the comparison of sustained wind speeds during an event to the high wind threshold will help the EPA Regional offices determine what evidence must be included in a demonstration. Specifically, it will inform the evidence required for the not reasonably controllable or preventable criteria, the possibility of noncompliance, or emissions from non-event sources.

Similarly, the high wind threshold also aids in determining whether a high wind dust event that includes emissions from anthropogenic sources can be considered a natural event. We have clarified that natural events can recur, sometimes frequently, and that we consider reasonably controlled anthropogenic emissions sources to play little or no direct role in causing emissions. For high wind dust events, if sustained wind speeds are above the high wind threshold and the anthropogenic emissions sources are reasonably controlled, it is more likely that human activity plays little or no direct role in causing emissions. Conversely, if sustained wind speeds are below the high wind threshold it is more likely that human activity does have a direct role in causing emissions because significant emissions under low wind conditions only occur if the area has been disturbed by human activity and those sources have not been reasonably controlled.

As noted in the proposed rule preamble and in the Interim High Winds Guidance, as part of an exceptional events demonstration for high wind dust events, the EPA expects air agencies to provide relevant wind data (*e.g.,* wind speed and direction). Wind speed data consist of analyses and statistics showing how the observed sustained wind speed compares to the established high wind threshold and demonstrates a relationship between the sustained wind speeds and measured PM concentrations at a particular monitoring location. The EPA has recommended that air agencies show these analyses as part of the clear causal relationship criterion discussed in Section IV.E.3 of this preamble. The EPA has encouraged air agencies to discuss wind direction in the narrative and to present wind direction data graphically in maps/plots in the clear causal relationship section of the high wind dust events demonstration.

The EPA will review any demonstration for a high wind dust event not meeting the criteria for a ''large-scale and high-energy'' described in the next paragraph on a case-by-case basis. In doing so, the EPA will consider what controls are reasonable in light of an area's attainment status and associated CAA control requirements, the frequency, and range of typical high wind dust events known (at the time of the particular event that is the subject of the demonstration) to occur in the area.

Large-Scale and High-Energy High Wind Dust Events. Many commenters supported the EPA's proposed rule language to apply a case-specific approach when considering reasonableness of controls for remote, large-scale, high-energy and/or sudden high wind dust events, such as ''haboobs,'' where sustained wind speeds can exceed 40 mph and generate walls of dust several miles wide and more than a mile high. As a result, we are finalizing this provision with several clarifying changes to the proposed language at 40 CFR 50.14(b)(5)(vi), which read, ''For remote, large-scale, high-energy and/or sudden high wind dust events, such as ''haboobs'' in the southwest, the Administrator will generally consider a demonstration documenting the nature and extent of the event to be sufficient with respect to the not reasonably controllable criterion of paragraph (c)(3)(iv)(D) of this section.'' We have changed this terminology to ''a large-scale and high-energy high wind dust event.'' We have removed the phrase ''such as haboobs in the southwest'' as a result of commenter feedback identifying that ''haboobs'' occur in places other than the ''southwest.'' We agree with the commenter. We removed the descriptive terms ''remote'' and ''sudden'' because we found that these words do not effectively change the characteristics of the type of event that we intend to include as ''a large-scale and high-energy'' high wind dust event. Thus, provided the event meets the identified criteria for a ''large-scale and high-energy'' high wind dust event, it could qualify for case-specific treatment with respect to the not reasonably controllable or preventable criterion.

Some areas of the country may claim that, because of local topography and meteorology, each PM exceedance that occurs in their jurisdiction would qualify as a ''large-scale and high-energy'' high wind dust event. While we acknowledge that large-scale and high-energy high wind dust events in a particular area may be associated with meteorological conditions unique to that area, we also believe that to qualify for the specific exclusion at 40 CFR 50.14(b)(5)(vi), a large-scale and high-energy high wind dust event must: Be associated with a dust storm,[86] have sustained wind speeds greater than or equal to 40 mph, have reduced visibility equal to or less than 0.5 miles,[87] be the focus of a ''Dust Storm Warning'' issued by the NWS (or a similar scientifically-based government entity) and include NWS (or a similar scientifically-based government entity) observations of dust storms and blowing dust. In addition, the event must be associated with measured exceedances occurring at multiple monitoring sites over a large geographic area unless the area has only a single PM monitor or if the area has monitors operating on a sampling frequency that does not coincide with the timing of the event.

[85] The default threshold of 25 mph was based on extensive windblown dust emissions research performed by the Department of Civil and Environmental Engineering at the University of Nevada, Las Vegas under contract to the Clark County Department of Air Quality and Environmental Management. *See* Appendix A1 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013, and *Refined PM_{10} Aeolian Emission Factors for Native Desert and Disturbed Vacant Land Areas.* Final Report, June 30, 2006.

[86] The NWS defines a dust storm as a severe weather condition characterized by strong winds and dust-filled air over an extensive area. *See* definition at *http://w1.weather.gov/glossary/.*

[87] Many NWS distributed alerts and advisories include visibility estimates. In addition, many airports provide estimates of surface visibility. Air agencies may also be able to use nephelometers to determine visibility.

Best Management Practices. After consideration of the public comments, as discussed more fully in this paragraph, we are finalizing here as guidance that, on a source or area-specific basis, we would accept as ''reasonable controls'' for purposes of satisfying the not reasonably controllable or preventable criterion for a particular potentially contributing source, those USDA/NRCS-approved BMPs designed to effectively reduce fugitive dust air emissions and prevent soil loss in agricultural applications in cases where these measures have been incorporated into an EPA-approved SIP, FIP or TIP or incorporated into state laws, regulations or local ordinances and where those measures consist of controls specific to the pollutant and potentially contributing source.

As we discuss in Section IV.E.2.b of this preamble, when addressing the not reasonably controllable or preventable criterion within an exceptional events demonstration, air agencies should: (1) Identify the natural and anthropogenic sources of emissions causing and contributing to the monitored exceedance or violation, including the contribution from local sources, (2) identify the relevant, enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable. For example, applying this approach to farm- and operation-specific BMPs for a high wind dust event that occurs during harvest time, an air agency would identify the potentially contributing agricultural source (*e.g.,* harvesting operations of crop X), identify the relevant BMP (*e.g.,* baling, which reduced PM emissions from residue burning and chopping) and provide evidence of penetration, scale and intensity (*e.g.,* baling applied at X of Y acres).

c. Comments and Responses

We noted in the final rule portion of the High Winds Dust Events section of this preamble that we did not receive comments related to the definition of either high wind dust event or high wind threshold. We further noted in the previous discussion that commenters did provide feedback regarding establishing, in rule, a high wind threshold of 25 mph. Several commenters supported this definition either as proposed or with the clarification that air agencies could develop as an alternative to the 25 mph high wind threshold, their own area-specific high wind threshold that is more representative of local/regional conditions. As already indicated, we have included this clarification in the regulatory text. Several of the commenters suggesting this revision also asked that the regulatory language include a provision that exceptional events can still occur at wind speeds less than 25 mph. We have not included this change as we believe that allowing areas to establish their own threshold will largely address this potential issue. Additionally, as stated in the proposal and in this final action, the EPA will review other events on a case-by-case basis considering the merits of each specific case. Still more commenters recommended keeping the high wind threshold as guidance rather than rule as it is ''overly restrictive.'' The EPA believes these revisions provide sufficient additional flexibility to address this concern.

Another commenter asked that we include in this final action language from our Interim High Winds Guidance, which stated ''high winds could be the cause of a high 24-hour average PM_{10} or $PM_{2.5}$ concentration if there was at least one full hour in which the hourly average wind speed was above the area-specific high wind threshold.'' We still believe this is an accurate statement, and we are noting this point in this final action.

As we noted previously, many commenters supported the EPA's proposed rule language to apply a case-specific approach when considering reasonableness of controls for large-scale and high-energy high wind dust events, such as ''haboobs.'' Another commenter noted that haboobs should not have special treatment under the rule revisions. This same commenter asked that we define large-scale and high-energy events, which we have done in the discussion of the final rule. Regarding special treatment of these types of events, we maintain that some events are of a scale and intensity that they would have overwhelmed all reasonable controls and other efforts to minimize wind-blown dust emissions. We maintain that such events warrant different treatment under the Exceptional Events Rule. We do, however, note that air agencies will need to provide evidence that the claimed event satisfied all of the other Exceptional Events Rule criteria.

We have incorporated relevant commenter feedback regarding BMP into our discussion of BMP in the final rule section of this action. We note that one additional commenter asked that we clarify whether the fugitive dust control plans included in approved air quality permits are or can represent reasonable controls for permitted sources. While we are not addressing this comment here, we note that we discuss the relationship between BACM or fugitive dust control plans and reasonable controls in our comments and responses section of the not reasonably controllable or preventable portion of this final action (*see* Section IV.E.2.c of this preamble).

G. Other Aspects of Identifying Exceptional Events-Influenced Data and Demonstration Submittal and Review

This portion of the proposed rule discussed the eight topics identified in the following sections, as well as a ninth topic addressing who may submit a demonstration for data exclusion. Because we identify, discuss and respond to questions regarding those entities that are allowed to submit a demonstration in Section IV.A of this preamble and because the proposal contained no additional items needing clarification, we omit that topic in this part of the final action.

1. Aggregation of Events

a. Summary of Proposal

The EPA proposed and solicited comment on guidance in the preamble and rule text allowing 24-hour concentrations of any NAAQS pollutant to be compared to a NAAQS level defined for a longer period as part of a weight of evidence showing for the clear causal relationship with respect to the NAAQS with the longer period and the NAAQS with the shorter period. This proposed approach allowed for examining one day at a time. For example, if an event were demonstrated to have caused a 24-hour concentration of SO_2 to exceed the level of the annual SO_2 NAAQS, the air agency and the EPA would consider this to be a demonstration that the event caused an ''exceedance or violation'' with respect to the 24-hour NAAQS and the annual NAAQS. This would avoid the need to determine if the 1-day effect of the event was enough to cause the annual average concentration of SO_2 to exceed the level of the annual SO_2 NAAQS. It would also allow the data from a day to be excluded from calculation of the design value for the 24-hour SO_2 NAAQS even if the event did not cause an exceedance of the level of the 24-hour SO_2 NAAQS. However, such exclusion would be unlikely to be material to compliance with the 24-hour SO_2 NAAQS if there was no such exceedance of the level of the 24-hour SO_2 NAAQS.

The EPA also proposed to allow air agencies to aggregate either similar or dissimilar events (*e.g.,* stratospheric ozone intrusion followed by a wildfire

or two distinct wildfires) that influence the same NAAQS but that occur on different days for the purpose of determining whether their collective effect has caused an exceedance or violation. The proposed event aggregation process would apply only for NAAQS with averaging or cumulative periods longer than 24 hours. Although we proposed this approach to event aggregation, we also indicated that it may be difficult to implement if the effects of the individual events on their individual days are not fully quantified. We proposed rule text and solicited comment on this approach.

b. Final Rule

After consideration of the public comments, as discussed more fully in the subsequent section, we are finalizing, as proposed and as supported by several commenters, rule language that will allow an air agency to compare a 24-hour concentration of any NAAQS pollutant to the NAAQS for the same pollutant with a longer averaging period as part of a weight of evidence showing for the clear causal relationship with respect to the NAAQS with the longer period. As we discussed in the proposal, the EPA's AQS database houses ambient air quality monitoring and related data. The data in AQS are maintained as individual reported measurements, which can range from 5-minute maximum concentrations per hour for SO_2, to hourly data for ozone, CO, NO_2, SO_2 and some PM measurements, to 24-hour measurements for lead and other PM measurements. Under the 2007 Exceptional Events Rule, air agencies identify individual measurements in AQS and compare these measurements to the subject NAAQS to determine whether an exceedance or violation occurred. When the averaging period for the NAAQS is the same as the measurement duration period, this comparison is relatively straightforward. For example, air agencies and the EPA can directly compare 1-hour ozone, 1-hour CO, 1-hour SO_2, and 1-hour NO_2 measurements to the respective 1-hour NAAQS. This comparison becomes more complicated, however, when there is a difference between the pollutant measurement duration and the averaging time of the NAAQS, which is the case when comparing a 1-hour measurement to an 8-hour, 24-hour, 3-month or annual NAAQS (or in the case of 1-hour ozone, the previously existing NAAQS, which may still apply in certain areas). The provision that we are finalizing allows an air agency to compare a 24-hour concentration of any NAAQS pollutant to the NAAQS for the same pollutant with a longer averaging period as part of the clear causal relationship showing. Using Table Q30–2 in the Interim Q&A document [88] as a guide, this rule revision will allow an air agency to compare a 24-hour averaging period for $PM_{2.5}$ to either the 24-hour $PM_{2.5}$ NAAQS or the annual NAAQS. (Note: If air agencies desire to exclude the identified concentration for both the 24-hour and the annual $PM_{2.5}$ NAAQS, they need to specifically request exclusion for both NAAQS, assuming regulatory significance for both standards.) Air agencies could also compare a 24-hour lead measurement to the rolling 3-month averaging period. A number of commenters supported the provision as proposed. One commenter, however, indicated that comparing a 24-hour concentration of any NAAQS pollutant to the NAAQS for the same pollutant with a longer averaging period is an ''apples to oranges'' analysis that could increase uncertainty and decrease the quality of the demonstration. The EPA acknowledges the commenter's perspective, but believes that clarification is needed regarding the comparison of measured concentrations to ambient air quality standards because, as we have explained, the measurement time frames do not often agree with the averaging period of the NAAQS. In preparing demonstrations, air agencies have often asked the EPA Regional offices whether such comparisons are allowed under the Exceptional Events Rule, and, if they are, how to present such comparisons in a demonstration. Our preamble discussion about these comparisons and our promulgation of associated rule language responds to these comments and provides clarity. We also note that the 2007 rule preamble discussed and allowed this type of comparison for the specific case of the $PM_{2.5}$ annual NAAQS and the 24-hour $PM_{2.5}$ NAAQS. We are extending this concept to all similar NAAQS comparisons.[89]

We are also finalizing regulatory language allowing air agencies to aggregate either similar or dissimilar events (*e.g.,* stratospheric ozone intrusion followed by a wildfire or two distinct wildfires) that influence the same NAAQS but that occur on different days for the purpose of determining whether their collective effect has caused an exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours.[90] That is, when considered individually, each event would not separately need to result in an exceedance or violation of a given NAAQS. The collective effect of the aggregated events would, however, need to cause an exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours. Also, as part of this aggregation approach, the air agency must show that each identified event separately satisfies each of the three technical rule criteria (*i.e.,* human activity/natural event, not reasonably controllable or preventable, and clear causal relationship). For the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours. We do not intend our approach for event aggregation to allow for the aggregation of unnamed events or events that occur over the course of an extended timeframe. Two commenters urged the EPA to remain silent on this provision and not include it in rule language, while several other state, local, tribal and association commenters supported the provision as proposed. To clarify, the final rule text also includes a statement that air agencies may aggregate events occurring on the same day and compare the cumulative effects to a NAAQS with an averaging period of 24 hours or less. As previously noted, for the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of the NAAQS and that each identified event separately satisfies each of the three technical rule criteria (*i.e.,* human activity/natural event, not reasonably controllable or preventable, and clear causal relationship).

We provide a specific approach to aggregating wildfire-related events that occur in different locations *on the same day* in the Wildfire Guidance, which we are releasing concurrently with this action. The aggregation methodology in the Wildfire Guidance applies for purposes of determining whether a given wildfire could use a tiered

[88] *Interim Exceptional Events Rule Frequently Asked Questions.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf.*

[89] 72 FR 13570 (March 22, 2007).

[90] *See* 80 FR 72882, which proposed allowing event aggregation occurring on different days for NAAQS with averaging or cumulative periods longer than 24 hours. It is not appropriate to aggregate the effects of events occurring over more than a 24-hour period to a standard that is less than or equal to 24 hours.

approach to satisfy the clear causal relationship criterion in a demonstration for an ozone standard (*i.e.,* either a 1-hour or an 8-hour standard). The current ozone NAAQS do not meet the pre-conditions for the aggregation approach discussed here, which requires the averaging or cumulative period of the standard to be longer than 24 hours. Additionally, use of the aggregation approach in the Wildfire Guidance would occur only *after* an exceedance or violation of the relevant ozone NAAQS versus the aggregation approach that we are finalizing in rule text that would allow aggregation to determine whether an exceedance or violation occurred. For these reasons, the regulatory approach to aggregation and the specific approach for wildfires that may influence ozone concentrations cannot be interchanged.

c. Comments and Responses

We address any additional comments received on this topic in the Response to Comments document found in the docket for this action.

2. Demonstrations With Respect to Multiple NAAQS for the Same Pollutant

a. Summary of Proposal

The proposal solicited comment on whether a successful demonstration with respect to any NAAQS for a given pollutant would suffice to qualify the data in question for exclusion with respect to all NAAQS for that pollutant. For example, the ''approved for one NAAQS approved for all NAAQS for the same pollutant'' concept would have allowed an air agency to prepare a demonstration for a 1-hour NAAQS and, if concurred, exclude data for both a 1-hour and an 8-hour NAAQS for the same pollutant.

b. Final Rule

Several commenters supported promulgating rule text for the proposed concept that a successful demonstration with respect to any NAAQS for a given pollutant would suffice to qualify the data in question for exclusion with respect to all NAAQS for that pollutant, but one commenter noted that this pathway is unlawful and would allow air agencies an easier path to exclude unfavorable data. After considering the feedback, we are retaining our current approach to excluding data on a NAAQS-specific basis with the previously identified clarifications for certain measurements and certain NAAQS. CAA section 319(b)(3)(B)(ii) refers to ''the measured exceedances of *a* national ambient air quality standard'' (emphasis added); CAA section 319(b)(3)(B)(iv) references excluding data from use in determinations with respect to ''exceedances or violations of the national ambient air quality standards.'' These passages do not clearly say that the EPA must or may allow data to be excluded for the purposes of all NAAQS for a given pollutant if the conditions for exclusion are satisfied for one of the NAAQS but not all of them. Even assuming *arguendo* that that the passages permit the EPA to allow such exclusions, we believe that we would be undermining the public health and welfare purpose of the NAAQS if we were to allow such broad exclusion. One public commenter provided a cogent statement of this fact. The CAA also directs that protection of public health is the highest priority. The commenters in favor of broad exclusion did not provide a legal or public health protection basis for their recommendations. Therefore, neither the final rule nor the preamble to the final rule includes language or guidance for the proposed ''approved for one NAAQS approved for all NAAQS for the same pollutant'' concept.

c. Comments and Responses

We address any additional comments received on this topic in the Response to Comments document found in the docket for this action.

3. Exclusion of Entire 24-Hour Value Versus Partial Adjustment of the 24-hour Value for Particulate Matter

a. Summary of Proposal

Citing Question 29 of the Interim Q&A document, the proposal articulated the EPA's current recommendation that air agencies preparing demonstrations to support requests to exclude $PM_{2.5}$ and PM_{10} data obtained via monitor instruments that provide 1-hour measurements should flag all 24 1-hour values within a given event-affected day and consider the effect of the event on the 24-hour average concentration, even if the event did not last all these hours. If concurred upon, flagging all 1-hour values and considering the effect of the event on the 24-hour average concentration relative to the level of the 24-hour NAAQS ultimately results in the same available remaining data for regulatory analysis and calculation as would be the case had the 24-hour $PM_{2.5}$ or PM_{10} measurement data been collected from filter-based (24-hour) monitoring instruments.[91] We further recommended that flagging all 24 1-hour values is appropriate because flagging only peak or selected hours could result in the remaining 1-hour values still meeting the data completeness requirements, even though there may be very few remaining 1-hour measurements, because flagged and excluded data do not count against completeness even though they cannot be used in calculating an average concentration for a 24-hour period. Under the rules for data interpretation, exclusion of only the event-affected 1-hour concentrations could result in AQS calculating a seemingly valid 24-hour concentration that is actually highly uncertain because it is based on only a few hours and thus may be biased relative to the actual 24-hour concentration or the 24-hour concentration that would have existed in the absence of the event.[92] The proposal solicited comment on codifying this approach in rule text to eliminate any regulatory uncertainty.

b. Final Rule

After considering the public comments we received, and for the reasons discussed in our proposed rule section, we are finalizing regulatory language, supported by a number of commenters, to exclude all 24 1-hour values within a given event-affected day for $PM_{2.5}$ and PM_{10} data obtained via monitor instruments that provide 1-hour measurements. We believe that the exclusion of all hours in a given event-affected day is appropriate, consistent with the approach for filter based analyzers, and will eliminate the calculation of uncertain and potentially biased daily values for $PM_{2.5}$ and PM_{10} NAAQS. We also agree with three commenters who suggested that the EPA modify the programming in AQS to automatically flag all remaining hourly values in the 24-hour period if an air agency flags only the event-influenced hours within AQS. The EPA will program the identified changes within AQS.

c. Comments and Responses

We address any additional comments received on this topic in the Response

[91] Filter based instruments typically record a single value within a 24-hour period while continuous monitors typically collect 24 1-hour measurements. Because AQS can calculate a valid 24-hour average concentration with as few as 18 hours, it may be necessary to exclude hours not actually affected by the event to ensure the same data exclusion outcome as if the measurement had been made with a 24-hour filter.

[92] The form of the 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ is 98th percentile averaged over 3 years. The form of the primary annual $PM_{2.5}$ NAAQS of 12 $\mu g/m^3$ is an annual mean averaged over 3 years. The form of the 24-hour PM_{10} NAAQS of 150 $\mu g/m^3$ is not to be exceeded more than once per year on average over 3 years. Biased concentrations can potentially skew the determination of the 98th percentile and/or the annual mean for $PM_{2.5}$ and the averages for $PM_{2.5}$ or PM_{10} calculated to determine compliance with the relevant NAAQS.

to Comments document found in the docket for this action.

4. Flagging of Data

a. Summary of Proposal

The EPA proposed to revise the ''general'' schedule language contained within 40 CFR 50.14(c)(2) by removing the timelines associated with initial event flagging. We also proposed to modify the associated data flagging process within AQS to correspond with the proposed regulatory changes.[93] Specifically, the revisions proposed to modify the flagging of exceptional event data by defining ''flagging'' as the application of the one- or two-character event type and event description text as described in the following paragraph, along with a concurrent or subsequent request for data exclusion communicated to the EPA through the Initial Notification of Potential Exceptional Event process.

The proposal noted that because the flagging of data necessarily begins with the identification of an event, the EPA proposed to retain, with modifications, the AQS free-form text field for an initial event description. As is currently the practice, we would request that air agencies use the ''initial event description'' to identify a unique, real-world event. We proposed to expand this ''initial event description'' to contain a unique event name; the type of the event (*e.g.,* high wind dust, volcanic eruption, other); a brief description of the event; and, to the extent known, the scope of the event in terms of geography and time (*e.g.,* likely affected area using latitude and longitude and a radius of influence and beginning day/time and ending day/time).[94] We proposed to simplify the process in AQS to allow the air agency to associate specific AQS sites and potentially affected monitors and specific data points with a given event as so described. We noted that this would enable air agencies and the EPA to ''flag'' or add qualifier codes to selected data in a single step rather than adding this information or the necessary codes on a per entry basis. Historically, when events have influenced the concentrations at multiple monitors for multiple days, the air agency has added initial event descriptions and set flags on each monitored concentration, sometimes resulting in hundreds of identical individual entries. The proposal noted that ''associating'' monitors with an event defined in time and space will save resources.

The proposal noted that the process of requesting exclusion for identified data would consist of two discrete operations: (1) Indicating in a separate communication to the EPA that specific ambient air quality measurements are affected by a defined event (*see* Section IV.G.5 of this preamble related to Initial Notification of Potential Exceptional Event), and (2) requesting that these identified ambient air quality measurements be excluded from regulatory actions according to the Exceptional Events Rule and/or the EPA's guidance for other applications of air quality data. The proposal indicated that AQS would retain a field to allow the EPA to concur or not concur with a given request for exclusion for one or more of the data points associated with a described event, once review of the air agency's request and demonstration is completed.

As noted previously, we proposed to remove the ''general'' flagging schedule in 40 CFR 50.14(c)(2)(iii), which requires that air agencies submit *R* flags and an initial description of the event by July 1 of the calendar year following the year in which the flagged measurement occurred or by the other deadlines identified with individual NAAQS. The proposal noted that an air agency may not know that data influenced by an exceptional event caused a violation of a NAAQS until after the initial event flagging deadline has passed. We proposed to remove the current language at 40 CFR 50.14(c)(2)(iii) and reserve that section number.

b. Final Rule

As proposed, and as supported by numerous commenters, we are removing the ''general'' flagging schedule in 40 CFR 50.14(c)(2)(iii), which requires that air agencies submit request exclusion flags and an initial description of the event by July 1 of the calendar year following the year in which the flagged measurement occurred or by the other deadlines identified with individual NAAQS. We are making this change because flagging data by the previously indicated deadlines can be difficult in the case of an annual standard where an air agency needs all 12 months of data to calculate an annual average and then needs 3 years of annual averages to identify whether or not the event-influenced data results in a violation of a 3-year design value. An air agency may not know that data influenced by an exceptional event caused the design value to become a NAAQS violation until 3 years after the event occurred. No commenters disagreed with this proposal.

One commenter requested that AQS retain the ability to incorporate informational flags in the data identification process. This commenter noted that informational flagging has uses beyond the exceptional events process. We are retaining informational flags in AQS.

c. Comments and Responses

We address any additional comments received on this topic in the Response to Comments document found in the docket for this action.

5. Initial Notification of Potential Exceptional Event

a. Summary of Proposal

As part of the best practices for communications[95] during the exceptional events process and to aid all agencies in resource planning and prioritization, the EPA proposed that air agencies and the EPA engage in regular communications to identify those data that have been potentially influenced by an exceptional event, to determine whether the identified data affect a regulatory determination, and to discuss whether an air agency should develop and submit an exceptional events demonstration. The proposal indicated that most of these discussions would be between individual air agencies and the reviewing EPA Regional office, but some discussions could involve a group discussion between the EPA Regional office and all air agencies in the region followed by individual discussions, as needed. In still other cases, such as where large events cross state lines and when two or more states are pursuing exclusion for the same event(s), the EPA region or regions may initiate discussions with all potentially affected states/agencies to assist in coordinating states affected by regional events.

The EPA referred to these communications as the ''Initial

[93] ''Flag'' is the common terminology for a data qualifier code in the EPA's AQS. Unless explicitly noted, the process of ''flagging'' data refers to adding Request Exclusion (*R*) data qualifier codes (*R* flags) to selected data in AQS. *R* flags are the only AQS flags that satisfy the 2007 Exceptional Events Rule requirement for initial data flagging. The current design of the AQS software is such that the EPA can act/concur only on an *R* flag.

[94] The EPA is proposing that air agencies select the ''type of event'' from a pre-set list of event types, which would likely consist of those event types currently identified by existing Informational and *R* flags within AQS.

[95] Between September 2014 and March 2015 the EPA held conference calls with some air agencies to ask about exceptional events implementation concerns and to better understand currently employed exceptional events implementation processes and practices. As a result of these discussions, the EPA developed a list of best practices for communication and collaboration between the EPA and air agencies, a summary of which is available at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*

Notification of Potential Exceptional Event'' (Initial Notification) process and described the purpose of the Initial Notification process as initiating conversations between an air agency and the EPA if not already on-going, or engaging in more detailed discussions if a process is currently in place, regarding specific data and whether the identified data are ripe for submittal as exceptional events. As stakeholders have repeatedly expressed and as the EPA acknowledges, the identification of data affected by exceptional events and the subsequent preparation, submittal and review of demonstrations is a resource intensive process both for the preparing air agency and the reviewing EPA Regional office.

The proposal also noted that if these data do not have regulatory significance, then engaging in the development and review of an exceptional events demonstration is generally not an efficient use of an air agency's or the EPA's limited resources. As described in the proposal, the Initial Notification process would focus efforts on the relevant data and provide the EPA with the opportunity to convey to the affected air agency our initial thoughts regarding the identified event and analyses that may or may not be appropriate for inclusion in a demonstration, and, with respect to regulatory significance, which demonstrations the EPA will consider for review.

The proposal indicated that the Initial Notification could include any form of communication (*e.g.,* letter, email, in-person meeting with an attendees list and discussion summary or phone conversation with follow-up email) that ultimately identifies the potential need to develop an exceptional events demonstration and communicates key information related to the data identified for potential exclusion. Where an air agency independently identifies event-affected data and the need to submit an exceptional events demonstration outside of its regular, on-going communications with the EPA Regional office, the air agency could prepare a letter or email communicating its Initial Notification. Generally, the EPA anticipates that air agencies would develop and provide an Initial Notification as soon as the agency identifies event-influenced data that potentially influence a regulatory decision or when an agency wants the EPA's input on whether or not to prepare a demonstration.[96] The EPA further proposed that each Initial Notification would include the following components:

- *Unique event name (field in AQS)*—facilitates future communication and understanding between the submitting air agency and the reviewing EPA Regional office, particularly if an air agency has submitted multiple exceptional events demonstrations.
- *Initial event description (field in AQS)*—provides a brief narrative of the event that could also include maps or graphs similar to what an air agency might include in the narrative conceptual model discussed in Section IV.G.6 of this preamble; the event description would include a qualitative description of the event and, at a minimum, briefly describe the air agency's current understanding of interaction of emissions with the event, transport and meteorology (*e.g.,* wind patterns such as strength, convergence, subsidence, recirculation) and pollutant formation in the area.
- *Affected regulatory decision*—provides a description of the regulatory action or actions potentially affected by the claimed event-influenced data and the anticipated timing of this action.
- *Proposed target date for demonstration submittal*—identifies the proposed target date by which the air agency would submit a demonstration to the reviewing EPA Regional office.
- *Most recent design value including and excluding the event-affected data*—the air agency's assessment of the most recent design value both with and without the identified event(s) is helpful when assessing regulatory significance. The EPA cannot accurately calculate this value (and therefore may not be able to determine significance) if the air agency has flagged more data than it intends to include in an exceptional events demonstration.
- *Information specific to each monitored day—see* Table 5 for an example of the type of table that could be used, which would be developed by the submitting air agency and generated from the initial event description in AQS (*see* discussion in Section IV.G.4 of this preamble).

Table 5. Initial Notification Information Specific to Each Monitored Day

Agency/ Planning Area	State	County	Event Name in AQS	Type of Event	NAAQS	Monitor AQS ID and Site Name	Date(s) of Event	Monitor Exceedance Concentration

The proposal indicated that, after one or more informal phone discussions with the air agency, the EPA would acknowledge an air agency's Initial Notification and then formally respond within 90 days of receipt of the Initial Notification via letter, email or in-person meeting with an attendees list and discussion summary. The response would provide the EPA Regional office's best assessment of the priority[97] that can be given to the submission once received, any case-specific advice the EPA may have to offer for the preparation of the demonstration, and the target date for demonstration submittal. Where the data are to be used in initial area designations, the EPA

[96] The EPA recognizes that air agencies can immediately identify those events that result in an exceedance of a NAAQS with a short averaging time (*e.g.,* 1-hour, 8-hour or 24-hour standards) but may need additional time for an annual average standard. An air agency could also submit an annual Initial Notification if annual submittal makes sense for resource planning or for recurring seasonal events.

[97] ''Priority'' refers to those exceptional events determinations that affect near-term regulatory decisions. ''Regulatory decisions'' include findings as to whether the area has met the applicable NAAQS, classification determinations, attainment demonstrations (including clean data findings), attainment date extensions, findings of SIP inadequacy and other actions on a case-by-case basis determined to have regulatory significance. *See* discussion in Section IV.B of this preamble for additional detail.

proposed to rely on the documentation submission schedule that, at the time of the proposal, appeared as Table 1 at 40 CFR 50.14(c)(2)(vi).[98] Where the data would influence another near-term regulatory decision, the EPA proposed to rely on the case-by-case timelines by which the air agency should submit the demonstration. For case-by-case demonstrations, the EPA's recommended date for demonstration submittal would consider the nature of the event and the anticipated timing of the regulatory decision, and would allow time for both an air agency's preparation of the demonstration and the EPA's review. Additionally, the EPA would request in its response that, if the submitting air agency has not already identified the affected data within AQS, that it undertake this effort according to the process described in Section IV.G.4 of this preamble. If the data identified in the Initial Notification do not have regulatory significance as discussed in Section IV.B of this preamble, then the EPA would indicate this in its correspondence back to the air agency and would discourage the air agency from devoting resources to developing a demonstration because the EPA would likely not review or act upon the submittal.

The proposal further noted that if the EPA has acknowledged as part of the Initial Notification process that identified data have regulatory significance (or some other compelling reason for excluding data), then the air agency should proceed with the development of a technical demonstration that satisfies the requirements in 40 CFR 50.14 and accounts for any case-specific advice from the EPA and additional information in the EPA's guidance documents.[99] The proposal specified that although air agencies could submit demonstrations for events that do not affect a regulatory action, the EPA would likely not review or act on such submittals.

To support the previously summarized process, the EPA proposed to revise the language in 40 CFR 50.14(c)(2)(i) as follows: ''A State shall notify the [EPA] of its intent to request exclusion of one or more measured exceedances of an applicable national ambient air quality standard as being due to an exceptional event by creating an initial event description and flagging the associated data that have been submitted to the AQS database and by engaging in the Initial Notification of Potential Exceptional Event process . . . .'' The EPA solicited comment on the proposed rule text revision (in 40 CFR 50.14(c)(2)) to require an Initial Notification of Potential Exceptional Event, with a provision that the EPA could waive the Initial Notification requirement on a case-by-case basis. We also solicited comment on making the Initial Notification of Potential Exceptional Event a voluntary process.

The proposal also included the associated revisions to rule text at (ii): ''The data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and the Administrator's review, the Administrator notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.''

b. Final Rule

In response to our solicitation for comment, several commenters indicated their desire for a voluntary Initial Notification of Exceptional Event process, while others indicated their desire that the Initial Notification process be promulgated in rule text as a requirement. To provide more regulatory certainty for all involved parties, we are finalizing the Initial Notification process as proposed, which includes a requirement for air agencies to engage in communications with the EPA once they identify a potential event; for air agencies to flag data within AQS, if appropriate; for the EPA to identify a demonstration submittal date that considers the nature of the event and the anticipated timing of the regulatory decision that may be affected by the exclusion of the flagged data; and an option for the appropriate EPA official to waive the Initial Notification process.[100] We also intend to formally respond (via email or letter) to an air agency's Initial Notification within 60 days of receipt of the Initial Notification.[101] We discuss the EPA's response timeframes in more detail in Section IV.G.7 of this preamble.

When the EPA promulgated the revised ozone NAAQS in 2015,[102] we revised the flagging, initial event description and demonstration submittal deadlines for data influenced by exceptional events for use in the initial area designations process. We did not propose any changes to this schedule as part of the proposed revisions to the Exceptional Events Rule. However, because we are finalizing the Initial Notification process in this action, which includes a requirement for air agencies to flag data within AQS, if appropriate, and characterize the identified event, we are revising the ''flagging and initial event description'' language in Table 2 to 40 CFR 50.14 that we promulgated with the ozone NAAQS to read ''Initial Notification.'' We are not changing the schedules for event-influenced data that may affect decisions associated with the initial area designations process.

c. Comments and Responses

Other than the comments related to the ''voluntary'' versus ''required'' nature of the Initial Notification process, the majority of the remaining comments on this topic pertained to the content of the Initial Notification and to the mechanics of communications between the EPA and affected air agencies. Two state commenters agreed with the proposed content of the Initial Notification to include: A unique event name, an initial event description, the affected regulatory decision, a proposed target date for demonstration submittal, the most recent design value (including and excluding the event-affected data), and basic information specific to each monitored day. Other commenters indicated that the content of the Initial Notification should *not* be specified. While we are not specifying required content in regulatory language, we are providing example content of an Initial Notification in this preamble. We also note that individual EPA Regional offices may implement procedures within their regions to assist with event

[98] This table appears as Table 2 at 40 CFR 50.14(c)(2)(vi) in the Exceptional Events Rule revisions that we are promulgating in this action.

[99] *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events.* Memorandum from Stephen D. Page, U.S. EPA Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X. May 10, 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_guidememo_130510.pdf.*

[100] As discussed in Section IV.A.2 of this preamble, if an air agency authorizes an FLM or other federal agency to prepare and submit exceptional events demonstrations directly to the EPA, the air agency should also indicate in this authorization whether an FLM can initiate the Initial Notification of Potential Exceptional Event process and whether this process would include or exclude the authorizing air agency.

[101] As previously indicated, the Initial Notification could include any form of communication (*e.g.,* letter, email, in-person meeting with an attendees list and discussion summary or phone conversation with follow-up email) that ultimately identifies the potential need to develop an exceptional events demonstration and communicates key information related to the data identified for potential exclusion. The EPA's timeline for formally responding to an agency's Initial Notification is based on the date of receipt of the identified communication.

[102] 80 FR 65292 (October 26, 2015).

identification, prioritization and processing.

Regarding communications between the EPA and affected air agencies, one commenter encouraged the EPA to ensure communication is formalized in writing and clarify that the EPA should initiate conversations regardless of the ''completeness'' of the notification to avoid confusion about whether the EPA has received the notification. Another commenter asked that we include regulatory language requiring that the EPA negotiate a timeline for demonstration submittal based on the available (and sometimes very limited) resources of the affected air agency. We interpret this comment to mean that the ''negotiation'' requirement would be a requirement for air agency agreement on the timeline for submittal rather than a consultation on timing.

The EPA agrees with the commenter that decisions or specific direction provided or agreed to between the EPA Regional office and the affected air agency should be communicated in writing either by letter or email. By decisions or direction, we generally mean decisions regarding whether a potential event has regulatory significance (including the EPA's intent with respect to review), direction regarding specific event day(s) to pursue and/or information to include in a demonstration and decisions related to target dates for demonstration submittal. The EPA also agrees that we should acknowledge receipt, in writing, of any submitted written Initial Notification. We do not, however, agree with the other commenter's suggestion to include regulatory language requiring a negotiated timeline for demonstration submittal based on the available resources of the affected air agency. First, such a regulatory requirement would not provide for an outcome should the negotiations between the air agency and the EPA Region office fail to reach agreement. Also, an air agency's failure to meet a regulatory deadline could have different consequences than an air agency's failure to meet an EPA-identified target date. As we noted in the proposal and this preamble, the EPA will establish a target date for demonstration submittal, which the EPA will communicate in writing, after discussing the specifics of the potential event with the affected air agency and after considering the nature of the event, the anticipated timing of the regulatory decision, the target date for demonstration submittal proposed by the air agency as part of its Initial Notification (if provided), and the available time for both the air agency's preparation of the demonstration and the EPA's review. We believe this process adequately addresses the commenter's concerns without the need for regulatory text.

6. Submission of Demonstrations

a. Summary of Proposal

With respect to the submission of demonstrations, the EPA proposed to make the following changes to the regulatory language in 40 CFR 50.14(c)(3):

- Remove the general schedule provisions in 40 CFR 50.14(c)(3)(i) for submitting demonstrations.
- Move the language requiring an air agency to include the comments it received during the public comment period for the subject demonstration from 40 CFR 50.14(c)(3)(i) to (v).
- Modify the language at 40 CFR 50.14(c)(3)(iv) to more clearly identify the required elements of an exceptional events demonstration to include (1) a narrative conceptual model and (2) demonstrations and analyses that address the core statutory technical criteria.
- Modify the language at 40 CFR 50.14(c)(3)(v) to identify that a demonstration submittal must include (1) documentation that the air agency conducted a public comment process on its draft exceptional events demonstration that was a minimum of 30 days, which could be concurrent with the EPA's review, (2) any public comments received during the public comment period and (3) an explanation of how the air agency addressed the public comments.

As described in more detail in the proposed rule, the EPA proposed to remove the provision in 40 CFR 50.14(c)(3)(i) that requires air agencies to submit a demonstration ''not later than the lesser of 3 years following the end of the calendar quarter in which the flagged concentration was recorded or 12 months prior to the date that a regulatory decision must be made by EPA.'' In place of this language, the EPA proposed to rely on the documentation submission schedule that, at the time of the proposal, appeared as Table 1 at 40 CFR 50.14(c)(2)(vi) in those cases where the data are to be used in initial area designations. If the data could influence a regulatory determination other than an initial area designation, the EPA proposed to rely on the case-by-case timelines established by the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process. As we noted when discussing removing the deadlines associated with initial event flagging in Section IV.G.4 of this preamble, air agencies have previously expressed concern that the timelines for event flagging and demonstration submittal are not always appropriate because an air agency may not know that data influenced by an exceptional event caused the design value exceedance until 3 years after the event occurred.[103] The EPA has previously acknowledged that this scenario can and does occur, particularly for annual standards and when a regulatory decision is based on a design value that is averaged over 3 years.

With respect to the public comment provisions for a developed demonstration, the EPA proposed to move the language requiring an air agency to include the comments it received during the public comment period for the subject demonstration from 40 CFR 50.14(c)(3)(i) to (v) to consolidate the required elements of the public comment process for exceptional events demonstrations within a single regulatory provision. The proposal noted that the language at 40 CFR 50.14(c)(3)(i) requires that ''A State must submit the public comments it received along with its demonstration to EPA.'' The ''public comments it received'' refer to those obtained when the air agency follows the process outlined in 40 CFR 50.14(c)(3)(v), which requires the air agency to document, and submit with its demonstration, evidence that it followed the public comment process.

Because the public comment process described in the 2007 rule did not identify a duration for the public comment process, the EPA also proposed to specify a minimum 30-day public comment process, which provides sufficient time for exchange between the reviewing public and the air agency. We noted that shorter comment periods may not provide necessary time for the public to research the identified event and associated supporting data while longer timeframes may not be possible where a near-term regulatory decision relies on an exceptional events decision. The proposal stated that in very limited cases where the air agency is relying on exceptional events claims as part of a near-term regulatory action, such as an initial area designation decision for a new or revised NAAQS under a 2-year designation schedule, the public comment period could be concurrent with the EPA's review provided the submitting air agency sends any received public comments and

[103] *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule,* U.S. EPA, June 2012. Available in Docket No. EPA–HQ–OAR–2011–0887.

responses to the EPA by a specified date. If an air agency receives public comment disputing the technical elements of a demonstration during a comment period that runs concurrent with the EPA's review and these comments result in the air agency's need to reanalyze or reassess the validity of a claimed event, a second public comment period may be necessary.

The EPA also proposed to revise the language at 40 CFR 50.14(c)(3)(iv) so that it more clearly identifies the required elements of an exceptional events demonstration. The EPA proposed that each demonstration begin with a narrative conceptual model supported by summary tables or maps, which summarizes the event in question and provides context for required statutory technical criteria analyses. The EPA further proposed, consistent with other proposed changes, that an air agency include in its demonstration to justify data exclusion evidence that the following statutory technical criteria are satisfied:

- The event was a human activity that is unlikely to recur at a particular location or was a natural event.
- The event was not reasonably controllable or preventable.
- The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation (supported in part by the comparison to historical concentrations and other analyses).

The EPA sought comment on the identified proposed changes to the language at 40 CFR 50.14(c)(3)(i), (iv) and (v), which more clearly identify the required elements of an exceptional events demonstration.

b. Final Rule

As with our proposal to remove the general schedule deadlines associated with initial event flagging, the overwhelming majority of commenters supported our proposal to remove the general schedule demonstration submittal deadlines contained within 40 CFR 50.14(c)(3)(i). Therefore, upon consideration of those comments and for the reasons previously explained, we are promulgating this provision as proposed. One commenter expressed general support for this concept provided the deadline for demonstration submittals is not extended. In response, we note that while the deadline for demonstration submittal might be longer than it would have been under the previous deadline of ''the lesser of 3 years following the end of the calendar quarter in which the flagged concentration was recorded or 12 months prior to the date that a regulatory decision must be made by EPA,'' we are not changing the timing of the regulatory actions in which the affected data may be used. Many of these deadlines are statutorily established and cannot be changed by regulation. Because the EPA is also accountable for these statutory deadlines, the effect of this now finalized exceptional events scheduling revision is compressing the timeline for the EPA's review.

The final rule will provide limited flexibility regarding the deadline for submitting exceptional events demonstrations that are otherwise due October 1, 2016. Given the close proximity of the **Federal Register** publication date of this revised rule with the demonstration submittal deadline for data influenced by exceptional events that could be used in the initial area designation decisions for the 2015 Ozone NAAQS, we are intentionally adjusting the deadline for those demonstrations in Table 2 to § 50.14 and intend for this deadline to apply to submissions that would otherwise be due October 1, 2016. This rule is being promulgated in advance of the October 1, 2016 deadline for the 2015 Ozone NAAQS designations, providing stakeholders with sufficient notice of this updated submission deadline. As set forth in Table 2 to § 50.14, exceptional events demonstrations must be submitted to the EPA on the later of (1) sixty days after the effective date of this rule or (2) the date that state and tribal recommendations are due to the Administrator. Going forward, exceptional events demonstrations will be due no later than the date that state and tribal designation recommendations are due to the Administrator.

We received no significant comments regarding the proposed revisions associated with the public comment process. Therefore, for the previously explained reasons, we are finalizing, as proposed, the repositioning of the requirement that an air agency include any received public comments from 40 CFR 50.14(c)(3)(i) to (v). We are also promulgating the revised language at 40 CFR 50.14(c)(3)(v) to identify that a demonstration submittal must include (1) documentation that the air agency conducted a public comment process on its draft exceptional events demonstration that was a minimum of 30 days, which could be concurrent with the beginning of the EPA's initial review period, (2) any public comments received during the public comment period and (3) an explanation of how the air agency addressed the public comments. As indicated in 40 CFR 50.14(c)(3)(v)(A), we have also finalized 30 days as the minimum duration for a public comment period.

We are promulgating revisions to the submission and required elements of an exceptional events demonstration at 40 CFR 50.14(c)(3)(iv), as proposed, for the previously stated reasons and as supported by commenters. Regarding the requirement that components of a demonstration include a narrative conceptual model, one commenter asked that we use the terminology ''narrative'' or ''executive summary'' rather than ''conceptual model.'' We have retained the use of narrative conceptual model because we believe this best conveys our intent, which is the ''story'' or ''executive summary'' of the event that provides an overview of the technical information in the demonstration and helps identify relevant quantitative information critical in satisfying the Exceptional Events Rule criteria. In most cases, air agencies will support the discussion in the narrative conceptual model with tables and maps.

c. Comments and Responses

We address any additional comments received on this topic in the Response to Comments document found in the docket for this action.

7. Timing of the EPA's Review of Submitted Demonstrations

a. Summary of Proposal

The proposal summarized and clarified some of the EPA's previous statements regarding the prioritization and submittal of demonstrations, and proposed regulatory language to increase the efficiency of preparing, submitting and reviewing exceptional events demonstrations. We did not propose any changes to regulatory language pertaining to the timing of the EPA review process. Rather the proposal discussed processes, expectations and communications concerns, which are at the center of timing-related issues.

The proposal articulated the EPA's previously expressed commitment to work collaboratively with air agencies as they prepare complete demonstrations. As we have previously communicated, demonstrated and summarized in our best practices for communications,[104] we encourage ongoing discussions between the

[104] *Best Communication Practices for Preparation of Exceptional Event Demonstrations,* U.S. EPA, OAQPS, 2015. Available at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*

reviewing EPA Regional office and the submitting air agency through the duration of the exceptional events process beginning with the Initial Notification of Potential Exceptional Event. Implementing the approaches identified by air agencies has generally improved the exceptional events process by improving relationships between air agencies and the EPA Regional office, clarified expectations, and resulted in decreased instances of submissions containing insufficient or unnecessary information.

The proposal clarified our continued efforts to improve the exceptional events process, in part through improved communications but also through regulatory changes and workload prioritization. On this last point, the proposal identified that in reviewing submitted demonstrations, the EPA will generally give priority to exceptional events determinations that may affect near-term regulatory decisions, such as the EPA's action on SIP submittals, NAAQS designations and clean data determinations (*see* discussion in Section IV.C of this preamble). The proposal stated the EPA's intent to make a decision regarding event status expeditiously following submittal of a complete demonstration if required by a near-term regulatory action. If during the review process the EPA identifies the need for additional information to determine whether the exceptional events criteria are met, the EPA will notify the submitting air agency and encourage the agency to provide the supplemental information. If the information needed is minor and a natural outgrowth of what was previously submitted, the EPA will not require the air agency to undergo an additional public notice-and-comment process. However, if the needed information is significant, the EPA may request that the air agency re-notice the demonstration before resubmitting it to the EPA, thus requiring an additional EPA review following resubmittal. The EPA will work with air agencies on supplemental timeframes; however, the mandatory timing of the EPA actions may limit the response time the EPA allows. The EPA proposed to include as rule text a requirement for the air agency to submit additional information within 12 months. If additional information is not received in 12 months, then the EPA would consider the submitted demonstration inactive, and would not continue the review or take action. In effect, an air agency's lack of response within a 12-month period would ''void'' the submittal. The proposal stated that in these cases, the EPA would not intend to issue a formal notice of deferral. If the air agency later decided to pursue the exceptional events claim after a 12-month period of inactivity, it may re-initiate the exceptional events process by submitting a new Initial Notification of Potential Exceptional Event followed by a new demonstration, which could simply be revising the original submittal to include the additional information previously requested by the EPA.

The proposal explained that at the conclusion of the EPA's review, the EPA would make a determination regarding the status of a submitted exceptional events demonstration. The EPA's decision could result in concurrence, nonconcurrence or deferral.[105] In acting on a submitted demonstration covering multiple event days and/or multiple flags, the EPA could concur with part of a demonstration and nonconcur or defer other flagged values. If the EPA determined that the events addressed in an exceptional events demonstration are not anticipated to affect any future regulatory decision, the EPA could defer review of these events and notify the submitting agency if a subsequent review results in a determination that the events would affect a regulatory decision.[106] The proposal stated that formal mechanisms for deferral could include the EPA's indicating this decision by letter, by email to a responsible official or during a high-level meeting with an attendees list and discussion summary.

b. Final Rule

For the previously explained reasons and as supported by one commenter, the EPA is finalizing with some clarification to the proposed language, the regulatory provision at 40 CFR 50.14(c)(3)(vi) to cease review of a demonstration following a 12-month period of inactivity by the submitting air agency. This finalized provision would apply when the air agency has submitted a demonstration for which the EPA has requested additional information, as indicated in writing by letter or email. The air agency will have 12 months from the date of the EPA's request to respond with the requested information. The EPA intends to track progress on demonstrations with regulatory significance and this 12-month period will ensure air agency accountability for its demonstrations and will allow the EPA to appropriately prioritize resources. Although the EPA anticipates ongoing discussions with the air agency, if the EPA has not received information from the air agency in response to the EPA's request for additional information, then least a month before the expiration period, the EPA will remind the air agency in writing (*e.g.,* a letter or email) of the upcoming deadline. The EPA will work with individual air agencies to address those situations where a response is insufficient or where an air agency needs additional time to prepare needed analyses or assemble identified information. If the air agency has not responded within this 12-month timeframe, then the EPA's review of the demonstration will terminate. The EPA can provide notification of such termination by sending written notification (*e.g.,* a letter or email) to the affected air agency.

Although we are not promulgating timelines in rule language for the EPA's response to demonstrations, we are identifying here the response timelines that we intend to follow during the Initial Notification and demonstration review processes. As we stated in Section IV.G.5.b of this preamble, the EPA intends to acknowledge receipt shortly after receiving an air agency's Initial Notification and then formally respond to the Initial Notification within 60 days. The EPA response will provide the EPA Regional office's best assessment of the priority that can be given to the submission once received, any case-specific advice the EPA may have to offer for the preparation of the demonstration, and the target date for demonstration submittal.

The EPA generally intends to conduct its initial review of an exceptional events demonstration with regulatory significance within 120 days of receipt. This initial review could be extended in certain circumstances, such as if the EPA is reviewing a demonstration concurrent with an air agency's public comment period. Following this initial review, the EPA will generally send a letter or email to the submitting air agency that includes a completeness determination and/or a request for additional information, a date by which the supplemental information should be submitted (if applicable), and an indicator of the timing of the EPA's final review. The EPA intends to make a decision regarding event concurrence as

[105] The EPA anticipates a reduced number of deferrals and/or nonconcurrences for demonstrations associated with the Initial Notification of Potential Exceptional Event process as discussed in Section IV.G.5 of this preamble because the EPA and the affected air agency would have discussed issues/concerns prior to the EPA's decision on a submitted demonstration.

[106] Routine status calls between the reviewing EPA Regional office and air agencies could include an agenda item to review the status of all submitted demonstrations, including those that the EPA has deferred.

expeditiously as necessary if required by a near-term regulatory action, but no later than 12 months following submittal of a complete demonstration.

In addition, if an air agency submits a demonstration for an event not discussed in the Initial Notification process or that the EPA has determined during the Initial Notification process to not to have regulatory significance (and there is no other compelling reason for excluding data), then the EPA will ''close out'' a submitted demonstration with a ''deferral letter'' within 60 days of receipt of the demonstration.

c. Comments and Responses

Numerous commenters asked that the EPA promulgate deadlines by which the EPA must act on exceptional events demonstrations. We are accountable for many statutorily-established deadlines for regulatory action. We also note that promulgating timelines for action might not have the intended result of expediting the EPA's action because it could force both the air agencies and the EPA to focus their efforts and limited resources on demonstrations that ultimately have no regulatory significance. Or, promulgated timelines could cause the EPA to act on determinations in the order in which they were received instead of allowing the EPA to prioritize demonstrations for nearer-term regulatory actions or mandated regulatory actions.

Establishing regulatory deadlines also implies consequences for missing such deadlines. Three commenters have suggested that the EPA's failure to act on a submitted demonstration within a promulgated timeframe should result in automatic approval of the subject demonstration. The EPA's inaction cannot be assumed to be approval of a demonstration. By statute in CAA section 319(b), exceptional events must satisfy certain definitional and procedural requirements, including a determination by the Administrator. These CAA criteria cannot be presumed to be satisfied unless the Administrator concurs.[107] Inaction is not concurrence. Additionally, approval by default is not appropriate because it would not ensure that air agencies and the EPA are upholding the principles and requirements of CAA section 319(b). Specifically, automatic approval of a demonstration without adequate review would not ensure that air agencies are taking appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. Another consequence of missing a promulgated deadline could be the opportunity for an air agency, or, potentially, another interested party, to file a lawsuit. This action is also not likely to expedite a decision on a given demonstration.

While we are not promulgating timelines in rule language for EPA's action, this preamble identifies the response timelines that we intend to follow during the Initial Notification and demonstration review process. Further, we have finalized provisions that focus on exceptional events demonstrations that have regulatory significance, which means that the demonstrations affect the outcome of a regulatory action. We are committed to taking action on all submitted demonstrations that have regulatory significance.

Two commenters expressly supported the EPA's approach to prioritizing exceptional events demonstrations to focus on those that affect regulatory determinations. Several other commenters indicated their belief that the EPA should act on all submitted demonstrations. Regarding acting on all demonstrations, we have taken numerous steps in this action and otherwise to improve the exceptional events process and we maintain that, given limited resources, both the air agencies' and the EPA's efforts should focus on the development and review of those demonstrations that affect regulatory determinations. Expending time and energy on demonstrations that will not influence the outcome of a regulatory action is generally not an efficient use of resources. As we have indicated in numerous passages in this final action, we will consider exceptional events demonstrations on a case-by-case basis and air agencies will have an opportunity to state their position during the Initial Notifications process. Unless there is a compelling reason, we will ''close out'' those demonstrations that we receive, which were not discussed in the Initial Notification process or those which the EPA has determined during the Initial Notification process do not have regulatory significance.

Another commenter asks that the EPA ''grandfather'' or otherwise respond to those demonstrations that have been previously submitted but on which the EPA has not yet acted. In promulgating these final rule revisions, we are taking no actions with respect to previously submitted and unprocessed demonstrations that otherwise remain ''open.'' To request a response for an inactive demonstration, we ask that the affected air agency contact the reviewing EPA Regional office and inquire as to the most appropriate next steps.

Two commenters supported, and several opposed, the EPA's regulatory provision to terminate the EPA's obligation to review a demonstration following a 12-month period of inactivity by the air agency. One of these supporters asked that, to facilitate transparency, that the EPA develop a publicly-accessible and transparent tracking system or otherwise provide status updates. The EPA agrees that a national tracking system could be valuable. We intend to explore this concept further as we implement these rule revisions.

8. Dispute Resolution Mechanisms

In the November 2015 proposal, the EPA discussed currently available dispute resolution mechanisms but neither proposed any associated regulatory language nor solicited comment on the dispute resolution process. Rather, the proposal explained that there is no need for a formal dispute resolution mechanism for exceptional events for the following reasons: (1) The existing dispute resolution mechanisms are sufficient, (2) the EPA is committed to focusing on communication and collaboration with the submitting air agency through the exceptional events demonstration process, and (3) this final action includes useful clarifications that should reduce disagreements between air agencies and the EPA regarding the adequacy of demonstrations.

Despite our statement that we were not soliciting comment of the topic of dispute resolution, numerous commenters requested that the EPA promulgate a dispute resolution process. Although commenters specified that the process be ''judicially appealable,'' ''include an independent third party with technical expertise'' and/or ''involve multiple EPA decision makers,'' no commenters provided substantive suggestions as to the mechanism by which a dispute resolution process could be implemented. In this action, we are not promulgating a dispute resolution mechanism. We are, however, restating currently available elevation measures and the EPA's internal mechanisms that ensure regional consistency.

As noted in the proposal, several mechanisms currently exist that air agencies can use at various points in the

[107] As discussed in more detail in Section IV.G.7 of this preamble, concurrent with these rule revisions, the EPA has revised the delegation of authority for exceptional events decision making. These authorities were previously delegated to the EPA Regional Administrators and, under the revised delegation, may be redelegated from the EPA Regional Administrator to the Regional Air Division Director or equivalent highest manager who exclusively oversees air programs.

exceptional events process. These mechanisms include engaging in early dialogue with the reviewing EPA Regional office, submitting requests for reconsideration to the official who made the determination if a request identifies a clear error or if the reviewing EPA Regional office overlooked information submitted by the affected air agency, and/or elevating the concern within the EPA's chain of command. Additionally, air agencies can raise any unresolved event-related issues during the regulatory process that relies upon the claimed event-influenced data by participating in related public notice-and-comment processes and/or challenging in an appropriate court the regulatory decision subsequently made based in part on the EPA's exceptional events determination.

The EPA did not specifically identify in the proposal some of the internal steps we have taken to improve our ability to act on exceptional events activities and actions in a timely and efficient manner. First, we have expanded the number of officials within the EPA who can make exceptional events decisions. While the language of CAA section 319(b) states that decision making on exceptional events is a process undertaken by the Administrator, our promulgation of the 2007 Exceptional Events Rule was accompanied by a delegation of authority delegating the decision making for exceptional events from the Administrator to the Assistant Administrator for Air and to the EPA Regional Administrators. However, this delegation did not allow for final decision making below the EPA Regional Administrator level. As part of this rule revision process, we revised the delegation of authority for exceptional events to allow for redelegation from the EPA Regional Administrator to the EPA Regional Air Division Director or equivalent highest manager who exclusively oversees air programs. If an EPA Regional Administrator elects to pursue redelegation, then the EPA Regional Air Division Director (or equivalent manager) would make exceptional events decisions and the EPA Regional Administrator would be an additional resource available within the elevation process for an air agency wishing to elevate concerns regarding an exceptional events-related decision.

The proposal also did not explain the role of the EPA's National Exceptional Events Work Group. This work group consists of technical and policy staff within the EPA's Office of Air Quality Planning and Standards (OAQPS), each of the EPA's Regional offices and the EPA's Office of General Counsel. The work group typically meets once each month and discusses technical and policy issues regarding exceptional events, including best practices implemented within the regions, new or evolving tools and technologies to help identify events and assess their impacts, upcoming regulatory decisions that could be influenced by event determinations and opportunities for outreach. In addition, at each meeting, regional participants report on the status of exceptional events actions in their respective states. This event report out also includes a discussion of new event types and/or novel policy issues and provides an opportunity for regional and OAQPS review of and input on specific demonstrations. These collaborative reviews are particularly relevant for new events (such as for the 2012 Wyoming Stratospheric Ozone Intrusion).[108]

As noted in the proposal, with exceptional events decisions, the air agency has opportunities to elevate concerns during two processes: The exceptional events determination and the subsequent regulatory action that relies on the exceptional events decision.

V. Mitigation

Section 319(b)(3)(A) of the CAA identifies five principles that the EPA must follow in developing implementing regulations for exceptional events:

(i) Protection of public health is the highest priority;

(ii) Timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) All ambient air quality data should be included in a timely manner in an appropriate federal air quality database that is accessible to the public;

(iv) Each state must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) Air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

The regulatory requirements implementing (iii) and (v) of this part of the statute are found in 40 CFR 50.14 while the regulatory requirements implementing (i) and (iv) are found in 40 CFR 51.930, Mitigation of Exceptional Events. Both §§ 50.14(c)(1) and 51.930(a)(1) implement (ii) of this part by requiring states to provide notice of events to the public.

The EPA promulgated the ''mitigation'' measures[109] at 40 CFR 51.930 when we finalized the Exceptional Events Rule in 2007, but we did not incorporate these measures into the criteria and processes by which data are excluded from use in regulatory determinations. The provisions at 40 CFR 51.930 require air agencies requesting data exclusion to take appropriate and reasonable actions to protect the public health from exceedances or violations of the NAAQS, promptly notify the public when the air exceeds or is expected to exceed the NAAQS, and educate the public regarding steps they can take to minimize exposure. These requirements apply whenever an air agency requests data exclusion, regardless of whether the EPA approves the exclusion. Although air agencies submitting demonstrations must meet the requirements at 40 CFR 51.930, the provisions do not require air agencies to submit their identified measures to the EPA or to notify the EPA of the measures an air agency plans to take or has taken. The mitigation measures that the EPA has seen air agencies practicing most commonly are those related to the requirement that air agencies ''provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed the NAAQS.'' Often, these public notifications have included public health alerts for high wind dust events or wildfires. Other aspects of mitigation, including implementing appropriate measures to protect public health beyond notification, are also important in implementing the CAA guiding principle that ''each State must take necessary measures to safeguard public health regardless of the source of the air pollution.''

A. Summary of Proposal

The proposal identified several possible changes to the mitigation-related rule components and solicited comment on approaches ranging from retaining the existing rule requirements at 40 CFR 51.930 to including several new components. The proposal indicated that as a result of commenter feedback, we might make no changes, adopt all of the presented components, or adopt some of the described features. The proposal also indicated that, if finalized, the identified mitigation components, which would be an obligation for an affected air agency and

[108] Wyoming Department of Environmental Quality, Air Quality Division. Big Piney and Boulder, Wyoming Ozone Standard Exceedance, June 14, 2012. Available at *http://www2.epa.gov/air-quality-analysis/exceptional-events-submissions-table.*

[109] The term ''mitigation'' does not appear in CAA section 319(b). It appears in the title but not the text of 40 CFR 51.930.

serve as criteria for the EPA's approval of future exceptional events demonstrations, would only apply to those air agencies with areas subject to ''historically documented'' or ''known seasonal'' exceptional events.

1. Defining Historically Documented or Known Seasonal Events

The proposal accepted comment on whether to define ''historically documented'' or ''known seasonal'' exceptional events to include events of the same type and pollutant (*e.g.,* high wind dust/PM or wildfire/ozone) that recur on an annual or seasonal basis and meet any of the following criteria: An event for which an air agency has previously submitted exceptional events demonstrations; an event that an air agency has previously flagged for concurrence in AQS (regardless of whether the air agency submitted a demonstration); or an event that has been the subject of public health alerts or published scientific journal articles. The proposal indicated that the EPA would not require an air agency to develop a mitigation plan for the first event of a given type (*e.g.,* if an area is prone to wildfires but has never experienced a high wind dust event, then it would not be expected to develop a mitigation plan for its first high wind dust event, but it would be expected to develop a mitigation plan for wildfires). A second event of a given type within a 3-year period would subject the area to ''having a history'' and, therefore, needing a mitigation plan.[110] This option avoids plan development following a one-of-a-kind occurrence.[111] In defining ''first'' and ''second'' events, the EPA indicated that it could consider events that affect the same AQCR, but not necessarily the same monitor.[112] We also solicited comment on whether it would be appropriate to consider a season of multiple events of a common type as one of three required seasons, so that a mitigation plan would be required only when an event type persists across several years.

2. Mitigation Plan Components

The proposal also identified and solicited comment on the following three plan components that could be recommended or required to implement the mitigation principles found in CAA section 319(b)(3)(A): Public notification and education; steps to identify, study and implement mitigating measures; and provision for periodic revision of the mitigation plan (to include public review of plan elements). Given the identified components, the proposal solicited comment on appropriate timelines for submitting a plan.

3. Options for Implementing Mitigation Plans

Because the 2007 Exceptional Events Rule did not tie the mitigation elements at 40 CFR 51.930 to the EPA's review of exceptional events demonstrations, we proposed and solicited feedback on the following options: Option 1 included the EPA's review for completeness but not substantive approval or disapproval, while Option 2 included the EPA's approval of the substance of the mitigation plan. The proposal noted that neither option would require a mitigation plan to be included in a SIP or to be otherwise federally-enforceable. Regarding the submittal of a mitigation plan to the EPA, the EPA proposed that air agencies with historically documented or known seasonal exceptional events could submit the mitigation plan to the EPA in advance of an event, or submit a mitigation plan along with an exceptional events demonstration. For both options, the proposal explained that if the EPA otherwise concurred with an exceptional events demonstration for a type of event that is also the subject of the mitigation plan, the EPA would only concur with such a demonstration for the relevant event type if a mitigation plan passed the type of review described in the option (*i.e.,* completeness review for Option 1 or approval of content for Option 2).

B. Final Rule

In keeping with the EPA's mission to protect public health and consistent with the principles included at CAA section 319(b)(3)(A), and after consideration of the public comments, we are promulgating new mitigation-related regulatory language at 40 CFR 51.930 requiring the development of mitigation plans in areas with ''historically documented'' or ''known seasonal'' exceptional events. As part of these promulgated requirements, we have decided to follow the review option identified as Option 1 in the proposal, which includes the EPA's review and a completeness determination, but not the EPA's ''approval'' of the plan content (identified as Option 2 in the proposal), as discussed in the comments and responses section below. We believe this option maximizes the flexibility of the air agency while providing for the protection of public health through the EPA's review of the required plan content and through the required public review process. We further believe that Option 2, which required the EPA's approval of mitigation plan content, could have the unintended effect of imposing additional administrative burden (*e.g.,* multiple rounds of review and revision) without corresponding additional public health and air quality benefit. Other regulatory mechanisms are already available to address public health and air quality, as needed (*e.g.,* SIP revisions or the regulatory action that is the focus of an event of the type that is the subject of the mitigation plan and an exceptional events demonstration). We are also adding a provision to clarify that, after an initial implementation period (as discussed in Section V.B.3 of this preamble), the EPA will not concur with an air agency's request to exclude data that have been influenced by an event of the type that is the subject of a required mitigation plan if an air agency has not submitted the related required mitigation plan. The EPA could, however, either nonconcur or defer action on a demonstration for such event-influenced data. The EPA's action would likely depend on the timing of the associated regulatory action. We are promulgating this regulatory language after seeking comment on approaches ranging from retaining the existing ''mitigation'' rule requirements to promulgating new mitigation-related rule components.

1. Defining Historically Documented or Known Seasonal Events

We are defining ''historically documented'' or ''known seasonal'' events to include events of the same type and pollutant (*e.g.,* high wind dust/PM or wildfire/ozone) that recur every year, either seasonally or throughout the year. For purposes of identifying the bounds of ''a particular area'' for those areas that are initially subject to the requirement to develop a mitigation plan (as discussed later in this section), we are using nonattainment area boundaries or county boundaries for those areas not in a nonattainment area. After these initial areas for which we have identified boundaries, the EPA Regional office and the affected air

[110] A 3-year period is measured backwards from the date of the most recent event.

[111] Because the form of the NAAQS varies by pollutant, it is possible that multiple events in a 3-year period may not cause a NAAQS violation. An air agency that identifies multiple events of the same type (*e.g.,* wildfire/ozone) in AQS, but prepares and submits a demonstration for only one of these events, *would* trigger the proposed requirement to develop a mitigation plan.

[112] 40 CFR part 81, subpart B, Designation of Air Quality Control Regions, defines Air Quality Control Regions.

agencies should consult regarding how to characterize ''a particular location.'' Ultimately, the EPA will determine the bounds for ''a particular location.''

Regarding recurrence, we are using the benchmark of three events in 3 years, which applies regardless of an area's designation status with respect to the NAAQS that could be the focus of a potential demonstration for a recurring event and regardless of whether the event type is the focus of specific recurrence circumstances within this rule for the ''human activity unlikely to recur at a particular location or a natural event'' criterion. We measure the 3-year period backwards from the date of the most recent event. Similar to our discussion of recurrence for the ''human activity unlikely to recur'' criterion in Section IV.E.1 of this preamble, if there have been two prior events of a similar type (*i.e.,* a similar event type generating emissions of the same pollutant) within a 3-year period in ''a particular location,'' the third event constitutes recurrence. While we are using the benchmark of three events in a 3-year period, for purposes of ''historically documented'' or ''known seasonal'' events, we will treat a season with multiple events as one event such that a mitigation plan will be required only when an event type persists across several years. For example, an area may not have previously experienced wildfires in the past 10 years, but then experiences multiple wildfires and multiple exceedances in a single wildfire season. If these multiple wildfires affect the same general geographic area and monitors in a relatively short period of time (*e.g.,* 2–3 months), then they could be considered a single event for purposes of developing a mitigation plan and would not trigger the requirement for a mitigation plan. Also, for purposes of counting a season towards the limit of three seasons in 3 years, we mean a season containing one or more events for which an air agency has previously submitted exceptional events demonstrations or a season of events that is the subject of an Initial Notification of Potential Exceptional Event as discussed in Section IV.G.5 of this preamble (regardless of whether the air agency submitted a demonstration).[113] Where an area experiences multiple event seasons in a given year (*e.g.,* a spring season and a fall season of events), then each season will count towards the benchmark of three recurrences in 3 years. Under this scenario, an area could experience a single season of events in year one, no events in year two, and multiple seasons of events in year three. Using the benchmark of three event-containing seasons in 3 years would subject the area to ''having a history'' and, therefore, needing a mitigation plan. The requirements of this section will apply regardless of the event/pollutant combination and regardless of whether the event type is the focus of specific recurrence circumstances within this rule for the ''human activity unlikely to recur at a particular location or a natural event'' criterion. We note, however, a demonstration for an event (or event season) for which the EPA nonconcurs (or previously nonconcurred) will not count towards recurrence.

Applying this framework of three events (or three seasons with multiple events of a common type) in a 3-year period, we identify in Table 6 those areas that have experienced recurring events during the timeframe from January 1, 2013, through December 31, 2015. Per the requirements set forth in 40 CFR 51.930(b)(1)(ii), we are using this action to provide written notice that the areas identified in Table 6 need to submit mitigation plans according to the requirements of the rule provisions in 40 CFR 51.930(b).

TABLE 6—AREAS SUBJECT TO THE MITIGATION REQUIREMENTS IN 40 CFR 51.930(B) [a]

Pollutant	AQS Flag [b]	AQS Flag description	State	Nonattainment area, county or city boundary
Ozone	RO	Stratospheric Ozone Intrusion	CO	Denver-Boulder-Greeley-Ft. Collins-Loveland, CO Ozone Nonattainment Area
Ozone	RT	Wildfire-U. S.	CO	Denver-Boulder-Greeley-Ft. Collins-Loveland, CO Ozone Nonattainment Area
Ozone	RT	Wildfire-U. S.	NV	Clark County
PM_{10}	RJ	High Winds	AZ	Phoenix, AZ PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	AZ	Rillito, AZ PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	AZ	West Pinal, AZ PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	AZ	Yuma, AZ PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	AZ	Gila River Indian Community
PM_{10}	RJ	High Winds	AZ	Salt River Pima-Maricopa Indian Community
PM_{10}	RJ	High Winds	CA	Coso Junction, CA PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	CA	Imperial Valley, CA PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	CA	Coachella Valley, CA PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	CA	San Joaquin Valley PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	CA	Los Angeles South Coast Air Basin PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	CO	Alamosa County
PM_{10}	RJ	High Winds	CO	Prowers County
PM_{10}	RJ	High Winds	NM	Anthony, NM PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	NM	Luna County
PM_{10}	RJ	High Winds	NV	Nye County
PM_{10}	RJ	High Winds	NV	Clark County PM_{10} Nonattainment Area
PM_{10}	RJ	High Winds	WA	Wallula PM_{10} Maintenance Area
$PM_{2.5}$	RA	African Dust	TX	Harris County
$PM_{2.5}$	RJ	High Winds	TX	El Paso County
$PM_{2.5}$	RS	Volcanic Eruptions	HI	Hawaii County
$PM_{2.5}$	RT	Wildfire-U. S.	CA	Nevada County
$PM_{2.5}$	RT	Wildfire-U. S.	CA	Sacramento, CA $PM_{2.5}$ Nonattainment Area

[113] Because the Initial Notification of Potential Exceptional Event is a new requirement in this action, we cannot use it to define recurrence for those areas that are initially subject to the requirement to develop a mitigation plan. For these areas, we are defining recurrence as three events or event seasons for which an air agency submitted a demonstration within a 3-year period or three events or event seasons in a 3-year period that resulted in a NAAQS exceedance(s) or violation(s) for which an air agency has previously flagged events for concurrence in AQS (regardless of whether the air agency submitted a demonstration).

TABLE 6—AREAS SUBJECT TO THE MITIGATION REQUIREMENTS IN 40 CFR 51.930(B) [a]—Continued

Pollutant	AQS Flag [b]	AQS Flag description	State	Nonattainment area, county or city boundary
$PM_{2.5}$	RT	Wildfire-U. S.	MT	Missoula County
$PM_{2.5}$	RT	Wildfire-U. S.	MT	Ravalli County
$PM_{2.5}$	RT	Wildfire-U. S.	NV	Carson City (City)
$PM_{2.5}$	RT	Wildfire-U. S.	NV	Douglas County
$PM_{2.5}$	RT	Wildfire-U. S.	NV	Washoe County
SO_2	RS	Volcanic Eruptions	HI	Hawaii County

[a] The areas noted in this table were identified using monitoring data in AQS for the January 1, 2013, through December 31, 2015, timeframe. The EPA downloaded data with request exclusion flags in May 2016, matched these data to exceedance days and then identified those areas with three seasons of events within a 3-year period.

[b] The complete list of AQS qualifier codes and descriptions is available at *https://aqs.epa.gov/aqsweb/documents/codetables/qualifiers.html.*

An area that appears in Table 6 for multiple NAAQS and/or event types could have a single mitigation plan, provided the plan components and actions address the multiple NAAQS and events. For example, a few areas have recurring high wind dust events for both PM_{10} and $PM_{2.5}$. These areas could develop a single high wind dust mitigation plan that addresses both PM_{10} and $PM_{2.5}$.

Within 2 years of the effective date of this action, air agencies responsible for ensuring air quality for the identified areas shall submit mitigation plans to the applicable EPA Regional Administrator. After this 2-year timeframe, the EPA will not concur with an air agency's request to exclude data that have been influenced by an event of the type that is the subject of a required mitigation plan if an air agency has not submitted the related required mitigation plan. The EPA could, however, either nonconcur or defer action on a demonstration for such event-influenced data. The EPA's action would likely depend on the timing of the associated regulatory action. As other areas become subject to the mitigation requirements identified in this action, the EPA will notify such areas in writing of the need for a mitigation plan. We discuss the timing associated with implementing a mitigation plan in more detail in Section V.B.3 of this preamble.

2. Mitigation Plan Components

After considering the public comments we received, we are finalizing the following three required plan components to help implement the mitigation principles found in CAA section 319(b)(3)(A). Unless otherwise specified, each mitigation plan should address actions that would be taken within an air agency's own jurisdiction for events that happen within its own jurisdiction or within the jurisdiction of another air agency.

a. Public notification to and education programs for affected or potentially affected communities. Air agencies are required to include in their mitigation plans steps to activate public notification and education systems whenever air quality concentrations exceed or are expected to exceed an applicable short-term NAAQS.[114] If possible, air agencies would notify the public of the actual or anticipated event at least 48 hours in advance of the event using methods appropriate to the community being served. (The EPA recognizes that for some event types, a 48-hour advance notice may not be possible.) Outreach mechanisms could include: Web site alerts, National Weather Service alerts, telephone or text bulletins, television or radio campaigns or other messaging campaigns. Public notification and education programs should include some or all of the following actions to support the outreach system: Adoption of methods for forecasting/detection, consultation with appropriate health department personnel regarding issuing health advisories and suggested actions for exposure minimization for sensitive populations (*e.g.,* remain indoors, avoid vigorous outdoor activity, avoid exposure to tobacco smoke and other respiratory irritants and, in extreme cases, evacuation or public sheltering procedures).

b. Steps to identify, study and implement mitigating measures, including approaches to address each of the following:

(i) Mandatory or voluntary measures to abate or minimize contributing controllable sources of identified pollutants that are within the jurisdiction of the affected air agency. An air agency is encouraged to consider full-time or contingent controls on event-related sources as well as non-event related sources. For example, these measures might include continuously operating control measures during an extreme event for identified sources that normally operate these same controls on an intermittent basis. It could also involve including work practices (*e.g.,* water spray for dust suppression) or contingent limits during extreme events on emissions from non-event related sources that, under non-event periods, have no or less stringent emissions limits or work practices.

(ii) Methods to minimize public exposure to high concentrations of identified pollutants.

(iii) Processes to collect and maintain data pertinent to the event (*e.g.,* to identify the data to be collected, the party responsible for collecting and maintaining the data and when, how and to whom the data will be reported).

(iv) Mechanisms to consult with other air quality managers in the affected area regarding the appropriate responses to abate and minimize impacts. Consultation could include collaboration between potentially affected local, state, tribal and federal air quality managers and/or emergency response personnel.

c. Provisions for review and evaluation of the mitigation plan and its implementation and effectiveness by the air agency and all interested stakeholders (*e.g.,* public and private land owners/managers, air quality, agriculture and forestry agencies, the public). During the initial development of the mitigation plan, this public review process would follow a process similar to that required for the public review of an exceptional events demonstration. That is, to solicit feedback from interested parties, an air agency subject to the mitigation requirements would conduct a public comment process on a draft mitigation plan for a minimum of 30 days. The air agency would then submit the public comments received to the EPA with the air agency's submission of its final

[114] By short-term, we mean NAAQS with averaging times that are 24-hours or less. We do not believe it is appropriate to notify the public when the pollutant concentrations exceed or violate a 3-month rolling average or an annual average as these violations reflect cumulative effects and in many cases the cause of the exceedance or violation is long past.

mitigation plan. With this submission and for each public comment received, the air agency would explain the changes made to the mitigation plan or explain why the air agency did not make any changes to the mitigation plan. We believe that public feedback will inherently strengthen the mitigation plans and focus the air agency action in the areas most needing the attention. Air agencies and the affected public are better suited than the EPA to determine effective mitigation measures.

The EPA expects that once an area becomes subject to these mitigation requirements, it will always have a mitigation plan in effect, although the plan would be periodically revised and evaluated for effectiveness. The process by which the air agency accomplishes this periodic review and evaluation of plan effectiveness after the initial development of the plan must also be identified in the plan. The review and evaluation would necessarily include a public process to solicit feedback from interested stakeholders (*e.g.,* public and private land owners/managers, air quality, agriculture and forestry agencies, the public). Periodic review could follow a process similar to the one identified for initial plan development. Although the air agency can determine the review timeframe for a mitigation plan, we offer the following guidance. For example, within this section of a mitigation plan, the air agency could specify review and revision, if appropriate, and recertification of the mitigation plan every 3 years. The air agency could also identify that review, revision, and recertification would occur after a season of implementing the plan, which could result in annual review if events continued to recur with such a frequency. Or, if the subject event did not recur for 5 years, then plan reassessment would follow a longer timeframe.

Because evaluating the effectiveness of a mitigation plan includes actions and responses from a variety of interested stakeholders, the air agency should consider submitting a summary and response to the comments received during the public plan review process to the EPA along with the recertification statement and/or revised mitigation plan. While we are *requiring* an air agency to submit any received public comments to the EPA after the air agency *initially develops* a mitigation plan, we are not requiring that the air agency summarize and submit public comments for subsequent reviews and plan reassessments.

If the historically documented or known seasonal exceptional events continue to result in elevated pollutant concentrations above the relevant NAAQS, thus showing that the combination of the existing SIP and the existing mitigation plan does not effectively safeguard public health, the air agency should consider whether to strengthen the mitigation plan.

In adopting these revisions, it is possible that all affected air agencies may not need to prepare new plans. If an air agency has developed and implemented a contingency plan under 40 CFR part 51, subpart H, Prevention of Air Pollution Emergency Episodes, that meets the requirements of 40 CFR 51.152, and that includes provisions for events that could be considered ''exceptional events'' under the provisions in 40 CFR 50.14, then the subpart H contingency plan would likely satisfy the mitigation requirements. If the identified basic elements are included and addressed, including the element for public comment, then other types of existing mitigation or contingency plans may satisfy the mitigation plan requirements. For example, if an area has developed a natural events action plan or a high wind action plan covering high wind dust events, this plan likely would satisfy mitigation elements for high wind dust events. Smoke management programs and/or forest management plans might also satisfy the mitigation elements for prescribed fires and wildfires. Most air agencies likely have sufficient, established processes that meet the public notification and education element, and which can be easily adapted or modified to meet the mitigation elements proposed in this action.

3. Implementing Mitigation Plans

The EPA is finalizing implementation provisions that provide for the EPA's review and verification of the mitigation plans' inclusion of the required elements and to ensure that the development of the mitigation plan included a public comment process. We would not formally review the substance of the plan in the sense of approving the details of the specific measures and commitments in the plan. We will, however, review each submitted plan and verify that it includes the required elements. Within 60 days of receipt of such a plan, the EPA plans to notify the submitting air agency that we have reviewed the mitigation plan and verified that it contains the required elements. Mitigation plans developed under 40 CFR 51.930 are not required to be included in a SIP or to be otherwise federally-enforceable.

Commenters asked that we allow air agencies 2 years from the date that they become subject to any mitigation plan requirements to develop their mitigation plan. We note that developing an effective mitigation plan that includes the required elements may require input from and coordination with numerous stakeholders, including, but not limited to, air agencies, public health officials, local governments, representatives serving potentially affected minority and low-income populations, if applicable, and the media. Additionally, air agencies must make the mitigation plan available for public comment, and respond and revise the mitigation plan in response to those comments, as appropriate. Upon consideration, we believe 2 years is a reasonable amount of time to ensure that air agencies have adequate time to prepare comprehensive mitigation plans that respond to the public health threat presented by historically documented or known seasonal events. Therefore, we are incorporating the commenters' suggestion into this preamble and into the final regulatory language. Thus, air agencies with historically documented or known seasonal exceptional events that we are formally identifying in this action as being subject to the requirements of this section will have 2 years from the effective date of this action to submit a mitigation plan to their applicable EPA Regional office. The EPA will process events of the type and pollutant that are the subject of the mitigation plan that occur during this 2-year period following the general provisions outlined in 40 CFR 50.14. During this interim period, the EPA's concurrence on demonstrations will not be contingent upon the affected air agency's submittal of a mitigation plan because air agencies should have sufficient time to develop their newly required mitigation plans. It is not reasonable to delay acting on demonstration submittals while air agencies prepare these plans. However, for events of the type subject to the mitigation plan requirement that occur after this 2-year window, the EPA's action on demonstrations will be contingent on the submittal of a mitigation plan that meets the requirements of this action. As the EPA identifies other areas subject to the mitigation requirements in this final rule, we provide such notice to the affected air agencies. Notified air agencies will then have a 2-year period to develop a mitigation plan. During this period of development, the EPA's concurrence on demonstrations for events of the type and pollutant that are

the subject of the mitigation plan will not be contingent upon the affected air agency's submittal of a mitigation plan.

All areas subject to these mitigation plan requirements can submit the mitigation plan to the EPA in advance of an event, or submit a mitigation plan along with an exceptional events demonstration. The EPA expects that mitigation plans developed according to this section will assist agencies in satisfying the not reasonably controllable or preventable criterion discussed in Section IV.E.2 of this preamble.

C. Comments and Responses

While the majority of commenters provided feedback indicating their preference to retain the existing mitigation requirements in 40 CFR 51.930 without revision, several other commenters supported the development of mitigation plans either for areas with ''historically documented'' or ''known seasonal'' events or all events. Of those commenters providing feedback on the EPA's review of mitigation plans, many commenters supported the ''review'' versus ''approval'' option. As previously noted, we have implemented the review option, which we proposed as Option 1. We believe that Option 1 maximizes the flexibility of the air agency while providing for the protection of public health through the EPA's review to ensure inclusion of required plan content and through the required public review process. Also consistent with commenter feedback, we have identified required program components, but have not specified the required content. Rather, it is appropriate to allow air agencies to develop mechanisms that are tailored to their unique situations and events.

Also regarding specific recommendations on plan content, one commenter did not support public notification for exceedances of an annual standard. The EPA agrees with the commenter that public notification is not necessary when the pollutant concentrations exceed or violate a 3-month rolling average or an annual average as these exceedances/violations reflect cumulative effects and in many cases the cause of the exceedance or violation is long past. We have clarified this point by adding regulatory language requiring public notification for exceedances or anticipated exceedances of short-term NAAQS. We also added regulatory text and a footnote in this preamble to define ''short-term'' as a NAAQS with an averaging time that is less than or equal to 24-hours.

VI. Environmental Justice Considerations

The Exceptional Events Rule provides the criteria by which state, local and tribal air agencies identify air quality data they believe have been influenced by exceptional events, which by statutory definition are not reasonably controllable or preventable. Because it is not reasonable to control or prevent these events, they can affect all downwind populations including minority and low-income populations. For this reason, in adding CAA section 319(b), Congress identified as a guiding principle in developing regulations, ''the principle that protection of public health is the highest priority.'' The Exceptional Events Rule at 40 CFR 50.14 requires air agencies to seek public comment on prepared exceptional events demonstrations prior to submitting them to the reviewing EPA Regional office. The public can also comment on rulemakings that include decisions related to the exclusion of event-influenced data. The mitigation of exceptional events language at 40 CFR 51.930 also requires that air agencies provide public notification and education programs related to events.

To protect all people and communities, notably minority and low-income populations, air agencies should ensure that notifications and education programs are communicated using the language (*e.g.,* English and Spanish) and media (*e.g.,* radio and postings in local community centers) best suited to the target audience(s). Furthermore, this action requires states to develop mitigation plans for recurring event types. Additionally, these revisions to the Exceptional Events Rule are being made as part of a public notice-and-comment rulemaking effort, which included a public hearing. These opportunities for public input in the rulemaking process, and the resulting requirements regarding public input and education ensure that all those residing, working, attending school or otherwise present in areas affected by exceptional events, regardless of minority and economic status, are protected.

VII. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities for ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule and has assigned OMB control number 2060–0084. The information being requested under these proposed rule revisions is consistent with current requirements related to information needed to verify the authenticity of monitoring data submitted to the EPA's AQS database, and to justify exclusion of data that have been flagged as being affected by exceptional events.

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. Instead, the rule revisions provide the criteria and increase the efficiency of the process by which state, local and tribal air agencies identify air quality data they believe have been influenced by an exceptional event. The rule revisions also clarify those actions that state, local and tribal air agencies should take to protect public health during and following an exceptional event. Because affected air agencies would have discretion to implement controls on sources that may need to be regulated due to anthropogenic contribution in the area determined to be influenced by an exceptional event, the EPA cannot predict the indirect effect of the rule on sources that may be 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, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. The EPA believes, however, that this action may be of significant interest to states and to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management. Consistent with

the EPA's policy to promote communications between the EPA and state and local governments, the EPA consulted with representatives of state and local governments early in the process of developing this action to permit them to have meaningful and timely input into its development. A summary of the concerns raised during that consultation is provided in Section IV of this preamble.

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

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA held public meetings attended by tribal representatives and separate meetings with tribal representatives to discuss the revisions proposed in this action. The EPA also provided an opportunity for all interested parties to provide oral or written comments on potential concepts for the EPA to address during the rule revision process. Summaries of these meetings are included in the docket for this rule. The EPA received comments on this action from multiple tribal organizations, requesting clarification on how this action includes and protects federal tribal communities. The Exceptional Events Rule addresses these concerns through the public comment process for both the rule revision and the exceptional events demonstrations, outreach efforts, and notification requirements.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The purpose of this proposed rule is to provide the criteria, and increase the efficiency of the process, by which state, local and tribal air agencies may identify air quality data they believe have been influenced by an exceptional event. The EPA does not expect these activities to affect energy suppliers, distributors or users.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Section VI of the preamble titled ''Environmental Justice Considerations.'' This action provides the criteria and increases the efficiency of the process by which state, local and tribal air agencies identify air quality data they believe have been influenced by exceptional events, which, by statutory definition, are not reasonably controllable or preventable. These regulatory provisions do, however, provide information concerning actions that state, local or tribal air agencies might take to uniformly protect public health once the EPA has concurred with an air agency's request to exclude data influenced by an exceptional event. The mitigation component of the rule could ultimately provide additional protection for minority, low income and other populations located in areas affected by recurring exceptional events. Therefore, the EPA finds that this action would not adversely affect the health or safety of minority or low-income populations, and that it is designed to protect and enhance the health and safety of these and other populations.

K. Congressional Review Act (CRA)

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

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VIII. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, National parks, Wilderness areas.

40 CFR Part 51

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 16, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, parts 50 and 51, title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Amend § 50.1 by:
■ a. Revising paragraphs (j) and (k).
■ b. Adding paragraphs (m), (n), (o), (p), (q) and (r).

The revisions and additions read as follows:

§ 50.1 Definitions.

* * * * *

(j) *Exceptional event* means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s), is not reasonably controllable or preventable, is an event(s) caused by human activity that is unlikely to recur at a particular location or a natural event(s), and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. It does not include air pollution relating to source noncompliance. Stagnation of air masses and meteorological inversions do not directly cause pollutant emissions and are not exceptional events. Meteorological events involving

high temperatures or lack of precipitation (*i.e.,* severe, extreme or exceptional drought) also do not directly cause pollutant emissions and are not considered exceptional events. However, conditions involving high temperatures or lack of precipitation may promote occurrences of particular types of exceptional events, such as wildfires or high wind events, which do directly cause emissions.

(k) *Natural event* means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

* * * * *

(m) *Prescribed fire* is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

(n) *Wildfir*e is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

(o) *Wildland* means an area in which human activity and development are essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

(p) *High wind dust event* is an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site.

(q) *High wind threshold* is the minimum wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event.

(r) *Federal land manager* means, consistent with the definition in 40 CFR 51.301, the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

■ 3. Revise § 50.14 to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

(a) *Requirements*—(1) *Scope.* (i) This section applies to the treatment of data showing exceedances or violations of any national ambient air quality standard for purposes of the following types of regulatory determinations by the Administrator:

(A) An action to designate an area, pursuant to Clean Air Act section 107(d)(1), or redesignate an area, pursuant to Clean Air Act section 107(d)(3), for a particular national ambient air quality standard;

(B) The assignment or re-assignment of a classification category to a nonattainment area where such classification is based on a comparison of pollutant design values, calculated according to the specific data handling procedures in 40 CFR part 50 for each national ambient air quality standard, to the level of the relevant national ambient air quality standard;

(C) A determination regarding whether a nonattainment area has attained the level of the appropriate national ambient air quality standard by its specified deadline;

(D) A determination that an area has data for the specific NAAQS, which qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant;

(E) A determination under Clean Air Act section 110(k)(5), if based on an area violating a national ambient air quality standard, that the state implementation plan is inadequate under the requirements of Clean Air Act section 110; and

(F) Other actions on a case-by-case basis as determined by the Administrator.

(ii) A State, federal land manager or other federal agency may request the Administrator to exclude data showing exceedances or violations of any national ambient air quality standard that are directly due to an exceptional event from use in determinations identified in paragraph (a)(1)(i) of this section by demonstrating to the Administrator's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.

(A) For a federal land manager or other federal agency to be eligible to initiate such a request for data exclusion, the federal land manager or other federal agency must:

(*1*) Either operate a regulatory monitor that has been affected by an exceptional event or manage land on which an exceptional event occurred that influenced a monitored concentration at a regulatory monitor; and

(*2*) Initiate such a request only after the State in which the affected monitor is located concurs with the federal land manager's or other federal agency's submittal.

(B) With regard to such a request, all provisions in this section that are expressed as requirements applying to a State shall, except as noted, be requirements applying to the federal land manager or other federal agency.

(C) Provided all provisions in this section are met, the Administrator shall allow a State to submit demonstrations for any regulatory monitor within its jurisdictional bounds, including those operated by federal land managers, other federal agencies and delegated local agencies.

(D) Where multiple agencies within a state submit demonstrations for events that meet the requirements of the Exceptional Events Rule, a State submittal shall have primacy for any regulatory monitor within its jurisdictional bounds.

(2) A demonstration to justify data exclusion may include any reliable and accurate data, but must specifically address the elements in paragraphs (c)(3)(iv) and (v) of this section.

(b) *Determinations by the Administrator*—(1) *Generally.* The Administrator shall exclude data from use in determinations of exceedances and violations identified in paragraph (a)(1)(i) of this section where a State demonstrates to the Administrator's satisfaction that an exceptional event caused a specific air pollution concentration at a particular air quality monitoring location and otherwise satisfies the requirements of this section.

(2) *Fireworks displays.* The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from fireworks displays caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Such data will be treated in the same manner as exceptional events under this rule, provided a State demonstrates that such use of fireworks is significantly integral to traditional national, ethnic, or other cultural events including, but not limited to, July Fourth celebrations that satisfy the requirements of this section.

(3) *Prescribed fires.* (i) The Administrator shall exclude data from use in determinations of exceedances and violations, where a State demonstrates to the Administrator's satisfaction that emissions from prescribed fires caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise

satisfies the requirements of this section.

(ii) In addressing the requirements set forth in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion:

(A) With respect to the requirement that a prescribed fire be not reasonably controllable, the State must either certify to the Administrator that it has adopted and is implementing a smoke management program or the State must demonstrate that the burn manager employed appropriate basic smoke management practices identified in Table 1 to § 50.14. Where a burn manager employs appropriate basic smoke management practices, the State may rely on a statement or other documentation provided by the burn manager that he or she employed those practices. If an exceedance or violation of a NAAQS occurs when a prescribed fire is employing an appropriate basic smoke management practices approach, the State and the burn manager must undertake a review of the subject fire, including a review of the basic smoke management practices applied during the subject fire to ensure the protection of air quality and public health and progress towards restoring and/or maintaining a sustainable and resilient wildland ecosystem. If the prescribed fire becomes the subject of an exceptional events demonstration, documentation of the post-burn review must accompany the demonstration.

(B) If the State anticipates satisfying the requirements of paragraph (c)(3)(iv)(D) of this section by employing the appropriate basic smoke management practices identified in Table 1 to § 50.14, then:

(*1*) The State, federal land managers, and other entities as appropriate, must periodically collaborate with burn managers operating within the jurisdiction of the State to discuss and document the process by which air agencies and land managers will work together to protect public health and manage air quality impacts during the conduct of prescribed fires on wildland. Such discussions must include outreach and education regarding general expectations for the selection and application of appropriate basic smoke management practices and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate basic smoke management practices;

(*2*) The State, federal land managers and burn managers shall have an initial implementation period, defined as being 2 years from September 30, 2016, to implement the collaboration and outreach effort identified in paragraph (b)(3)(ii)(B)(*1*) of this section; and

(*3*) Except as provided in paragraph (b)(3)(ii)(B)(*2*) of this section, the Administrator shall not place a concurrence flag in the appropriate field for the data record in the AQS database, as specified in paragraph (c)(2)(ii) of this section, if the data are associated with a prescribed fire on wildland unless the requirements of paragraph (b)(3)(ii)(B)(*1*) of this section have been met and associated documentation accompanies any applicable exceptional events demonstration. The Administrator may nonconcur or defer action on such a demonstration.

(C) With respect to the requirement that a prescribed fire be not reasonably preventable, the State may rely upon and reference a multi-year land or resource management plan for a wildland area with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire provided that the Administrator determines that there is no compelling evidence to the contrary in the record and the use of prescribed fire in the area has not exceeded the frequency indicated in that plan.

(iii) Provided the Administrator determines that there is no compelling evidence to the contrary in the record, in addressing the requirements set forth in paragraph (c)(3)(iv)(E) of this section regarding the human activity unlikely to recur at a particular location criterion for demonstrations involving prescribed fires on wildland, the State must describe the actual frequency with which a burn was conducted, but may rely upon and reference an assessment of the natural fire return interval or the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire.

TABLE 1 TO § 50.14—SUMMARY OF BASIC SMOKE MANAGEMENT PRACTICES, BENEFIT ACHIEVED WITH THE BSMP, AND WHEN IT IS APPLIED[a]

Basic Smoke Management Practice[b]	Benefit achieved with the BSMP	When the BSMP is applied—before/during/after the burn
Evaluate Smoke Dispersion Conditions	Minimize smoke impacts	Before, During, After.
Monitor Effects on Air Quality	Be aware of where the smoke is going and degree it impacts air quality.	Before, During, After.
Record-Keeping/Maintain a Burn/Smoke Journal.	Retain information about the weather, burn and smoke. If air quality problems occur, documentation helps analyze and address air regulatory issues..	Before, During, After.
Communication—Public Notification	Notify neighbors and those potentially impacted by smoke, especially sensitive receptors.	Before, During.
Consider Emission Reduction Techniques	Reducing emissions through mechanisms such as reducing fuel loading can reduce downwind impacts.	Before, During, After.
Share the Airshed—Coordination of Area Burning.	Coordinate multiple burns in the area to manage exposure of the public to smoke.	Before, During, After.

[a] The EPA believes that elements of these BSMP could also be practical and beneficial to apply to wildfires for areas likely to experience recurring wildfires.

[b] The listing of BSMP in this table is not intended to be all-inclusive. Not all BSMP are appropriate for all burns. Goals for applicability should retain flexibility to allow for onsite variation and site-specific conditions that can be variable on the day of the burn. Burn managers can consider other appropriate BSMP as they become available due to technological advancement or programmatic refinement.

(4) *Wildfires.* The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from wildfires caused a

specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Provided the Administrator determines that there is no compelling evidence to the contrary in the record, the Administrator will determine every wildfire occurring predominantly on wildland to have met the requirements identified in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion.

(5) *High wind dust events.* (i) The Administrator shall exclude data from use in determinations of exceedances and violations, where a State demonstrates to the Administrator's satisfaction that emissions from a high wind dust event caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section provided that such emissions are from high wind dust events.

(ii) The Administrator will consider high wind dust events to be natural events in cases where windblown dust is entirely from natural undisturbed lands in the area or where all anthropogenic sources are reasonably controlled as determined in accordance with paragraph (b)(8) of this section.

(iii) The Administrator will accept a high wind threshold of a sustained wind of 25 mph for areas in the States of Arizona, California, Colorado, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming provided this value is not contradicted by evidence in the record at the time the State submits a demonstration. In lieu of this threshold, States can identify and use an Administrator-approved alternate area-specific high wind threshold that is more representative of local or regional conditions, if appropriate.

(iv) In addressing the requirements set forth in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably preventable criterion, the State shall not be required to provide a case-specific justification for a high wind dust event.

(v) With respect to the not reasonably controllable criterion of paragraph (c)(3)(iv)(D) of this section, dust controls on an anthropogenic source shall be considered reasonable in any case in which the controls render the anthropogenic source as resistant to high winds as natural undisturbed lands in the area affected by the high wind dust event. The Administrator may determine lesser controls reasonable on a case-by-case basis.

(vi) For large-scale and high-energy high wind dust events, the Administrator will generally consider a demonstration documenting the nature and extent of the event to be sufficient with respect to the not reasonably controllable criterion of paragraph (c)(3)(iv)(D) of this section provided the State provides evidence showing that the event satisfies the following:

(A) The event is associated with a dust storm and is the focus of a Dust Storm Warning.

(B) The event has sustained winds that are greater than or equal to 40 miles per hour.

(C) The event has reduced visibility equal to or less than 0.5 miles.

(6) *Stratospheric Intrusions.* Where a State demonstrates to the Administrator's satisfaction that emissions from stratospheric intrusions caused a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location and otherwise satisfies the requirements of this section, the Administrator will determine stratospheric intrusions to have met the requirements identified in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion and shall exclude data from use in determinations of exceedances and violations.

(7) *Determinations with respect to event aggregation, multiple national ambient air quality standards for the same pollutant, and exclusion of 24-hour values for particulate matter.*

(i) Where a State demonstrates to the Administrator's satisfaction that for national ambient air quality standards with averaging or cumulative periods less than or equal to 24 hours the aggregate effect of events occurring on the same day has caused an exceedance or violation, the Administrator shall determine such collective data to satisfy the requirements in paragraph (c)(3)(iv)(B) of this section regarding the clear causal relationship criterion. Where a State demonstrates to the Administrator's satisfaction that for national ambient air quality standards with averaging or cumulative periods longer than 24 hours the aggregate effect of events occurring on different days has caused an exceedance or violation, the Administrator shall determine such collective data to satisfy the requirements in paragraph (c)(3)(iv)(B) of this section regarding the clear causal relationship criterion.

(ii) The Administrator shall accept as part of a demonstration for the clear causal relationship in paragraph (c)(3)(iv)(B) of this section with respect to a 24-hour NAAQS, a State's comparison of a 24-hour concentration of any national ambient air quality standard pollutant to the level of a national ambient air quality standard for the same pollutant with a longer averaging period. The Administrator shall also accept as part of a demonstration for the clear causal relationship in paragraph (c)(3)(iv)(B) of this section with respect to a NAAQS with a longer averaging period, a State's comparison of a 24-hour concentration of any national ambient air quality standard pollutant to the level of the national ambient air quality standard for the same pollutant with a longer averaging period, without the State having to demonstrate that the event caused the annual average concentration of the pollutant to exceed the level of the NAAQS with the longer averaging period.

(iii) Where a State operates a continuous analyzer that has been designated as a Federal Equivalent Method monitor as defined in 40 CFR 50.1(g) that complies with the monitoring requirements of 40 CFR part 58, Appendix C, and the State believes that collected data have been influenced by an event, in following the process outlined in paragraph (c)(2) of this section, the State shall create an initial event description and flag the associated event-influenced data that have been submitted to the AQS database for the affected monitor. Where a State demonstrates to the Administrator's satisfaction that such data satisfy the requirements in paragraph (c)(3)(iv)(B) of this section regarding the clear causal relationship criterion and otherwise satisfy the requirements of this section, the Administrator shall agree to exclude all data within the affected calendar day(s).

(8) *Determinations with respect to the not reasonably controllable or preventable criterion.* (i) The not reasonably controllable or preventable criterion has two prongs that the State must demonstrate: prevention and control.

(ii) The Administrator shall determine that an event is not reasonably preventable if the State shows that reasonable measures to prevent the event were applied at the time of the event.

(iii) The Administrator shall determine that an event is not reasonably controllable if the State shows that reasonable measures to control the impact of the event on air quality were applied at the time of the event.

(iv) The Administrator shall assess the reasonableness of available controls for

anthropogenic sources based on information available as of the date of the event.

(v) Except where a State, tribal or federal air agency is obligated to revise its state implementation plan, tribal implementation plan, or federal implementation plan, the Administrator shall consider enforceable control measures implemented in accordance with a state implementation plan, tribal implementation plan, or federal implementation plan, approved by the EPA within 5 years of the date of the event, that address the event-related pollutant and all sources necessary to fulfill the requirements of the Clean Air Act for the state implementation plan, tribal implementation plan, or federal implementation plan to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to the monitored exceedance or violation.

(vi) Where a State, tribal or federal air agency is obligated to revise its state implementation plan, tribal implementation plan, or federal implementation plan, the deference to enforceable control measures identified in paragraph (b)(8)(v) of this section shall remain only until the due date of the required state implementation plan, tribal implementation plan, or federal implementation plan revisions. However, where an air agency is obligated to revise the enforceable control measures identified in paragraph (b)(8)(v) of this section in its implementation plan as a result of an action pursuant to Clean Air Act section 110(k)(5), the deference, if any, to those enforceable control measures shall be determined on a case-by-case basis.

(vii) The Administrator shall not require a State to provide case-specific justification to support the not reasonably controllable or preventable criterion for emissions-generating activity that occurs outside of the State's jurisdictional boundaries within which the concentration at issue was monitored. In the case of a tribe treated as a state under 40 CFR 49.2 with respect to exceptional events requirements, the tribe's jurisdictional boundaries for purposes of requiring or directly implementing emission controls apply. In the case of a federal land manager or other federal agency submitting a demonstration under the requirements of this section, the jurisdictional boundaries that apply are those of the State or the tribe depending on which has jurisdiction over the area where the event has occurred.

(viii) In addition to the provisions that apply to specific event types identified in paragraphs (b)(3)(ii) and (b)(5)(i) through (iii) of this section in addressing the requirements set forth in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion, the State must include the following components:

(A) Identification of the natural and anthropogenic sources of emissions causing and contributing to the monitored exceedance or violation, including the contribution from local sources.

(B) Identification of the relevant state implementation plan, tribal implementation plan, or federal implementation plan or other enforceable control measures in place for the sources identified in paragraph (b)(8)(vii)(A) of this section and the implementation status of these controls.

(C) Evidence of effective implementation and enforcement of the measures identified in paragraph (b)(8)(vii)(B) of this section.

(D) The provisions in this paragraph shall not apply if the provisions in paragraph (b)(4), (b)(5)(vi), or (b)(6) of this section apply.

(9) *Mitigation plans.* (i) Except as provided for in paragraph (b)(9)(ii) of this section, where a State is subject to the requirements of 40 CFR 51.930(b), the Administrator shall not place a concurrence flag in the appropriate field for the data record in the AQS database, as specified in paragraph (c)(2)(ii) of this section, if the data are of the type and pollutant that are the focus of the mitigation plan until the State fulfills its obligations under the requirements of 40 CFR 51.930(b). The Administrator may nonconcur or defer action on such a demonstration.

(ii) The prohibition on placing a concurrence flag in the appropriate field for the data record in the AQS database by the Administrator stated in paragraph (b)(9(i) of this section does not apply to data that are included in an exceptional events demonstration that is:

(A) submitted in accordance with paragraph (c)(3) of this section that is also of the type and pollutant that is the focus of the mitigation plan, and

(B) submitted within the 2-year period allowed for mitigation plan development as specified in 40 CFR 51.930(b)(3).

(c) *Schedules and procedures*—(1) *Public notification.* (i) In accordance with the mitigation requirement at 40 CFR 51.930(a)(1), all States and, where applicable, their political subdivisions must notify the public promptly whenever an event occurs or is reasonably anticipated to occur which may result in the exceedance of an applicable air quality standard.

(ii) [Reserved]

(2) *Initial notification of potential exceptional event.* (i) A State shall notify the Administrator of its intent to request exclusion of one or more measured exceedances of an applicable national ambient air quality standard as being due to an exceptional event by creating an initial event description and flagging the associated data that have been submitted to the AQS database and by engaging in the Initial Notification of Potential Exceptional Event process as follows:

(A) The State and the appropriate EPA Regional office shall engage in regular communications to identify those data that have been potentially influenced by an exceptional event, to determine whether the identified data may affect a regulatory determination and to discuss whether the State should develop and submit an exceptional events demonstration according to the requirements in this section;

(B) For data that may affect an anticipated regulatory determination or where circumstances otherwise compel the Administrator to prioritize the resulting demonstration, the Administrator shall respond to a State's Initial Notification of Potential Exceptional Event with a due date for demonstration submittal that considers the nature of the event and the anticipated timing of the associated regulatory decision;

(C) The Administrator may waive the Initial Notification of Potential Exceptional Event process on a case-by-case basis.

(ii) The data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and the Administrator's review, the Administrator notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.

(iii) [Reserved]

(iv) [Reserved]

(v) [Reserved]

(vi) Table 2 to § 50.14 identifies the submission process for data that will or may influence the initial designation of areas for any new or revised national ambient air quality standard.

TABLE 2 TO § 50.14—SCHEDULE FOR INITIAL NOTIFICATION AND DEMONSTRATION SUBMISSION FOR DATA INFLUENCED BY EXCEPTIONAL EVENTS FOR USE IN INITIAL AREA DESIGNATIONS

Exceptional events/Regulatory action	Condition	Exceptional events deadline schedule [d]
(A) Initial Notification deadline for data years 1, 2 and 3.[a].	If state and tribal initial designation recommendations for a new/revised national ambient air quality standard are due August through January,	then the Initial Notification deadline will be the July 1 prior to the recommendation deadline.
(B) Initial Notification deadline for data years 1, 2 and 3.[a].	If state and tribal recommendations for a new/revised national ambient air quality standard are due February through July,	then the Initial Notification deadline will be the January 1 prior to the recommendation deadline.
(C) Exceptional events demonstration submittal deadline for data years 1, 2 and 3 [a].	None	no later than the later of November 29, 2016 or the date that state and tribal recommendations are due to the Administrator.
(D) Initial Notification and exceptional events demonstration submittal deadline for data year 4 [b] and, where applicable, data year 5.[c].	None	by the last day of the month that is 1 year and 7 months after promulgation of a new/revised national ambient air quality standard, unless either paragraph (E) or paragraph (F) applies.
(E) Initial Notification and exceptional events demonstration submittal deadline for data year 4 [b] and, where applicable, data year 5.[c].	If the Administrator follows a 3-year designation schedule.	the deadline is 2 years and 7 months after promulgation of a new/revised national ambient air quality standard.
(F) Initial Notification and exceptional events demonstration submittal deadline for data year 4 [b] and, where applicable, data year 5.[c].	If the Administrator notifies the state/tribe that it intends to complete the initial area designations process according to a schedule between 2 and 3 years,.	the deadline is 5 months prior to the date specified for final designations decisions in such Administrator notification.

[a] Where data years 1, 2, and 3 are those years expected to be considered in state and tribal recommendations.
[b] Where data year 4 is the additional year of data that the Administrator may consider when making final area designations for a new/revised national ambient air quality standard under the standard designations schedule.
[c] Where data year 5 is the additional year of data that the Administrator may consider when making final area designations for a new/revised national ambient air quality standard under an extended designations schedule.
[d] The date by which air agencies must certify their ambient air quality monitoring data in AQS is annually on May 1 of the year following the year of data collection as specified in 40 CFR 58.15(a)(2). In some cases, however, air agencies may choose to certify a prior year's data in advance of May 1 of the following year, particularly if the Administrator has indicated intent to promulgate final designations in the first 8 months of the calendar year. Exceptional events demonstration deadlines for "early certified" data will follow the deadlines for "year 4" and "year 5" data.

(3) *Submission of demonstrations.* (i) Except as provided under paragraph (c)(2)(vi) of this section, a State that has flagged data as being due to an exceptional event and is requesting exclusion of the affected measurement data shall, after notice and opportunity for public comment, submit a demonstration to justify data exclusion to the Administrator according to the schedule established under paragraph (c)(2)(i)(B).

(ii) [Reserved]

(iii) [Reserved]

(iv) The demonstration to justify data exclusion must include:

(A) A narrative conceptual model that describes the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitor(s);

(B) A demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation;

(C) Analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times to support the requirement at paragraph (c)(3)(iv)(B) of this section. The Administrator shall not require a State to prove a specific percentile point in the distribution of data;

(D) A demonstration that the event was both not reasonably controllable and not reasonably preventable; and

(E) A demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event.

(v) With the submission of the demonstration containing the elements in paragraph (c)(3)(iv) of this section, the State must:

(A) Document that the State followed the public comment process and that the comment period was open for a minimum of 30 days, which could be concurrent with the beginning of the Administrator's initial review period of the associated demonstration provided the State can meet all requirements in this paragraph;

(B) Submit the public comments it received along with its demonstration to the Administrator; and

(C) Address in the submission to the Administrator those comments disputing or contradicting factual evidence provided in the demonstration.

(vi) Where the State has submitted a demonstration according to the requirements of this section after September 30, 2016 and the Administrator has reviewed such demonstration and requested additional evidence to support one of the elements in paragraph (c)(3)(iv) of this section, the State shall have 12 months from the date of the Administrator's request to submit such evidence. At the conclusion of this time, if the State has not submitted the requested additional evidence, the Administrator will notify the State in writing that it considers the demonstration to be inactive and will not pursue additional review of the demonstration. After a 12-month period of inactivity by the State, if a State desires to pursue the inactive demonstration, it must reinitiate its request to exclude associated data by following the process beginning with paragraph (c)(2)(i) of this section.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 5. Revise § 51.930 to read as follows:

§ 51.930 Mitigation of Exceptional Events.

(a) A State requesting to exclude air quality data due to exceptional events must take appropriate and reasonable actions to protect public health from exceedances or violations of the national ambient air quality standards. At a minimum, the State must:

(1) Provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed an applicable ambient air quality standard;

(2) Provide for public education concerning actions that individuals may take to reduce exposures to unhealthy levels of air quality during and following an exceptional event; and

(3) Provide for the implementation of appropriate measures to protect public health from exceedances or violations of ambient air quality standards caused by exceptional events.

(b) *Development of mitigation plans for areas with historically documented or known seasonal events*—(1) *Generally.* All States having areas with historically documented or known seasonal events shall be required to develop a mitigation plan with the components identified in paragraph (b)(2) of this section and submit such plan to the Administrator according to the requirements in paragraph (b)(3) of this section.

(i) For purposes of the requirements set forth in this section, historically documented or known seasonal events shall include those events of the same type and pollutant that recur in a 3-year period and meet any of the following:

(A) Three events or event seasons for which a State submits a demonstration under the provisions of 40 CFR 50.14 in a 3-year period; or

(B) Three events or event seasons that are the subject of an initial notification of a potential exceptional event as defined in 40 CFR 50.14(c)(2) in a 3-year period regardless of whether the State submits a demonstration under the provisions of 40 CFR 50.14.

(ii) The Administrator will provide written notification to States that they are subject to the requirements in paragraph (b) of this section when the Administrator becomes aware of applicability.

(2) *Plan components.* At a minimum, each mitigation plan developed under this paragraph shall contain provisions for the following:

(i) Public notification to and education programs for affected or potentially affected communities. Such notification and education programs shall apply whenever air quality concentrations exceed or are expected to exceed a national ambient air quality standard with an averaging time that is less than or equal to 24-hours.

(ii) Steps to identify, study and implement mitigating measures, including approaches to address each of the following:

(A) Measures to abate or minimize contributing controllable sources of identified pollutants.

(B) Methods to minimize public exposure to high concentrations of identified pollutants.

(C) Processes to collect and maintain data pertinent to the event.

(D) Mechanisms to consult with other air quality managers in the affected area regarding the appropriate responses to abate and minimize impacts.

(iii) Provisions for periodic review and evaluation of the mitigation plan and its implementation and effectiveness by the State and all interested stakeholders.

(A) With the submission of the initial mitigation plan according to the requirements in paragraph (b)(3) of this section that contains the elements in paragraph (b)(2) of this section, the State must:

(*1*) Document that a draft version of the mitigation plan was available for public comment for a minimum of 30 days;

(*2*) Submit the public comments it received along with its mitigation plan to the Administrator; and

(*3*) In its submission to the Administrator, for each public comment received, explain the changes made to the mitigation plan or explain why the State did not make any changes to the mitigation plan.

(B) The State shall specify in its mitigation plan the periodic review and evaluation process that it intends to follow for reviews following the initial review identified in paragraph (b)(2)(iii)(A) of this section.

(3) *Submission of mitigation plans.* All States subject to the provisions of paragraph (b) of this section shall, after notice and opportunity for public comment identified in paragraph (b)(2)(iii)(A) of this section, submit a mitigation plan to the Administrator for review and verification of the plan components identified in paragraph (b)(2) of this section.

(i) States shall submit their mitigation plans within 2 years of being notified that they are subject to the provisions of paragraph (b) of this section.

(ii) The Administrator shall review each mitigation plan developed according to the requirements in paragraph (b)(2) of this section and shall notify the submitting State upon completion of such review.

[FR Doc. 2016–22983 Filed 9–28–16; 4:15 pm]

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FEDERAL REGISTER

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No. 191 October 3, 2016

Part VI

The President

Proclamation 9504—Death of Shimon Peres

Proclamation 9505—National Arts and Humanities Month, 2016

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Presidential Documents

Title 3—

The President

Proclamation 9504 of September 28, 2016

Death of Shimon Peres

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Shimon Peres, former President and Prime Minister of Israel, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, on September 30, 2016. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–24038
Filed 9–30–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9505 of September 28, 2016

National Arts and Humanities Month, 2016

By the President of the United States of America

A Proclamation

Throughout history, the arts and humanities have been at the forefront of progress. In diverse mediums and methods—whether through the themes of a novel, the movement of a dancer, or a monologue on a stage—the arts enrich our souls, inspire us to chase our dreams, and challenge us to see things through a different lens. During National Arts and Humanities Month, we celebrate the important role the arts and humanities have played in shaping the American narrative.

Our achievements as a society and a culture go hand-in-hand. The arts embody who we are as a people and have long helped drive the success of our country. They provoke thought and encourage our citizenry to reach new heights in creativity and innovation; they lift up our identities, connecting what is most profound within us to our collective human experiences.

In seeking to break down barriers and challenge our assumptions, we must continue promoting and prioritizing the arts and humanities, especially for our young people. In many ways, the arts and humanities reflect our national soul. They are central to who we are as Americans—as dreamers and storytellers, creators and visionaries. By investing in the arts, we can chart a course for the future in which the threads of our common humanity are bound together with creative empathy and openness. When we engage with the arts, we instill principles that, at their core, make us truer to ourselves.

This month, we acknowledge all those who have proudly and passionately dedicated their lives to these diverse, beautiful, and often challenging forms of expression. In our increasingly global economy, we recognize the power of the arts and humanities to connect people around the world. Be it through the pen of a poet, the voice of a singer, or the canvas of a painter, let us continue to harness the unparalleled ways the arts and humanities bring people together.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2016 as National Arts and Humanities Month. I call upon the people of the United States to observe this month with appropriate ceremonies, activities, and programs to celebrate the arts and the humanities in America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–24041
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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 2016

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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