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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS–2012–0049]

RIN 0579–AE00

Exportation of Live Animals, Hatching Eggs, and Animal Germplasm From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on January 20, 2016, and effective on February 19, 2016, we revised our regulations regarding the exportation of livestock from the United States. Among other revisions, we expanded the scope of the regulations so that, if the Animal and Plant Health Inspection Service (APHIS) knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an endorsed export health certificate in order to be eligible for export from the United States. While, in the preamble for that rule, we indicated that APHIS is the competent veterinary authority of the United States, and must endorse the export health certificate in such instances, this was not reflected in the regulations themselves. This document corrects that error.

DATES: Effective October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Taniewski, Director for Animal Export, National Import Export Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION: In a final rule [1] that was published in the **Federal Register** on January 20, 2016 (81 FR 2967, Docket No. APHIS–2012–0049), and effective on February 19, 2016, we amended the regulations concerning the exportation of livestock from the United States, which are found in 9 CFR part 91 (referred to below as ''the regulations''). Among other revisions, we expanded the scope of the regulations so that, if the Animal and Plant Health Inspection Service (APHIS) knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an endorsed export health certificate in order to be eligible for export from the United States.

In the preamble of that rule, we stated that this requirement was necessary because several foreign countries consider any animal, germplasm, or hatching egg offered for importation to their country without an export health certificate issued by the competent veterinary authority of the exporting country to present a risk of disseminating pests or diseases of livestock within their country, and accordingly prohibit such importation. We also stated that, if we are aware that the importing country has such requirements, we consider it necessary to require export health certificates for the animals, germplasm, or hatching eggs in order to provide assurances to the importing country that, in our, that is, APHIS', determination as the competent veterinary authority of the United States, we do not consider the animals, germplasm, or hatching eggs to present a risk of disseminating pests or diseases of livestock. Thus, we implied that, in such instances, the export health certificate must be issued and endorsed by APHIS.

In the regulatory text of that final rule, however, we did not specify that such export health certificates must be endorsed by APHIS, but rather that they must be endorsed by the competent veterinary authority of the United States.

This has led to confusion regarding whether we intended to allow agencies other than APHIS to endorse the certificates. We did not.

Accordingly, we are amending the regulations to specify that, if APHIS knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an export health certificate endorsed by APHIS in order to be eligible for export from the United States.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—EXPORTATION OF LIVE ANIMALS, HATCHING EGGS OR OTHER EMBRYONATED EGGS, ANIMAL SEMEN, ANIMAL EMBRYOS, AND GAMETES FROM THE UNITED STATES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 91.3, paragraph (a)(2) is revised to read as follows:

§ 91.3 General requirements.

(a) * * *

(2) If APHIS knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an export health certificate endorsed by APHIS in order to be

[1] To view the rule, supporting documents, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0049.*

eligible for export from the United States.

* * * * *

Done in Washington, DC, this 21st day of October 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–25860 Filed 10–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 313, 320, and 500

[Docket No. FSIS–2016–0004]

Inhumane Handling of Livestock in Connection With Slaughter by Persons Not Employed by the Official Establishment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final determination and opportunity for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS), is announcing its intent to hold livestock owners, transporters, haulers and other persons not employed by an official establishment responsible if they commit acts involving inhumane handling of livestock in connection with slaughter when on the premises of an official establishment. The Agency intends to initiate civil or criminal action, in appropriate circumstances, against individuals not employed by an official establishment, if these individuals handle livestock inhumanely in connection with slaughter when on the official premises. FSIS believes these actions will further improve the welfare of livestock handled in connection with slaughter by ensuring that all persons that inhumanely handle livestock in connection with slaughter are held accountable.

DATES: Comments must be received by November 25, 2016. FSIS will implement the actions discussed in this document on January 24, 2017, unless FSIS receives comments that demonstrate a need to revise this date. FSIS will publish a **Federal Register** document affirming the implementation date.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov/*. Follow the on-line instructions at that site for submitting comments.

Mail, including CD–ROMs, etc.: Send to Docket Room Manager, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 14000 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B. Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), which establishes requirements for the premises, facilities, and operations of official establishments that slaughter livestock and prepare meat and meat products for human food to ensure both the safety of meat and the humane slaughter and handling of livestock. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection under the FMIA (21 U.S.C. 603(b)). The Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*) requires that the slaughter of livestock and the handling of livestock in connection with slaughter be carried out only by humane methods (7 U.S.C. 1901). Therefore, FSIS requires official establishments to humanely handle livestock that are on the official premises, on vehicles that are on the official premises, and on vehicles in queue for slaughter establishments. Once a vehicle carrying livestock enters, or is in line to enter, an official establishment's premises, the vehicle is considered to be part of that official establishment's premises (see FSIS Directive 6900.2).

With respect to enforcement action at the establishment, the FMIA and implementing regulations provide that FSIS may suspend inspection services from an official establishment for inhumane slaughter or inhumane handling in connection with slaughter (21 U.S.C. 603(b); 9 CFR part 500). The FMIA (21 U.S.C. 610) provides that no person, establishment, or corporation shall slaughter or handle in connection with slaughter any livestock in any manner not in accordance with the HMSA (21 U.S.C. 610(b)). The FMIA also provides for the issuance of warning letters and for initiation of criminal and civil action for violations (21 U.S.C. 674 and 676).

Livestock transporters or haulers transport animals to slaughter establishments. Many of these individuals are not employed by the establishment and thus are not required to follow instructions from the establishment on the handling of livestock in connection with slaughter.

Unlike owners of Federal establishments, non-employees, such as livestock transporters, generally do not hold a grant of Federal inspection and therefore are not subject to FSIS administrative enforcement actions. When non-employee transporters inhumanely handle livestock on the premises of an official establishment, FSIS takes action against the establishment (see FSIS Directive 6900.2). For purposes of this document, livestock transporters, haulers, or other persons not employed by an official establishment that handle livestock in connection with slaughter are collectively referred to as ''non-employee transporters'', or simply ''non-employees.''

On January 21, 2015, FSIS received a petition from an attorney on behalf of an official swine slaughter establishment requesting that FSIS review its humane handling enforcement policy (available on the FSIS Web page at *http://www.fsis.usda.gov/wps/wcm/connect/4d9160de-a7a1-4fd9-88ff-e3b24bf8d1e9/15-03-Non-Employee-Humane-Handling.pdf?MOD=AJPERES*). The petition stated that official establishments should not be held accountable when non-employees inhumanely handle livestock on the official establishment premises. FSIS

has decided to grant the petition and is publishing this document to describe the actions that the Agency will take when non-employee transporters inhumanely handle livestock on the premises of an official establishment.

Non-Employee Violations

FSIS intends to hold non-employees accountable for their actions if they inhumanely handle livestock in connection with slaughter when on the premises of an official establishment.

When FSIS's Office of Field Operations (OFO) inspection program personnel (IPP) observe a non-employee inhumanely handling livestock in connection with slaughter, FSIS will instruct them to produce a written record of the event and forward the record to their District Office. The District Office will refer the record, when appropriate, to FSIS's Office of Investigation, Enforcement and Audit (OIEA) to conduct follow-up investigations and enforcement action. As discussed below, FSIS intends to update its livestock handling instructions to OFO and OIEA personnel to reflect the actions described in this document. These instructions will include a description of the type of information that IPP are to include in their written records of the event. In accordance with FSIS Directive 8010.5 Case Referral and Disposition, OIEA personnel will evaluate the case for determination of action, including warning letters for minor violations, civil action for repetitive violations, and criminal prosecution for egregious violations (21 U.S.C. 674 and 676).

The actions that FSIS is announcing in this document are intended to enhance the Agency's ability to ensure the humane handling of livestock in connection with slaughter and do not replace existing enforcement policies. FSIS will continue to use its administrative authority to take action against the establishment when establishment employees are found responsible for inhumane handling of livestock. FSIS will consider the involvement of non-employees in incidents of inhumane handling while on establishment premises to assess the appropriate administrative enforcement actions, if any, that the Agency will take against the establishment. The following examples illustrate how FSIS intends to implement this policy.

If FSIS determines that a non-employee is solely responsible for a humane handling violation, FSIS will use its authority to initiate action solely against the non-employee and will not take administrative enforcement action against the establishment. For example, if OFO personnel observe a non-employee driving animals too fast and causing a few to slip and fall, and establishment employees are not involved in the event, FSIS will initiate action against the non-employee and will not take an administrative enforcement action against the establishment.

If FSIS determines that a non-employee and an establishment employee both are engaged in a humane handling violation, FSIS will use its authority to initiate action against the non-employee and to take a regulatory control action or administrative enforcement action, as appropriate, against the establishment. For example, if OFO personnel observe a non-employee transporter and an establishment employee driving animals too fast, FSIS will initiate an action against the non-employee and take a separate regulatory or administrative enforcement action against the establishment.

OFO personnel will take a regulatory control action when it is necessary for FSIS to stop the inhumane treatment of livestock because the violation continues to injure, cause distress, or otherwise adversely affects livestock, or to immediately stop inhumane handling that is egregious, regardless of whether a non-employee or an establishment employee is responsible for the inhumane handling (9 CFR 500.2(a)(4), 9 CFR 313.50). After taking a regulatory control action, OFO personnel will meet with establishment management and assess the event to determine whether a non-employee, an establishment employee, or both committed the humane handling violation. For example, if OFO personnel observe the excessive beating of livestock during unloading, FSIS personnel may apply a tag to the unloading chute to prevent further inhumane handling. FSIS personnel would meet with establishment management and make a determination as to whether the persons responsible for the inhumane handling were non-employees or were employed by the establishment. If a non-employee is found to be solely responsible for the inhumane handling violation, OFO personnel would not take regulatory or administrative enforcement actions against the establishment. OFO personnel would remove the tag after the establishment proffers preventive measures that ensure compliance with the appropriate provisions of 9 CFR part 313.

If OFO personnel determine that a non-employee inhumanely handled livestock on the premises of an official slaughter establishment, FSIS expects that establishment management will provide, upon request, certain records that are required to be maintained under 9 CFR part 320. These records include, among others, the name and address of the seller of the livestock, the method of shipment, the date of shipment, and the name and address of the carrier (9 CFR 320.1(b)(1)). If establishment management does not provide the information upon request, FSIS may obtain a subpoena to gain access to the non-employee information required under 9 CFR 320.1.

Implementation and Request for Comments

FSIS requests comments on its decision to initiate enforcement actions against non-employees that inhumanely handle livestock in connection with slaughter while on the premises of an official establishment. FSIS will make changes to its implementation plans as necessary in response to the comments received. The Agency also will update its livestock handling instructions to OFO and OIEA personnel and its humane handling guidance materials to reflect the actions described in this document. FSIS will begin implementing the policy discussed in this action 90 days after its publication in the **Federal Register**, unless FSIS receives comments that demonstrate a need to revise this plan. The Agency will announce the availability of its updated humane handling guidance materials in a separate **Federal Register** notice. Additionally, FSIS will perform outreach to industry to educate slaughter establishments as well as animal transporters, haulers, and allied industries.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or

write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 400 Independence Avenue SW., Washington, DC 20250–9410, Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders.

The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Dated: October 6, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–24754 Filed 10–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. FAA–2016–9308; Special Conditions No. 27–040–SC]

Special Conditions: Airbus Helicopters Model EC120B Helicopters, Installation of HeliSAS Autopilot and Stabilization Augmentation System (AP/SAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the modification of the Airbus Helicopters Model EC120B helicopter. This model helicopter will have a novel or unusual design feature after installation of the S–TEC Corporation (S–TEC) HeliSAS helicopter autopilot/stabilization augmentation system (AP/SAS) that has potential failure conditions with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. These special conditions contain the added safety standards the Administrator considers necessary to ensure the failures and their effects are sufficiently analyzed and contained.

DATES: The effective date of these special conditions is October 26, 2016. We must receive your comments on or before December 12, 2016.

ADDRESSES: Send comments identified by docket number [FAA–2016–9308] using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–4859; facsimile (817) 222–5961; or email to *Gary.Roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined that notice and opportunity for public comment are unnecessary because the substance of these special conditions has been subjected to the notice and comment period previously and has been derived without substantive change from those previously issued. As it is unlikely that we will receive new comments, the FAA finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

While we did not precede this with a notice of proposed special conditions, we invite interested people to take part in this action by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your mailed comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On January 25, 2016, S–TEC applied for a supplemental type certificate No. SR11230SC to install a HeliSAS AP/SAS on the Airbus Helicopters Model EC120B helicopter. The Airbus Helicopters Model EC120B helicopter is a 14 CFR part 27 normal category rotorcraft, single turbine engine, conventional helicopter designed for civil operations. This helicopter model is capable of carrying up to four passengers with one pilot, and has a maximum gross weight of up to 3,700 pounds, depending on the model configuration. The major design features include a 3-blade, fully articulated main rotor, an anti-torque tail rotor system, a skid landing gear, and a visual flight rule basic avionics configuration.

S–TEC proposes to modify these model helicopters by installing a two-axis HeliSAS AP/SAS. The S–TEC HeliSAS SAS/AP is intended only for operations under Visual Flight Rules. The system is designed to reduce pilot workload by stabilizing the pitch and roll attitudes of the helicopter in all flight conditions.

Type Certification Basis

Under 14 CFR 21.115, S–TEC must show that the Airbus Helicopters Model EC120B helicopter, as modified by the installed HeliSAS AP/SAS, continues to meet the requirements specified in 14 CFR 21.101. The baseline of the certification basis for the unmodified Airbus Helicopters model EC120B helicopter is listed in Type Certificate No. R0001RD. Additionally, compliance must be shown to any applicable equivalent level of safety findings, exemptions, and special conditions prescribed by the Administrator as part of the certification basis.

The Administrator has determined the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Airbus Helicopters Model EC120B helicopter because of a novel or unusual design feature. Therefore, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, S–TEC must show compliance of the HeliSAS AP/SAS STC altered Airbus Helicopters Model EC120B helicopter with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.101(d).

Novel or Unusual Design Features

The HeliSAS AP/SAS incorporates novel or unusual design features for installation in an Airbus Helicopters Model EC120B helicopter. This HeliSAS AP/SAS performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopters, are more severe than those envisioned by the present rules. Therefore, a high level of integrity for failure protection is required.

Discussion

The effect on safety is not adequately covered under § 27.1309 for the application of new technology and new application of standard technology. Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions. The current regulations are inadequate because when § 27.1309(c) was promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in ''catastrophic'' or ''hazardous/severe-major'' effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

To comply with the provisions of the special conditions, we require that S–TEC provide the FAA with a systems safety assessment (SSA) for the final HeliSAS AP/SAS installation configuration that will adequately address the safety objectives established by a functional hazard assessment (FHA) and a preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This will ensure that all failure conditions and their resulting effects are adequately addressed for the installed HeliSAS AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment process discussed in FAA Advisory Circular 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers document Aerospace Recommended Practice 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment).

These special conditions require that the HeliSAS AP/SAS installed on an Airbus Helicopters Model EC120B helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Failure Condition Categories. Failure conditions are classified, according to the severity of their effects on the rotorcraft, into one of the following categories:

1. *No Effect*—Failure conditions that would have no effect on safety. For example, failure conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions would include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload such as routine flight plan changes or result in some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or result in impairing crew efficiency, physical distress to occupants, including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major.*

a. Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

(1) A large reduction in safety margins or functional capabilities;

(2) physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or

(3) possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

b. ''Hazardous/severe-major'' failure conditions can include events that are manageable by the crew by the use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a catastrophic event.

5. *Catastrophic*—Failure conditions which would result in multiple fatalities

to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

Radio Technical Commission for Aeronautics, Inc. (RTCA) Document DO–178C (Software Considerations in Airborne Systems And Equipment Certification) provides software design assurance levels most commonly used for the major, hazardous/severe-major, and catastrophic failure condition categories. The HeliSAS AP/SAS system equipment must be qualified for the expected installation environment. The test procedures prescribed in RTCA Document DO–160G (Environmental Conditions and Test Procedures for Airborne Equipment) are recognized by the FAA as acceptable methodologies for finding compliance with the environmental requirements. Equivalent environment test standards may also be acceptable. This is to show that the HeliSAS AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the HeliSAS AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the HeliSAS AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the HeliSAS AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

Applicability

These special conditions are applicable to the HeliSAS AP/SAS installed as an STC approval in Airbus Helicopters Model EC120B helicopters, Type Certificate No. R0001RD.

Conclusion

This action affects only certain novel or unusual design features for a HeliSAS AP/SAS STC installed on the specified model helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety.

■ The authority citation for these special conditions is as follows:

Authority: 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the S–TEC Corporation (S–TEC) supplemental type certificate basis for the installation of a HeliSAS helicopter autopilot/stabilization augmentation system (AP/SAS) on the Airbus Helicopters Model EC120B helicopter.

In addition to the requirement of § 27.1309(c), HeliSAS AP/SAS installations on Airbus Helicopters Model EC120B helicopters must be designed and installed so that the failure conditions identified in the functional hazard assessment (FHA) and verified by the system safety assessment (SSA), after design completion, are adequately addressed in accordance with the following requirements.

Requirements

S–TEC must comply with the existing requirements of § 27.1309 for all applicable design and operational aspects of the HeliSAS AP/SAS with the failure condition categories of ''no effect,'' and ''minor,'' and for non-complex systems whose failure condition category is classified as ''major.'' S–TEC must comply with the requirements of these special conditions for all applicable design and operational aspects of the HeliSAS AP/SAS with the failure condition categories of ''catastrophic'' and ''hazardous severe/major,'' and for complex systems whose failure condition category is classified as ''major.'' A complex system is a system whose operations, failure conditions, or failure effects are difficult to comprehend without the aid of analytical methods (for example, FTA, Failure Modes and Effect Analysis, FHA).

System Design Integrity Requirements

Each of the failure condition categories defined in these special conditions relate to the corresponding aircraft system integrity requirements. The system design integrity requirements, for the HeliSAS AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category and the proposed software design assurance level, are as follows:

1. ''Major''—For systems with ''major'' failure conditions, failures resulting in these major effects must be shown to be remote, a probability of occurrence on the order of between 1×10^{-5} to 1×10^{-7} failures/hour, and associated software must be developed, at a minimum, to the Level C software design assurance level.

2. ''Hazardous/Severe-Major''—For systems with ''hazardous/severe-major'' failure conditions, failures resulting in these hazardous/severe-major effects must be shown to be extremely remote, a probability of occurrence on the order of between 1×10^{-7} to $1 \times 10^{-}$ failures/hour, and associated software must be developed, at a minimum, to the Level B software design assurance level.

3. ''Catastrophic''—For systems with ''catastrophic'' failure conditions, failures resulting in these catastrophic effects must be shown to be extremely improbable, a probability of occurrence on the order of 1×10^{-9} failures/hour or less, and associated software must be developed, at a minimum, to the Level A design assurance level.

System Design Environmental Requirements

The HeliSAS AP/SAS system equipment must be qualified to the appropriate environmental level for all relevant aspects to show that it performs its intended function under any foreseeable operating condition, including the expected environment in which the HeliSAS AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the HeliSAS AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the HeliSAS AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

Test and Analysis Requirements

Compliance with the requirements of these special conditions may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is related to the associated failure condition category. If the HeliSAS AP/SAS is a complex system, compliance with the requirements for failure conditions classified as ''major'' may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements for failure conditions classified as ''hazardous/severe-major'' may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for ''hazardous/severe-major'' failure conditions and effects due to safety considerations. Compliance with the requirements for failure conditions classified as ''catastrophic'' may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited

flight tests in combination with simulation are used as a part of a showing of compliance for ''catastrophic'' failure conditions. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

These special conditions require that the HeliSAS AP/SAS system installed on an Airbus Helicopters Model EC120B helicopter meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design system integrity requirements.

Issued in Fort Worth, Texas, on October 17, 2016.

Scott A. Horn,

Assistant Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–25786 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3821; Directorate Identifier 2014–SW–025–AD; Amendment 39–18696; AD 2016–22–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 75–26–05 for Bell Helicopter Textron (Bell) Model 204B, 205A–1 and 212 helicopters. AD 75–26–05 required removing and visually inspecting each main rotor (M/R) blade and, depending on the inspection's outcome, repairing or replacing the M/R blades. This new AD requires more frequent inspections of certain M/R blades and applies to Model 205A helicopters. This AD does not require that helicopter blades be removed to conduct the initial visual inspections. We are issuing this AD to detect a crack and prevent failure of an M/R blade and subsequent loss of helicopter control.

DATES: This AD is effective November 30, 2016.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–3821; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5140; email *charles.c.harrison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975) and add a new AD. AD 75–26–05 applied to Bell Model 204B, 205A–1, and 212 helicopters. AD 75–26–05 required removing and visually inspecting each M/R blade and, depending on the inspection's outcome, repairing or replacing the M/R blade.

The NPRM published in the **Federal Register** on May 5, 2016 (81 FR 27055). The NPRM was prompted by a report of an M/R blade with multiple fatigue cracks around the retention bolt hole. The NPRM proposed to require more frequent inspections of certain M/R blades and proposed to remove the requirement that helicopter blades be removed to conduct the initial visual inspections. The NPRM also proposed to include the Model 205A in the applicability but remove the Model 212 because similar inspections are required by AD 2011–23–02 (76 FR 68301, November 4, 2011). Finally, the NPRM included specific part-numbered blades in the applicability so that the proposed AD would no longer be required if a new blade is designed that is not subject to the unsafe condition.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (81 FR 27055, May 5, 2016).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Bell issued Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, for the Model UH–1H helicopter (ASB UH–1H–13–09). ASB UH–1H–13–09 specifies a one-time visual inspection, within 10 hours time-in-service (TIS), of the lower grip pad and upper and lower grip plates for cracks, edge voids, and loose or damaged adhesive squeeze-out. ASB UH–1H–13–09 also specifies a repetitive visual inspection, daily and at every 150 hours TIS of the lower grip pad, upper and lower grip plates, and all upper and the lower doublers for cracks, corrosion, edge voids, and loose or damaged adhesive squeeze-out. Similar inspections are contained in Bell ASB No. 204–75–1 (ASB 204–75–1) and No. 205–75–5 (ASB 205–75–5), both Revision C and both dated April 25, 1979, for Bell Model 204B and 205A–1 helicopters, respectively. ASB 204–75–1 and ASB 205–75–5 call for daily inspections and for inspections, rework, and refinishing every 1,000 hours TIS or 12 months, whichever occurs first.

Differences Between This AD and the Service Information

This AD requires all inspections every 25 hours TIS or 2 weeks, whichever occurs first. ASB UH–1H–13–09 specifies a one-time inspection within 10 hours TIS, and then a second repetitive inspection daily and at every 150 hours TIS, while ASB 204–75–1 and ASB 205–75–5 call for daily visual inspections, and inspections, rework, and refinishing every 1,000 hours TIS or 12 months, whichever occurs first. This AD contains more detailed inspection requirements and a more specific inspection area than the instructions in ASB UH–1H–13–09. The service information applies to M/R blade, part number (P/N) 204–011–250, and was issued for Model 204B and 205A–1 helicopters. This AD also applies to P/N 204–011–200 because this blade is of the same type and susceptible to the unsafe condition. This AD also applies

to certain M/R blades installed on the Model 205A helicopters. While none of these models are registered in the U.S., they were included because of blade P/N eligibility.

Costs of Compliance

We estimate that this AD affects 52 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

Cleaning and performing all inspections of a set of M/R blades (2 per helicopter) requires a half work-hour. No parts are needed. At an estimated 24 inspections a year, the cost is $1,032 per helicopter and $53,664 for the U.S. fleet.

Replacing an M/R blade requires 12 work hours and parts cost $90,656 for a total cost of $91,676 per blade.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that a regulatory distinction is required and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975), and adding the following new AD:

2016–22–07 Bell Helicopter Textron: Amendment 39–18696; Docket No. FAA–2015–3821; Directorate Identifier 2014–SW–025–AD.

(a) Applicability

This AD applies to Model 204B, 205A, and 205A–1 helicopters with a main rotor (M/R) blade, part number (P/N) 204–011–200–001 or P/N 204–011–250–(all dash numbers), installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in an M/R blade, which could result in failure of an M/R blade and subsequent loss of helicopter control.

(c) Affected ADs

This AD supersedes AD 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975).

(d) Effective Date

This AD becomes effective November 30, 2016.

(e) Compliance

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

(f) Required Actions

(1) Within 25 hours time-in-service (TIS) or 2 weeks, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 2 weeks, whichever occurs first, clean the upper and lower exposed surfaces of each M/R blade from an area starting at the butt end of the blade to three inches outboard of the doublers. Using a 3X or higher power magnifying glass and a light, inspect as follows:

(i) Visually inspect the exposed areas of the lower grip pad and upper and lower grip plates of each M/R blade for a crack and any corrosion.

(ii) On the upper and lower exposed surfaces of each M/R blade from blade stations 24.5 to 35 for the chord width, visually inspect each layered doubler and blade skin for a crack and any corrosion. Pay particular attention for any cracking in a doubler or skin near or at the same blade station as the blade retention bolt hole (blade station 28).

(iii) Visually inspect the exposed areas of each bond line at the edges of the lower grip pad, upper and lower grip plates, and each layered doubler (bond lines) on the upper and lower surfaces of each M/R blade for the entire length and chord width for an edge void, any corrosion, loose or damaged adhesive squeeze-out, and an edge delamination. Pay particular attention to any crack in the paint finish that follows the outline of a grip pad, grip plate, or doubler, and to any loose or damaged adhesive squeeze-out, as these may be the indication of an edge void.

(2) If there is a crack, any corrosion, an edge void, loose or damaged adhesive squeeze-out, or an edge delamination during any inspection in paragraph (f)(1) of this AD, before further flight, do the following:

(i) If there is a crack in a grip pad or any grip plate or doubler, replace the M/R blade with an airworthy M/R blade.

(ii) If there is a crack in the M/R blade skin that is within maximum repair damage limits, repair the M/R blade. If the crack exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iii) If there is any corrosion within maximum repair damage limits, repair the M/R blade. If the corrosion exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iv) If there is an edge void in the grip pad or in a grip plate or doubler, determine the length and depth using a feeler gauge. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(v) If there is an edge void in a grip plate or doubler near the outboard tip, tap inspect the affected area to determine the size and shape of the void. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(vi) If there is any loose or damaged adhesive squeeze-out along any of the bond lines, trim or scrape away the adhesive without damaging the adjacent surfaces or parent material of the M/R blade. Determine if there is an edge void or any corrosion by lightly sanding the trimmed area smooth using 280 or finer grit paper. If there is no edge void or corrosion, refinish the sanded area.

(vii) If there is an edge delamination along any of the bond lines or a crack in the paint finish, determine if there is an edge void or a crack in the grip pad, grip plate, doubler, or skin by removing paint from the affected area by lightly sanding in a span-wise direction using 180–220 grit paper. If there are no edge voids and no cracks, refinish the sanded area.

(viii) If any parent material is removed during any sanding or trimming in paragraphs (f)(2)(vi) or (f)(2)(vii) of this AD, repair the M/R blade if the damage is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5140; email *7-AVS-ASW-170@faa.gov*.

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

(i) Additional Information

Bell Helicopter Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, and ASB No. 204–75–1 and ASB No. 205–75–5, both Revision C and both dated April 25, 1979, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

Issued in Fort Worth, Texas, on October 18, 2016.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–25742 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8464; Directorate Identifier 2015–NM–050–AD; Amendment 39–18692; AD 2016–22–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by a revision by the manufacturer to the Certification Maintenance Requirements (CMR) of the Airworthiness Limitation Items (ALI), in the Maintenance Requirement Manual (MRM), that introduces a new CMR task that requires repetitive operational checks of the propeller overspeed governor. This AD requires revising the airplane maintenance or inspection program, as applicable, to incorporate a new CMR task. We are issuing this AD to prevent dormant failure of the propeller overspeed governor, which may lead to a loss of propeller overspeed protection and result in high propeller drag in flight.

DATES: This AD is effective November 30, 2016.

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–2015–8464; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Morton Lee, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7355; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on January 19, 2016 (81 FR 2785) (''the NPRM''). The NPRM was prompted by a revision by the manufacturer to the CMR of the ALI, in the MRM, that introduces a new CMR task that requires repetitive operational checks of the propeller overspeed governor. The NPRM proposed to require revising the airplane maintenance or inspection program, as applicable, to incorporate a new CMR task. We are issuing this AD to prevent dormant failure of the propeller overspeed governor, which may lead to a loss of propeller overspeed protection and result in high propeller drag in flight.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2014–43, dated December 18, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> Bombardier Inc. has revised the Maintenance Requirement Manual PSM–1–84–7, Airworthiness Limitation Items (ALI), Part 2, Section 1, Certification Maintenance Requirements (CMR). This revision introduces a new CMR task, task number 612000–109, for the Operational Check of the Propeller Overspeed Governor to be performed every 200 flight hours.
>
> This new task was introduced to minimize the probability of dormant failure of the propeller overspeed governor, which may lead to a loss of propeller overspeed protection and result in high propeller drag in-flight.
>
> This [Canadian] AD is issued to mandate the incorporation of a new CMR task for the Propeller Overspeed Governor.

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–2015–8464.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response.

Request To Specify Temporary Revision (TR) as Method of Compliance

Horizon Air requested that we revise paragraph (g) of the proposed AD, which would require revising the maintenance or inspection program, as applicable, to incorporate an operational check of the propeller overspeed governor using a method approved by the Manager, New York ACO, ANE–170, FAA. Horizon Air requested that we instead allow an operational check of the propeller overspeed governor using Bombardier ''Temporary Revision (TR) ALI–129 of the DHC–8 Series 400 Maintenance Requirements Manual, PSM–1–84–7.'' Horizon stated that the revised AD would then be similar to previous ADs that have mandated incorporation of maintenance program tasks. Horizon Air also requested that we add a note that allows the incorporation of the TR by the general revisions of the maintenance requirements manual (MRM).

We do not agree with the commenter's request. Because of certain formatting anomalies in the document, we cannot incorporate it by reference in this AD, so this AD requires revising the maintenance or inspection program to incorporate an operational check, using a method approved by the Manager, New York ACO, ANE–170, FAA. We referred to CMR task number 612000–109 of the MRM in note 1 to paragraph (g) of this AD to inform operators that the TR to the MRM is an additional source of guidance for the operational check of the propeller overspeed governor. We have not changed this AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 82 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,970, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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):

2016–22–03 Bombardier, Inc.: Amendment 39–18692; Docket No. FAA–2015–8464; Directorate Identifier 2015–NM–050–AD.

(a) Effective Date

This AD is effective November 30, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 61, Propellers/propulsors.

(e) Reason

This AD was prompted by a revision by the manufacturer to the Certification Maintenance Requirements (CMR) of the Airworthiness Limitation Items (ALI), in the Maintenance Requirement Manual (MRM), that introduces a new CMR task that requires repetitive operational checks of the propeller overspeed governor. We are issuing this AD to prevent dormant failure of the propeller overspeed governor, which may lead to a loss of propeller overspeed protection and result in high propeller drag in flight.

(f) Compliance

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

(g) Maintenance Program or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance program or inspection program, as applicable, to incorporate an operational check of the propeller overspeed governor, CMR task number 612000–109, to be performed every 200 flight hours, using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA.

Note 1 to paragraph (g) of this AD: CMR task number 612000–109, Operational Check of the Propeller Overspeed Governor, in Bombardier Q400 Dash 8 Temporary Revision (TR) ALI–129, dated September 3, 2013, is an additional source of guidance for the operational check of the propeller overspeed governor specified in paragraph (g) of this AD.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2014–43, dated December 18, 2014, 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–2015–8464.

(2) Service information identified in this AD that is not incorporated by reference is available at Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on October 13, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25747 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31098; Amdt. No. 3715]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an

effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 23, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 November 2016

Barter Island, AK, Barter Island, Takeoff Minimums and Obstacle DP, Orig
Barter Island, AK, Barter Island, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Bettles, AK, Bettles, VOR RWY 1, Amdt 1B
Kodiak, AK, Kodiak, ILS Y OR LOC Y RWY 26, Amdt 3A
Platinum, AK, Platinum, Takeoff Minimums and Obstacle DP, Amdt 1A
Scammon Bay, AK, Scammon Bay, Takeoff Minimums and Obstacle DP, Amdt 2
El Dorado, AR, South Arkansas Rgnl At Goodwin Field, ILS OR LOC RWY 22, Amdt 2D
El Dorado, AR, South Arkansas Rgnl At Goodwin Field, RNAV (GPS) RWY 4, Orig-B
El Dorado, AR, South Arkansas Rgnl At Goodwin Field, RNAV (GPS) RWY 22, Orig-B
El Dorado, AR, South Arkansas Rgnl At Goodwin Field, VOR/DME RWY 4, Amdt 10B
Jackson, CA, Westover Field Amador County, Takeoff Minimums and Obstacle DP, Amdt 1
Long Beach, CA, Long Beach/Daugherty Field/, ILS OR LOC RWY 30, Amdt 33
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (GPS) Z RWY 30, Amdt 3
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (RNP) RWY 12, Amdt 2
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (RNP) RWY 25R, Amdt 1
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (RNP) Y RWY 30, Amdt 2
Palm Springs, CA, Palm Springs Intl, RNAV (RNP) Y RWY 13R, Amdt 1B, CANCELED
Palm Springs, CA, Palm Springs Intl, RNAV (RNP) Z RWY 13R, Amdt 1
San Andreas, CA, Calaveras Co-Maury Rasmussen Field, Takeoff Minimums and Obstacle DP, Amdt 1
San Diego, CA, San Diego Intl, Takeoff Minimums and Obstacle DP, Amdt 9
Santa Ana, CA, John Wayne Airport-Orange County, LOC BC RWY 2L, Amdt 13
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (GPS) Y RWY 2L, Amdt 2
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (RNP) Z RWY 2L, Orig
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (RNP) Z RWY 20R, Amdt 2
Santa Barbara, CA, Santa Barbara Muni, Takeoff Minimums and Obstacle DP, Amdt 8
Georgetown, DE, Delaware Coastal, Takeoff Minimums and Obstacle DP, Amdt 4B
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 21, Orig-B
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 26, Orig-D
Hilo, HI, Hilo Intl, VOR–B, Orig-C
Hilo, HI, Hilo Intl, VOR/DME OR TACAN RWY 26, Amdt 5D
Hilo, HI, Hilo Intl, VOR/DME OR TACAN–A, Amdt 7C
Forest City, IA, Forest City Muni, NDB RWY 33, Amdt 2B
Forest City, IA, Forest City Muni, RNAV (GPS) RWY 33, Orig-A
Forest City, IA, Forest City Muni, VOR/DME–A, Amdt 3A
Hampton, IA, Hampton Muni, VOR/DME RWY 35, Amdt 1E
Keokuk, IA, Keokuk Muni, NDB RWY 14, Amdt 12B
Keokuk, IA, Keokuk Muni, NDB RWY 26, Amdt 1B
Mount Pleasant, IA, Mount Pleasant Muni, NDB RWY 33, Amdt 6B
Driggs, ID, Driggs-Reed Memorial, LAMON TWO GRAPHIC DP
Grangeville, ID, Idaho County, MELLR ONE GRAPHIC DP
Grangeville, ID, Idaho County, MELLR TWO GRAPHIC DP, CANCELED
Grangeville, ID, Idaho County, RNAV (GPS) RWY 7, Amdt 1A, CANCELED
Grangeville, ID, Idaho County, RNAV (GPS) RWY 8, Orig
Grangeville, ID, Idaho County, RNAV (GPS) RWY 25, Amdt 1A, CANCELED
Grangeville, ID, Idaho County, RNAV (GPS) RWY 26, Orig
Grangeville, ID, Idaho County, Takeoff Minimums and Obstacle DP, Orig
Grangeville, ID, Idaho County, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELED
Canton, IL, Ingersoll, RNAV (GPS) RWY 36, Amdt 1B
Macomb, IL, Macomb Muni, LOC RWY 27, Amdt 3B
Macomb, IL, Macomb Muni, RNAV (GPS) RWY 9, Amdt 1B
Greensburg, IN, Greensburg Municipal, VOR–A, Amdt 2D
Indianapolis, IN, Greenwood Muni, VOR–A, Amdt 5A
Winchester, IN, Randolph County, RNAV (GPS) RWY 8, Amdt 1A
St Francis, KS, Cheyenne County Muni, NDB–A, Orig
St Francis, KS, Cheyenne County Muni, NDB OR GPS RWY 32, Amdt 1A, CANCELED
St Francis, KS, Cheyenne County Muni, RNAV (GPS) RWY 32, Orig
St Francis, KS, Cheyenne County Muni, Takeoff Minimums and Obstacle DP, Orig
Albert Lea, MN, Albert Lea Muni, VOR/DME RWY 35, Amdt 1B
Austin, MN, Austin Muni, RNAV (GPS) RWY 17, Amdt 1B
Austin, MN, Austin Muni, RNAV (GPS) RWY 35, Amdt 1B
Monroe, NC, Charlotte-Monroe Executive, ILS OR LOC RWY 5, Amdt 2
Monroe, NC, Charlotte-Monroe Executive, RNAV (GPS) RWY 5, Amdt 2
Monroe, NC, Charlotte-Monroe Executive, RNAV (GPS) RWY 23, Amdt 1
Eugene, OR, Mahlon Sweet Field, ILS OR LOC RWY 16L, Amdt 1A
Eugene, OR, Mahlon Sweet Field, ILS OR LOC RWY 16R, ILS RWY 16R (SA CAT I), ILS RWY 16R (CAT II), ILS RWY 16R (CAT III), Amdt 37
Eugene, OR, Mahlon Sweet Field, VOR–A, Amdt 7A
Eugene, OR, Mahlon Sweet Field, VOR OR TACAN RWY 16R, Amdt 5B
Eugene, OR, Mahlon Sweet Field, VOR OR TACAN RWY 34L, Amdt 5A

Greenwood, SC, Greenwood County, NDB RWY 27, Amdt 2
Greenwood, SC, Greenwood County, RNAV (GPS) RWY 9, Orig
Greenwood, SC, Greenwood County, RNAV (GPS) RWY 27, Orig
Greenwood, SC, Greenwood County, Takeoff Minimums and Obstacle DP, Amdt 1
Greenwood, SC, Greenwood County, VOR RWY 9, Amdt 14
College Station, TX, Easterwood Field, VOR/DME RWY 28, Amdt 13A
Houston, TX, David Wayne Hooks Memorial, LOC RWY 17R, Amdt 3C
Midland, TX, Midland Intl Air & Space Port, RADAR–1, Amdt 7
Ellensburg, WA, Bowers Field, Takeoff Minimums and Obstacle DP, Amdt 2B
Wenatchee, WA, Pangborn Memorial, ILS X RWY 12, Orig-A, CANCELED
Wenatchee, WA, Pangborn Memorial, ILS Y RWY 12, Amdt 1
Wenatchee, WA, Pangborn Memorial, ILS Z RWY 12, Orig
Wenatchee, WA, Pangborn Memorial, RNAV (RNP) RWY 12, Amdt 1
Wenatchee, WA, Pangborn Memorial, RNAV (RNP) Z RWY 30, Amdt 1
Wenatchee, WA, Pangborn Memorial, VOR–A, Amdt 9
Wenatchee, WA, Pangborn Memorial, VOR–B, Orig
Wenatchee, WA, Pangborn Memorial, VOR/DME–C, Amdt 4A, CANCELED

[FR Doc. 2016–25784 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31101; Amdt. No. 3718]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to

the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 7, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
10–Nov–16 ..	WI	Necedah	Necedah	6/1373	9/22/16	RNAV (GPS) RWY 36, Orig-B.

[FR Doc. 2016–25783 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31100; Amdt. No. 3717]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the

regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 7, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 November 2016

Barter Island, AK, Barter Island, RNAV (GPS) RWY 7, Orig
Barter Island, AK, Barter Island, RNAV (GPS) RWY 7, Orig-C, CANCELED
Barter Island, AK, Barter Island, RNAV (GPS) RWY 25, Orig
Barter Island, AK, Barter Island, RNAV (GPS) RWY 25, Orig-C, CANCELED
Bethel, AK, Bethel, VOR/DME RWY 19R, Amdt 2C, CANCELED
Ketchikan, AK, Ketchikan Intl, ILS Y OR LOC Y RWY 11, Amdt 8
Ketchikan, AK, Ketchikan Intl, ILS Z OR LOC Z RWY 11, Amdt 1
Ketchikan, AK, Ketchikan Intl, LOC X RWY 11, Amdt 1
St George, AK, St George, Takeoff Minimums and Obstacle DP, Amdt 2
Auburn, AL, Auburn University Rgnl, ILS OR LOC RWY 36, Amdt 2C
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 11, Amdt 2
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 18, Amdt 2
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 29, Amdt 1C
Auburn, AL, Auburn University Rgnl, RNAV (GPS) RWY 36, Amdt 2C
Auburn, AL, Auburn University Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
Auburn, AL, Auburn University Rgnl, VOR–A, Amdt 8B
Dothan, AL, Dothan Rgnl, RNAV (GPS) RWY 36, Amdt 2
Hot Springs, AR, Memorial Field, VOR Y RWY 5, Amdt 16B, CANCELED
Little Rock, AR, Bill and Hillary Clinton National/Adams Field, ILS OR LOC RWY 22R, ILS RWY 22R (SA CAT 1), ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 3
Springdale, AR, Springdale Muni, VOR RWY 18, Amdt 15D, CANCELED
St. Johns, AZ, St. Johns Industrial Airpark, Takeoff Minimums and Obstacle DP, Amdt 1B
Arcata/Eureka, CA, Arcata, VOR/DME RWY 1, Amdt 8A, CANCELED
Bishop, CA, Bishop, VOR/DME OR GPS–B, Amdt 4B, CANCELED
Brawley, CA, Brawley Muni, VOR/DME–A, Amdt 1B, CANCELED
Burbank, CA, Bob Hope, ILS Y OR LOC Y RWY 8, Amdt 6
Burbank, CA, Bob Hope, ILS Z OR LOC Z RWY 8, Amdt 39
Burbank, CA, Bob Hope, RNAV (GPS) Z RWY 8, Amdt 2
Burbank, CA, Bob Hope, RNAV (RNP) Y RWY 8, Amdt 2
Carlsbad, CA, Mc Clellan-Palomar, ILS OR LOC RWY 24, Amdt 9D
Carlsbad, CA, Mc Clellan-Palomar, RNAV (GPS) X RWY 24, Orig-C
Carlsbad, CA, Mc Clellan-Palomar, RNAV (GPS) Y RWY 6, Orig
Carlsbad, CA, Mc Clellan-Palomar, RNAV (GPS) Y RWY 24, Amdt 3C
Carlsbad, CA, Mc Clellan-Palomar, RNAV (RNP) Z RWY 6, Orig
Lodi, CA, Lodi, RNAV (GPS)-B, Orig-A
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6L, Amdt 13
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6R, Amdt 18
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7L, Amdt 8
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7R, Amdt 7
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 6L, Amdt 2
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 6R, Amdt 2
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 7L, Amdt 3
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 7R, Amdt 3
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 6L, Amdt 1
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 6R, Amdt 1

Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 7L, Amdt 1
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 7R, Amdt 1
Los Banos, CA, Los Banos Muni, VOR/DME RWY 14, Amdt 5, CANCELED
Modesto, CA, Modesto City-Co-Harry Sham Fld, ILS OR LOC/DME RWY 28R, Amdt 14B
Sacramento, CA, Mc Clellan Airfield, ILS OR LOC RWY 16, Orig-E
Sacramento, CA, Mc Clellan Airfield, VOR/DME RWY 34, Orig-C
San Diego, CA, San Diego Intl, LOC RWY 27, Amdt 6
San Diego, CA, San Diego Intl, RNAV (GPS) Y RWY 27, Amdt 4
San Diego, CA, San Diego Intl, RNAV (RNP) Z RWY 27, Orig
Santa Monica, CA, Santa Monica Muni, VOR–A, Amdt 11
Van Nuys, CA, Van Nuys, VOR–B, Amdt 4
Denver, CO, Centennial, RNAV (GPS) RWY 35R, Orig
Denver, CO, Centennial, RNAV (GPS) Y RWY 35R, Amdt 2, CANCELED
Denver, CO, Centennial, RNAV (GPS) Z RWY 35R, Amdt 1, CANCELED
New Haven, CT, Tweed-New Haven, ILS OR LOC RWY 2, Amdt 17
New Haven, CT, Tweed-New Haven, RNAV (GPS) RWY 2, Amdt 1
New Haven, CT, Tweed-New Haven, RNAV (GPS) RWY 20, Orig
West Palm Beach, FL, North Palm Beach County General Aviation, RNAV (GPS) RWY 8R, Amdt 1
West Palm Beach, FL, North Palm Beach County General Aviation, RNAV (GPS) RWY 26L, Amdt 1
Atlanta, GA, Fulton County Airport—Brown Field, NDB RWY 8, Amdt 4A, CANCELED
Lawrenceville, GA, Gwinnett County—Briscoe Field, NDB RWY 25, Amdt 1B, CANCELED
Winder, GA, Northeast Georgia Rgnl, VOR/DME–A, Amdt 9E, CANCELED
Burlington, IA, Southeast Iowa Rgnl, ILS OR LOC RWY 36, Amdt 10B
Cedar Rapids, IA, The Eastern Iowa, VOR RWY 27, Amdt 13, CANCELED
Cedar Rapids, IA, The Eastern Iowa, VOR/DME RWY 9, Amdt 17A, CANCELED
Clarion, IA, Clarion Muni, NDB RWY 14, Amdt 4A
Fort Madison, IA, Fort Madison Muni, RNAV (GPS) RWY 17, Orig-A
Fort Madison, IA, Fort Madison Muni, RNAV (GPS) RWY 35, Orig-B
Fort Madison, IA, Fort Madison Muni, VOR/DME–A, Amdt 7A
Mason City, IA, Mason City Muni, ILS OR LOC RWY 36, Amdt 6F
Mason City, IA, Mason City Muni, LOC/DME BC RWY 18, Amdt 7B
Mason City, IA, Mason City Muni, VOR RWY 36, Amdt 6F
Mason City, IA, Mason City Muni, VOR/DME RWY 18, Amdt 5B, CANCELED
Muscatine, IA, Muscatine Muni, ILS OR LOC RWY 24, Amdt 1B
Spencer, IA, Spencer Muni, VOR/DME RWY 12, Amdt 3A, CANCELED
Waterloo, IA, Waterloo Rgnl, ILS OR LOC RWY 12, Amdt 9B
Boise, ID, Boise Air Terminal/Gowen Fld, VOR/DME RWY 10R, Amdt 1A, CANCELED
Burley, ID, Burley Muni, VOR/DME–B, Amdt 4D, CANCELED
Driggs, ID, Driggs-Reed Memorial, RNAV (GPS) RWY 4, Amdt 2
Driggs, ID, Driggs-Reed Memorial, RNAV (GPS)-A, Amdt 1
Pocatello, ID, Pocatello Rgnl, VOR/DME RWY 21, Amdt 10C, CANCELED
Chicago, IL, Chicago O'Hare Intl, ILS PRM RWY 28C, ILS PRM RWY 28C (SA CAT I), ILS PRM RWY 28C (CAT II), ILS PRM RWY 28C (CAT III) (CLOSE PARALLEL), Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) PRM RWY 28C (CLOSE PARALLEL), Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) PRM Y RWY 28L (CLOSE PARALLEL), Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) Y RWY 28L, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) Z RWY 28L, Orig-A
Chicago/Aurora, IL, Aurora Muni, VOR RWY 15, Orig-B, CANCELED
Chicago/Aurora, IL, Aurora Muni, VOR RWY 33, Orig, CANCELED
Mount Vernon, IL, Mount Vernon, VOR RWY 23, Amdt 16A, CANCELED
Bloomington, IN, Monroe County, ILS OR LOC/DME RWY 35, Amdt 6B
Crawfordsville, IN, Crawfordsville Muni, NDB RWY 4, Amdt 6
Crawfordsville, IN, Crawfordsville Muni, RNAV (GPS) RWY 4, Amdt 1
Crawfordsville, IN, Crawfordsville Muni, RNAV (GPS) RWY 22, Amdt 1
Crawfordsville, IN, Crawfordsville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Evansville, IN, Evansville Rgnl, NDB RWY 22, Amdt 14A, CANCELED
Indianapolis, IN, Indianapolis Executive, VOR/DME RWY 36, Amdt 9B, CANCELED
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5L, ILS RWY 5L (SA CAT I), ILS RWY 5L (CAT II), ILS RWY 5L (CAT III), Amdt 5
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5R, ILS RWY 5R (CAT II), ILS RWY 5R (CAT III), Amdt 7
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 14, Amdt 7
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23L, Amdt 7
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23R, Amdt 5
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 32, Amdt 21
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5L, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5R, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 14, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23L, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23R, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 32, Amdt 4
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5L, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 14, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23L, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 32, Amdt 2
Indianapolis, IN, Indianapolis Metropolitan, VOR RWY 33, Amdt 10B
Indianapolis, IN, Indianapolis Rgnl, VOR RWY 34, Amdt 2C
Kokomo, IN, Kokomo Muni, VOR RWY 23, Amdt 20, CANCELED
Marion, IN, Marion Muni, VOR RWY 4, Amdt 13C, CANCELED
Marion, IN, Marion Muni, VOR RWY 22, Amdt 16A, CANCELED
Shelbyville, IN, Shelbyville Muni, RNAV (GPS) RWY 1, Amdt 1B
Shelbyville, IN, Shelbyville Muni, RNAV (GPS) RWY 19, Amdt 1B
Shelbyville, IN, Shelbyville Muni, VOR RWY 19, Amdt 1B
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB RWY 31, Amdt 3, CANCELED
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 9A, CANCELED
Ruston, LA, Ruston Regional Airport, NDB RWY 36, Orig-A, CANCELED
Elkton, MD, Claremont, RNAV (GPS) RWY 13, Orig-C, CANCELED
Elkton, MD, Claremont, RNAV (GPS) RWY 31, Orig-D, CANCELED
Elkton, MD, Claremont, RNAV (GPS)-B, Orig
Stevensville, MD, Bay Bridge, Takeoff Minimums and Obstacle DP, Amdt 1
Augusta, ME, Augusta State, VOR/DME RWY 8, Amdt 12, CANCELED
Augusta, ME, Augusta State, VOR/DME RWY 17, Amdt 5, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 3R, ILS RWY 3R (SA CAT I), ILS RWY 3R (CAT II), ILS RWY 3R (CAT III), Amdt 17
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 4R, ILS RWY 4R (SA CAT I), ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 18
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 21L, ILS RWY 21L (SA CAT I), ILS RWY 21L (SA CAT II), Amdt 12
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), Amdt 31
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT I), ILS RWY 27L (SA CAT II), Amdt 5
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 27R, Amdt 13
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 3R, ILS PRM RWY 3R (SA CAT I), ILS PRM RWY 3R (CAT II), ILS PRM RWY 3R (CAT III), (SIMULTANEOUS CLOSE PARALLEL), Amdt 1, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 4R, ILS PRM RWY 4R (SA CAT I), ILS PRM RWY 4R (CAT II), ILS PRM RWY 4R (CAT III) (CLOSE PARALLEL), Amdt 2

Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 21L (SIMULTANEOUS CLOSE PARALLEL), Orig-D, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 22L (CLOSE PARALLEL), Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 4L (CLOSE PARALLEL), Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 22R (CLOSE PARALLEL), Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 4L, Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 22R, Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 4L, ILS Z RWY 4L (CAT II), ILS Z RWY 4L (CAT III), Amdt 4
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 22R, ILS Z RWY 22R (SA CAT I), ILS Z RWY 22R (SA CAT II), Amdt 4
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 3R, Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 4L, Amdt 2A, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 4R, Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 21L, Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 22L, Amdt 2
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 22R, Amdt 2, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 27L, Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 27R, Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) PRM RWY 4R (CLOSE PARALLEL), Orig
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) PRM RWY 22L (CLOSE PARALLEL), Orig
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) PRM Y RWY 4L (CLOSE PARALLEL), Orig
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) PRM Y RWY 22R (CLOSE PARALLEL), Orig
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) Y RWY 4L, Orig
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) Y RWY 22R, Orig
Jackson, MI, Jackson County-Reynolds Field, VOR/DME RWY 24, Orig, CANCELED
Hawley, MN, Hawley Muni, RNAV (GPS) RWY 34, Orig-A
Hawley, MN, Hawley Muni, VOR/DME–A, Amdt 2A
Moorhead, MN, Moorhead Muni, RNAV (GPS) RWY 30, Amdt 1B
Moorhead, MN, Moorhead Muni, VOR–A, Amdt 1C
Cape Girardeau, MO, Cape Girardeau Rgnl, VOR RWY 10, Amdt 3B, CANCELED
Macon, MO, Macon-Fower Memorial, VOR/DME RWY 20, Amdt 2, CANCELED
St. Louis, MO, Spirit of St Louis, NDB RWY 8R, Amdt 11E, CANCELED
St. Louis, MO, Spirit of St Louis, NDB RWY 26L, Amdt 3A, CANCELED
Bozeman, MT, Bozeman Yellowstone Intl, VOR/DME RWY 12, Amdt 4B, CANCELED
Butte, MT, Bert Mooney, VOR/DME OR GPS–A, Amdt 3B, CANCELED
Livingston, MT, Mission Field, VOR–A, Amdt 5C, CANCELED
Sidney, MT, Sidney-Richland Muni, NDB RWY 1, Amdt 3, CANCELED
Fargo, ND, Hector Intl, ILS OR LOC RWY 18, Orig-C
Fargo, ND, Hector Intl, ILS OR LOC RWY 36, Amdt 1C
Fargo, ND, Hector Intl, VOR RWY 36, Orig-D
Kindred, ND, Robert Odegaard Field, RNAV (GPS) RWY 11, Amdt 1D
Kindred, ND, Robert Odegaard Field, RNAV (GPS) RWY 29, Amdt 1D
Tioga, ND, Tioga Muni, RNAV (GPS) RWY 12, Orig
Norfolk, NE., Karl Stefan Memorial, VOR RWY 1, Amdt 8, CANCELED
Wayne, NE., Wayne Muni, NDB RWY 23, Orig-B, CANCELED
Nashua, NH, Boire Field, NDB RWY 14, Orig-A, CANCELED
Elko, NV, Elko Rgnl, VOR–A, Amdt 6, CANCELED
Las Vegas, NV, Mc Carran Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Dunkirk, NY, Chautauqua County/Dunkirk, VOR RWY 6, AMDT 3A, CANCELED
Columbus, OH, Bolton Field, RNAV (GPS) RWY 22, Orig
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 14, Amdt 1
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 32, Amdt 1
Steubenville, OH, Jefferson County Airpark, Takeoff Minimums and Obstacle DP, Amdt 2
Hugo, OK, Stan Stamper Muni, NDB OR GPS RWY 35, Amdt 1A, CANCELED
Hugo, OK, Stan Stamper Muni, RNAV (GPS) RWY 17, Orig
Hugo, OK, Stan Stamper Muni, RNAV (GPS) RWY 35, Orig
Tulsa, OK, Richard Lloyd Jones Jr, VOR RWY 1L, Amdt 4D, CANCELED
Corvallis, OR, Corvallis Muni, RNAV (GPS) RWY 35, Amdt 2
Scappoose, OR, Scappoose Industrial Airpark, Takeoff Minimums and Obstacle DP, Amdt 1A
Pittsburgh, PA, Pittsburgh Intl, ILS OR LOC RWY 10R, ILS RWY 10R (SA CAT I), ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 10F
Huntingdon, TN, Carroll County, NDB RWY 1, Amdt 2, CANCELED
Dallas, TX, Dallas Love Field, ILS Y OR LOC Y RWY 13R, Amdt 6
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13R, Amdt 2
Houston, TX, Lone Star Executive, ILS OR LOC RWY 14, Amdt 3A
Houston, TX, Lone Star Executive, NDB RWY 14, Amdt 3A
Houston, TX, William P Hobby, ILS OR LOC RWY 13R, Amdt 12C
Houston, TX, William P Hobby, ILS OR LOC RWY 31L, Amdt 6C
Houston, TX, William P Hobby, RNAV (GPS) RWY 13R, Amdt 1C
Houston, TX, William P Hobby, RNAV (GPS) RWY 31L, Amdt 2C
Houston, TX, William P Hobby, Takeoff Minimums and Obstacle DP, Amdt 6B
Mineral Wells, TX, Mineral Wells, GPS RWY 31, Orig-B, CANCELED
Mineral Wells, TX, Mineral Wells, ILS OR LOC RWY 31, Amdt 1
Mineral Wells, TX, Mineral Wells, RNAV (GPS) RWY 31, Orig
Navasota, TX, Navasota Muni, VOR–A, Amdt 2B
Sherman/Denison, TX, North Texas Rgnl/Perrin Field, NDB RWY 17L, Amdt 10A, CANCELED
Temple, TX, Draughon-Miller Central Texas Rgnl, VOR RWY 15, Amdt 18, CANCELED
Roosevelt, UT, Roosevelt Muni, RNAV (GPS) RWY 25, Amdt 1
Roosevelt, UT, Roosevelt Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Roosevelt, UT, Roosevelt Muni, VOR–A, Amdt 4
Danville, VA, Danville Regional, VOR RWY 2, Amdt 14A, CANCELED
Dublin, VA, New River Valley, VOR–A, Amdt 9, CANCELED
Roanoke, VA, Roanoke Rgnl/Woodrum Field, VOR RWY 34, Amdt 1C, CANCELED
Ephrata, WA, Ephrata Muni, RNAV (GPS) RWY 3, Orig-A
Everett, WA, Snohomish County (Paine Fld), VOR RWY 16R, Orig-A, CANCELED
Eau Claire, WI, Chippewa Valley Rgnl, LOC BC RWY 4, Amdt 10
Eau Claire, WI, Chippewa Valley Rgnl, RNAV (GPS) RWY 4, Amdt 1
Madison, WI, Dane County Rgnl-Truax Field, VOR/DME OR TACAN RWY 14, Orig-D, CANCELED
Madison, WI, Dane County Rgnl-Truax Field, VOR/DME OR TACAN RWY 18, Amdt 1D, CANCELED
Madison, WI, Dane County Rgnl-Truax Field, VOR/DME OR TACAN RWY 32, Orig-C, CANCELED
Lewisburg, WV, Greenbrier Valley, VOR RWY 4, Amdt 2, CANCELED
Casper, WY, Casper/Natrona County Intl, VOR/DME RWY 3, Amdt 6C, CANCELED
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt 1, CANCELED

Rescinded: On September 30, 2016 (81 FR 67105), the FAA published an Amendment in Docket No. 31094, Amdt No. 3711 to Part 97 of the Federal Aviation Regulations under section 97.23. The following entry, effective November 10, 2016, is hereby rescinded in its entirety:

Butte, MT, Bert Mooney, VOR OR GPS–B, Amdt 1C

[FR Doc. 2016–25782 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31099; Amdt. No. 3716]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 23, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10-Nov-16	WI	Middleton	Middleton Muni—Morey Field.	6/0372	9/8/16	VOR RWY 28, Orig-A.
10-Nov-16	KS	Anthony	Anthony Muni	6/0583	9/13/16	RNAV (GPS) RWY 36, Orig-A.
10-Nov-16	KS	Anthony	Anthony Muni	6/0584	9/13/16	VOR–A, Amdt 2.
10-Nov-16	KS	Anthony	Anthony Muni	6/0585	9/13/16	RNAV (GPS) RWY 18, Amdt 1A.
10-Nov-16	CA	Jackson	Westover Field Amador County.	6/0704	9/15/16	VOR/DME RWY 1, Amdt 1B.
10-Nov-16	NM	Artesia	Artesia Muni	6/0908	9/8/16	RNAV (GPS) RWY 30, Amdt 1A.
10-Nov-16	IN	Indianapolis	Indianapolis Executive	6/1595	9/8/16	RNAV (GPS) RWY 36, Orig-C.
10-Nov-16	IN	Indianapolis	Indianapolis Executive	6/1597	9/8/16	VOR/DME RWY 18, Amdt 1B.
10-Nov-16	IN	Indianapolis	Indianapolis Executive	6/1598	9/8/16	RNAV (GPS) RWY 18, Amdt 1B.
10-Nov-16	IN	Indianapolis	Indianapolis Executive	6/1600	9/8/16	ILS OR LOC RWY 36, Amdt 5B.
10-Nov-16	KY	Louisville	Louisville Intl-Standiford Field.	6/2884	9/13/16	LOC RWY 29, Orig.
10-Nov-16	SC	Orangeburg	Orangeburg Muni	6/2891	9/13/16	RNAV (GPS) RWY 5, Amdt 1A.
10-Nov-16	TX	Borger	Hutchinson County	6/2988	9/19/16	VOR/DME RWY 35, Amdt 4.
10-Nov-16	OH	Medina	Medina Muni	6/4982	9/19/16	RNAV (GPS) RWY 27, Orig.
10-Nov-16	OH	Medina	Medina Muni	6/4983	9/19/16	VOR RWY 27, Amdt 2B.
10-Nov-16	OH	Medina	Medina Muni	6/4986	9/19/16	RNAV (GPS) RWY 9, Orig-A.
10-Nov-16	OH	Middletown	Middletown Regional/ Hook Field.	6/6224	9/7/16	RNAV (GPS) RWY 5, Orig-A.
10-Nov-16	OH	Middletown	Middletown Regional/ Hook Field.	6/6225	9/7/16	RNAV (GPS) RWY 23, Orig-A.
10-Nov-16	OH	Middletown	Middletown Regional/ Hook Field.	6/6226	9/7/16	LOC RWY 23, Amdt 7G.
10-Nov-16	OH	Middletown	Middletown Regional/ Hook Field.	6/6227	9/7/16	NDB RWY 23, Amdt 9A.
10-Nov-16	OH	Middletown	Middletown Regional/ Hook Field.	6/6230	9/7/16	NDB–A, Amdt 3.
10-Nov-16	PA	Meadville	Port Meadville	6/7232	9/7/16	RNAV (GPS) RWY 25, Amdt 1C.
10-Nov-16	NY	Weedsport	Whitfords	6/8074	9/13/16	RNAV (GPS) RWY 28, Orig.
10-Nov-16	NY	Weedsport	Whitfords	6/8077	9/13/16	RNAV (GPS) RWY 10, Orig.
10-Nov-16	NE	Kimball	Kimball Muni/Robert E Arraj Field.	6/8271	9/13/16	RNAV (GPS) RWY 10, Amdt 1A.
10-Nov-16	OH	Washington Court House	Fayette County	6/8273	9/13/16	NDB RWY 23, Amdt 5.
10-Nov-16	OH	Washington Court House	Fayette County	6/8276	9/13/16	RNAV (GPS) RWY 23, Amdt 1.
10-Nov-16	KY	Louisville	Bowman Field	6/8360	9/13/16	VOR RWY 24, Amdt 9.
10-Nov-16	GA	Swainsboro	East Georgia Regional	6/8361	9/20/16	RNAV (GPS) RWY 32, Amdt 2.
10-Nov-16	GA	Swainsboro	East Georgia Regional	6/8363	9/20/16	NDB RWY 14, Amdt 2.
10-Nov-16	GA	Swainsboro	East Georgia Regional	6/8365	9/20/16	ILS OR LOC/DME RWY 14, Amdt 1.
10-Nov-16	GA	Swainsboro	East Georgia Regional	6/8366	9/20/16	RNAV (GPS) RWY 14, Amdt 1A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10-Nov-16	GA	Calhoun	Tom B David Fld	6/8369	9/15/16	RNAV (GPS) RWY 17, Amdt 1.
10-Nov-16	GA	Calhoun	Tom B David Fld	6/8376	9/15/16	RNAV (GPS) RWY 35, Amdt 1.
10-Nov-16	GA	Quitman	Quitman Brooks County	6/8379	9/15/16	RNAV (GPS) RWY 28, Amdt 1.
10-Nov-16	GA	Quitman	Quitman Brooks County	6/8385	9/15/16	RNAV (GPS) RWY 10, Amdt 1.
10-Nov-16	GA	Americus	Jimmy Carter Rgnl	6/8398	9/20/16	RNAV (GPS) RWY 23, Amdt 1.
10-Nov-16	GA	Americus	Jimmy Carter Rgnl	6/8399	9/20/16	RNAV (GPS) RWY 5, Amdt 1.
10-Nov-16	KS	Belleville	Belleville Muni	6/8459	9/8/16	RNAV (GPS) RWY 18, Orig-A.
10-Nov-16	KS	Belleville	Belleville Muni	6/8460	9/8/16	RNAV (GPS) RWY 36, Orig-A.
10-Nov-16	KS	Belleville	Belleville Muni	6/8461	9/8/16	VOR/DME–A, Amdt 3B.
10-Nov-16	IL	Benton	Benton Muni	6/8578	9/13/16	RNAV (GPS) RWY 18, Orig-A.
10-Nov-16	PA	Meadville	Port Meadville	6/8885	9/7/16	LOC RWY 25, Amdt 6C.

[FR Doc. 2016–25785 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. FDA–2015–N–1355]

RIN 0910–AH36

Use of Ozone-Depleting Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is amending its regulation on uses of ozone-depleting substances (ODSs), including chlorofluorocarbons (CFCs), to remove the designation for certain products as ''essential uses'' under the Clean Air Act. Essential-use products are exempt from the ban by FDA on the use of CFCs and other ODS propellants in FDA-regulated products and from the ban by the Environmental Protection Agency (EPA) on the use of ODSs in pressurized dispensers. The products that will no longer constitute an essential use are: Sterile aerosol talc administered intrapleurally by thoracoscopy for human use and metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. FDA is taking this action because alternative products that do not use ODSs are now available and because these products are no longer being marketed in versions that contain ODSs.

DATES: This direct final rule is effective February 23, 2017. Submit either electronic or written comments on the direct final rule by December 27, 2016. If FDA receives no significant adverse comments within the specified comment period, the Agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–1355 for ''Use of Ozone-Depleting Substances.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6246, Silver Spring, MD 20993, 240–402–0979, *daniel.orr@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Production of ODSs has been phased out worldwide under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I.L.M. 1541 (1987)). In accordance with the provisions of the Montreal Protocol, under authority of Title VI of the Clean Air Act (section 601 *et seq.*), the manufacture of ODSs, including CFCs, in the United States was generally banned as of January 1, 1996. To receive permission to manufacture CFCs in the United States after the phase-out date, manufacturers must obtain an exemption from the phase-out requirements from the parties to the Montreal Protocol. Procedures for securing an essential-use exemption under the Montreal Protocol are described in a request by EPA for applications for exemptions (60 FR 54349, October 23, 1995).

Firms that wish to use ODSs manufactured after the phase-out date in medical devices (as defined in section 601(8) of the Clean Air Act) (42 U.S.C. 7671(8)) covered under section 610 of the Clean Air Act (42 U.S.CC. 7671i) must receive exemptions for essential uses under the Montreal Protocol. EPA regulations implementing the provisions of section 610 of the Clean Air Act contain a general ban on the use of ODSs in pressurized dispensers, such as metered-dose inhalers (MDIs) (40 CFR 82.64(c) and 82.66(d)). These EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e) (21 CFR 2.125(e)). Section 601(8) of the Clean Air Act defines ''medical device'' as any device (as defined in the Federal Food, Drug and Cosmetic Act (the FD&C Act) (21 U.S.C. 321)), diagnostic product, drug (as defined in the FD&C Act), and drug delivery system, if such device, diagnostic product, drug, or drug delivery system uses a class I or class II ODS for which no safe and effective alternative has been developed (and where necessary, has been approved by the Commissioner of Food and Drugs), and if such device, diagnostic product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA. Class I substances include CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (see 40 CFR part 82, appendix B to subpart A).

A drug, device, cosmetic, or food contained in an aerosol product or other pressurized dispenser that releases a CFC or other ODS propellant is generally not considered an essential use of the ODS under the Clean Air Act except as provided in § 2.125(c) and (e). This prohibition is based on scientific research indicating that CFCs and other ODSs reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the Earth. An increase in ultraviolet radiation will increase the incidence of skin cancer and produce other adverse effects of unknown magnitude on humans, animals, and plants (80 FR 36937, June 29, 2015). Section 2.125(c) and (e) provide exemptions for essential uses of ODSs for certain products containing ODS propellants that FDA determines provide unique health benefits that would not be available without the use of an ODS.

Faced with the statutorily mandated phase-out of the production of ODSs, drug manufacturers have developed alternatives to MDIs and other self-pressurized drug dosage forms that do not contain ODSs. Examples of these alternative dosage forms are MDIs that use non-ODSs as propellants and dry-powder inhalers. The availability of alternatives to ODSs means that certain drug products listed in § 2.125(e) are no longer essential uses of ODSs. Therefore, due to lack of marketing of approved products containing ODSs, and the availability of alternative products that do not contain ODSs, FDA is amending its regulations to remove essential-use designations for sterile aerosol talc administered intrapleurally by thoracoscopy for human use (§ 2.125(e)(4)(ix)) and for metered-dose atropine sulfate aerosol human drugs administered by oral inhalation (§ 2.125(e)(4)(vi)).

There is currently one sterile aerosol talc product containing ODSs that is approved for administration intrapleurally by thoracoscopy for human use for the treatment of recurrent malignant pleural effusion in symptomatic patients. Section 2.125(g) sets forth standards for determining whether the use of an ODS in a medical product is no longer essential. Under § 2.125(g)(3), an essential-use designation for individual active moieties marketed as ODS products and represented by one new drug application may no longer be essential if:

- At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;
- Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;
- Adequate U.S. postmarketing-use data are available for the non-ODS product(s); and
- Patients who medically require the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products (§ 2.125(g)(3)).

On June 29, 2015, FDA published a notice and request for comment concerning its tentative conclusion that sterile aerosol talc administered intrapleurally by thoracoscopy for human use no longer constitutes an essential use under the Clean Air Act under the criteria in § 2.125(g)(3). FDA requested comment on its findings that sterile aerosol talc is currently marketed for intrapleural administration in two non-ODS formulations and on its

finding that the route of administration, indications, and level of convenience appear to be the same for the ODS and non-ODS formulations of sterile aerosol talc. FDA also requested comment on its finding that the non-ODS products are available in sufficient quantities to serve the current patient population. FDA received no comments on these findings or on its tentative conclusion that sterile aerosol talc administered intrapleurally by thoracoscopy for human use no longer constitutes an essential use of ODSs under the Clean Air Act.

In the same document published on June 29, 2015, FDA requested comments concerning its tentative conclusion that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation no longer constitute an essential use under the Clean Air Act under the criteria in § 2.125(g)(1). FDA requested comment concerning its finding that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer marketed in an approved ODS formulation. Under § 2.125(g)(1), an active moiety may no longer constitute an essential use (§ 2.125(e)) if it is no longer marketed in an approved ODS formulation. The failure to market indicates nonessentiality because the absence of a demand sufficient for even one company to market the product is highly indicative that the use is not essential. FDA received no comments concerning its finding that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer marketed in an ODS formulation or concerning its tentative conclusion that these drugs no longer constitute an essential use of ODSs under the Clean Air Act.

Accordingly, FDA is amending its regulation to remove sterile aerosol talc administered intrapleurally by thoracoscopy for human use (§ 2.125(e)(4)(ix)) and to remove metered-dose atropine sulfate aerosol human drugs administered by oral inhalation (§ 2.125(e)(4)(vi)) as essential uses under the Clean Air Act.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. FDA is amending § 2.125 to remove essential-use designations for sterile aerosol talc administered intrapleurally by thoracoscopy for human use and for metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. This rule is intended to make noncontroversial changes to existing regulations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule and this direct final rule are substantively identical. The companion proposed rule provides the procedural framework within which the proposed rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

FDA is providing a comment period for the direct final rule of 60 days after the date of publication in the **Federal Register**. If we receive any significant adverse comment, we intend to withdraw this direct final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment explains why the rule either would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, the Agency will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the direct final rule will not be considered significant or adverse under this procedure. For example, a comment recommending a regulation change in addition to the changes in the direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final the provisions of the rule that are not the subject of a significant adverse comment.

If FDA does not receive any significant adverse comment in response to the direct final rule, the Agency will publish a document in the **Federal Register** confirming the effective date of the final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**.

A full description of FDA's policy on direct final rule procedures may be found in a guidance for FDA and industry entitled ''Direct Final Rule Procedures'' (available on *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm*) that was announced in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the direct final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. We certify that the direct final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This direct final rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Need for the Regulation

This rule is necessary to comply with the Montreal Protocol under authority of

Title VI of the Clean Air Act (section 601 *et seq.*), which banned the manufacture of ODSs, including CFCs, to reduce the depletion of the ozone layer in the United States as of January 1, 1996. EPA regulations exempted from the ban medical devices, diagnostic products, drugs, and drug delivery systems that FDA considered essential and that are listed in § 2.125(e) when they use a class I or class II ODS for which no safe and effective alternative has been developed. The direct final rule would remove the exemptions for sterile aerosol talc products and for metered-dose atropine sulfate aerosol human drugs containing ODSs.

There is currently at least one sterile aerosol talc product not containing ODSs approved for the administration intrapleurally by thoracoscopy for human use that is a safe and effective alternative, and which meets the criteria outlined in § 2.125(g)(3). Accordingly, the sterile aerosol talc product containing ODSs no longer meets the requirements for an essential use and should no longer be exempted from the ban.

Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer available in the product market in an approved ODS formulation. The current absence of the product in the market indicates both a lack of demand for the product and that the product is nonessential, under § 2.125(g)(1). With the adoption of this direct final rule, the manufacturer of the sterile aerosol talc with ODSs and any potential future manufacturers of metered-dose atropine sulfate aerosols will have notice of the requirements to comply with the ban of products from containing ODSs.

C. Benefits and Costs

1. Number of Affected Entities

The affected entities covered by this direct final rule are the manufacturing facilities of the products that would have exemptions from the ban removed. Only one manufacturer, the Bryan Corporation that manufactures the sterile aerosol talc product containing ODSs at a single facility, would be affected. Currently, there are no manufacturers of metered-dose atropine sulfate aerosols.

2. Costs

The potential social costs from removing the exemptions are (1) the costs to patient consumers or to their insurers for paying a higher price for alternative non-ODS formulations of sterile aerosol talc products and (2) the costs for disposing of and destroying any remaining product inventory that remains after the effective date of the direct final rule. We lack data about the remaining stocks of product inventory that are likely to remain after the effective date of the direct final rule and the relative price that consumers or their insurers would pay. Because significant notice has been given to the manufacturer about the impending removal of the exemptions, we do not believe a significant stock of inventory will remain for the sterile aerosol talc product. The most recent publically available information shows that the annual revenues for Bryan Corporation are about $10 million (Ref. 1). Public information about this company shows that it manufactures three different surgical and medical instruments including the talc. If total profits for the exempt talc product are 10 percent of the total annual revenues, and if total revenues are exclusively from the exempt talc, then $1 million represents an upper bound for the total social cost of removing the sterile aerosol talc product from the market. Because it is unlikely that their total profits are exclusively from the sterile aerosol talc, it is more likely that the foregone profits are at most one-third of the $1 million; in fact, the true social cost could be significantly less than the total foregone profit of this product.

Metered-dose atropine sulfate aerosol human drugs that would be affected by this rule are no longer marketed; consequently, removal of the exemption for this product would not present the public, consumers, insurers, or producers with any costs.

3. Health Benefits

The direct final rule implements the requirements of the Clean Air Act that ban the use of products containing ODSs that no longer meet the requirements for essential use. The social benefits of the direct final rule derive from greater compliance with the Clean Air Act. The ODSs that either would have been emitted by sterile aerosol talcs that contain them, or from potential market entrants that would have manufactured metered-dose atropine sulfate aerosols that contain ODSs will no longer be emitting them, which will help reduce the depletion of the ozone layer and the ultraviolet radiation reaching the Earth. We lack the ability to quantify the health benefits from the reduced exposure to and from the reduced risk associated with ultraviolet light that result from removing the exemptions to the ban. Because the change in exposure and resulting risk from the final rule is likely to be small, the incremental health impact is likely to be too small to measure.

D. Economic Summary

The direct final rule will remove the exemptions for sterile aerosol talc products and for metered-dose atropine sulfate aerosol human drugs containing ODSs. The primary public health benefit from adoption of the direct final rule is to reduce the depletion of the ozone layer to decrease human exposure to ultraviolet radiation. The reduction in exposure to ultraviolet radiation because of the direct rule is likely to be too small to measure. The potential social costs of the direct final rule would occur if patient consumers or their health care insurers would have to pay more for otherwise comparable products and if the product manufacturers would have to safely destroy any remaining product inventories after the effective date of the rule. We estimate that the social cost of the direct final rule is likely to be significantly less than $1 million but no more than the upper bound estimate of the foregone annual profit of the company that manufactures the sterile aerosol talc or $1 million. Because the metered-dose atropine sulfate aerosol is not currently in the market, there would be no social cost for removing its exemption from the ban.

Imposing no new federal requirement is the baseline for a regulatory analysis. With no new regulation, there are no compliance costs or benefits to the direct final rule. However, because sterile aerosol talc is no longer an essential use of ODSs, under the Clean Air Act, there is no longer a pathway for sterile aerosol talc products containing ODSs to remain on the market.

IV. Final Regulatory Flexibility Analysis

FDA has examined the economic implications of the direct final rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We certify that the direct final rule will not have a significant economic impact on a substantial number of small entities. This analysis, together with other relevant sections of this document, serves as the final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this final rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* FDA has verified the Web site address as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Bryan Corporation (*http://listings.findthecompany.com/l/12165972/Bryan-Corporation-in-Woburn-MA,* accessed on February 24, 2016).

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

§ 2.125 [Amended]

■ 2. In § 2.125, remove and reserve paragraphs (e)(4)(vi) and (ix).

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25851 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–079–FOR; Docket ID: OSMRE–2016–0005; S1D1S SS08011000 SX064A000 178S180110; S2D2S SS08011000 SX064A000 17XS501520]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its Program to closely follow the Federal regulations regarding awarding of appropriate costs and expenses including attorneys' fees. Alabama is revising its program to be no less effective than the Federal regulations.

DATES: *Effective Date:* October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, AL 35209. Telephone: (205) 290–7282. Email: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10 and 901.15.

II. Submission of the Amendment

By letter dated March 18, 2016 (Administrative Record No. AL–0669), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced receipt of the proposed amendment in the May 20, 2016, **Federal Register** (81 FR 31881). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 20, 2016. We received one public comment (Administrative Record No. AL–0669–04) that is addressed in the ''Public Comments'' section of part IV. Summary and Disposition of Comments.

III. OSMRE's Findings

We are approving the amendment as described below. The following are the findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov.*

1. Alabama Code 880–X–5A–.35—Assessment of Costs

Alabama revised this section to allow any party the opportunity to be awarded costs and expenses by a final appellate body. Additionally, language was added to protect the public by including a ''bad faith'' clause so that expenses may only be assessed against any person in favor of the permittee or the regulatory authority upon demonstration that the

person initiated or participated in the proceedings in bad faith for the purpose of harassing or embarrassing the permittee or the regulatory authority.

We find that Alabama's revision regarding awarding of expenses protects the public in a manner that is no less effective that the counterpart Federal regulations at 43 CFR 4.1294. Therefore, we are approving Alabama's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received one (Administrative Record No. AL–0669–04), which is discussed below.

A comment was received supporting the approval of the proposed amendment in order to bring the Alabama program into compliance with SMCRA and correcting deficiencies in Alabama's program which created hardship for citizens, citizen-based groups, and others, by putting them at risk of potentially having to pay substantial fees if they challenged a permit or other decision covered by Alabama's regulations.

We agree with this comment and are approving the amendment.

Federal Agency Comments

On April 7, 2016, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0669–03). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on April 7, 2016, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL–0669–03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 7, 2016, we requested comments on Alabama's amendment (Administrative Record No. AL–0669–03), but neither the SHPO nor ACHP responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Alabama sent us on March 18, 2016 (Administrative Record No. AL–0669).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 901, that codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rulemaking is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rulemaking meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rulemaking does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Indian tribes and have determined that the rulemaking does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency

decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rulemaking.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 2016.

Sterling Rideout,

Acting Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding an entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
March 18, 2016	October 26, 2016	Alabama Code 880–X–5A–.35.

Editorial note: This document was received for publication by the Office of the Federal Register on October 21, 2016.

[FR Doc. 2016–25869 Filed 10–25–16; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 20

International Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services, as established by the Governors of the Postal Service.

DATES: *Effective date:* January 22, 2017.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin at 202–268–2537.

SUPPLEMENTARY INFORMATION: New prices will be posted under Docket Number CP2017–20 on the Postal Regulatory Commission's Web site at *http://www.prc.gov.*

This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- Global Express Guaranteed® (GXG®);
- International Priority Airmail® (IPA®);
- International Surface Air Lift® (ISAL®);
- Direct Sacks of Printed Matter to One Addressee (Airmail M-bag®); and
- International Extra Services:
  - Priority Mail Express International® (PMEI) Insurance and Priority Mail International® (PMI) Insurance,
  - Registered Mail™ Service,
  - International Postal Money Orders, and
- Pickup on Demand®.

New prices will be located on the Postal Explorer® Web site at *http://pe.usps.com.*

Global Express Guaranteed

Global Express Guaranteed (GXG) provides fast international shipping with international transportation and delivery provided by FedEx Express®. The price increase for GXG service averages 4.9 percent.

The Postal Service continues to provide Commercial Base pricing to online customers who prepare and pay for GXG shipments via USPS®-approved payment methods, with variable discounts up to 5 percent off the published retail prices for GXG.

The Postal Service also continues to offer Commercial Plus pricing incentives for large volume customers who commit to tendering $100,000 in annual postage revenue from GXG, Priority Mail Express International (PMEI), Priority Mail International (PMI), and First-Class Package International Service® (FCPIS®) via

USPS-approved payment methods, with variable discounts up to 5 percent off the published retail prices for GXG.

International Priority Airmail and International Surface Air Lift

The structure of IPA and ISAL price categories will continue to be priced by the worldwide and 19 country price groups and applicable mail shapes [letters and postcards, large envelopes (flats), and packages (small packets and rolls)]. These categories correspond to the Universal Postal Convention requirements to use shape-based pricing.

International Priority Airmail (IPA) service, including IPA M-bags, is a bulk commercial service designed for volume mailings of First-Class Mail International® postcards, letters, large envelopes (flats), and FCPIS packages (small packets) weighing up to a maximum 4.4 pounds. IPA is dispatched to the destination country where it is entered into the postal administration's air or surface priority mail system for delivery. The overall price increase for IPA service averages 3.8 percent.

International Surface Air Lift (ISAL) service, including ISAL M-Bags, is a bulk commercial service designed for volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and FCPIS packages (small packets) weighing up to 4.4 pounds. ISAL is dispatched to the destination country where it is then entered into the postal administration's surface nonpriority network. The overall price increase for ISAL service averages 3.8 percent.

Direct Sacks of Printed Matter to One Addressee (Airmail M-Bags)

Airmail M-bags are direct sacks of printed matter sent to a single foreign addressee at a single address. Prices are based on the weight of the sack. The price increase for Airmail M-bags averages 4.9 percent.

International Extra Services

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments. Prices for some of these extra services are increasing.

For our competitive offerings, we revised the prices for the following international extra services:

PMEI Insurance and PMI Insurance

The price for PMEI Insurance and PMI insurance will increase an average of 4.7 percent.

Registered Mail

The price for Registered Mail service will increase 7.2 percent.

International Postal Money Orders

The price for International Postal Money Orders will increase by 73.7 percent.

Pickup on Demand

The price for Pickup on Demand will increase 10 percent.

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–25711 Filed 10–25–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Competitive Products Pricing and Mailing Standards Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes to prices and mailing standards for competitive products.

DATES: *Effective Date:* January 22, 2017.

FOR FURTHER INFORMATION CONTACT: Karen Key at (202) 268–7492 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: This final rule describes new prices and product features for competitive products, by class of mail, established by the Governors of the United States Postal Service®. New prices are available under Docket Number CP2017–20 on the Postal Regulatory Commission's (PRC) Web site at *http://www.prc.gov,* and also located on the Postal Explorer® Web site at *http://pe.usps.com.*

The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), to reflect changes to prices and mailing standards for the following competitive products:

- Priority Mail Express®.
- Priority Mail®.
- First-Class Package Service®.
- Parcel Select®.
- USPS Retail Ground™.
- Extra Services.
- Return Services.
- Mailer Services.
- Recipient Services.

Competitive product prices and changes are identified by product as follows:

Priority Mail Express

Prices

Overall, Priority Mail Express prices will increase 3.3 percent. Priority Mail Express will continue to offer zoned Retail, Commercial Base™, and Commercial Plus™ pricing tiers.

Retail prices will increase an average of 3.7 percent. The Flat Rate Envelope price will increase to $23.75, the Legal Flat Rate Envelope will increase to $23.95, and the Padded Flat Rate Envelope will increase to $24.45.

Commercial Base prices offer lower prices to customers who use authorized postage payment methods. Commercial Base prices will increase an average of 2.4 percent. Commercial Base pricing offers a flat 11.2 percent discount off retail prices.

Commercial Plus prices were matched to the Commercial Base prices in 2016 and will continue to be matched in 2017.

Priority Mail

Prices

Overall, Priority Mail prices will increase 3.9 percent. Priority Mail will continue to offer zoned Retail, Commercial Base, and Commercial Plus pricing tiers.

Retail prices will increase an average of 3.3 percent. The Flat Rate Envelope price will increase to $6.65, the Legal Flat Rate Envelope will increase to $6.95, and the Padded Flat Rate Envelope will increase to $7.20. The Small Flat Rate Box price will increase to $7.15 and the Medium Flat Rate Boxes will increase to $13.60. The Large Flat Rate Box will increase to $18.85 and the APO/FPO/DPO Large Flat Rate Box will increase to $17.35.

Commercial Base prices offer lower prices to customers who use authorized postage payment methods. Commercial Base prices will increase an average of 4.1 percent. Commercial Base pricing offers an average 13.6 percent discount off retail prices.

The Commercial Plus price category offers price incentives to large volume customers. Commercial Plus prices will increase an average of 4.5 percent. Commercial Plus pricing offers an average 16.8 percent discount off retail prices.

First-Class Package Service

Prices

Overall, First-Class Package Service prices will increase 4.1 percent.

First-Class Package Service Optional ADC Presort

The Postal Service will offer an optional Area Distribution Center (ADC) presort for First-Class Package Service (FCPS) parcels to improve service for mailers. As a result, a new optional FCPS ADC labeling list, L015, will be added.

Parcel Select

Prices

Overall Parcel Select non-lightweight prices will increase an average of 3.5 percent. The average price increase for Parcel Select Destination Entry is 4.9 percent. Parcel Select Ground™ prices will increase an average of 2.7 percent. The prices for Parcel Select Lightweight® (PSLW) will increase an average of 8.0 percent.

USPS Retail Ground

Overall, USPS Retail Ground prices will increase an average of 3.8 percent.

Extra Services

Adult Signature Service

Adult Signature Required and Adult Signature Restricted Delivery service prices are increasing 3.5 and 3.4 percent respectively. The price for Adult Signature Required will increase to $5.90 and Adult Signature Restricted Delivery will increase to $6.15.

Return Services

Parcel Return Service

Overall, Parcel Return Service (PRS) prices will increase an average of 5.5 percent.

Return Sectional Center Facility (RSCF) prices will increase an average of 5.8 percent and Return Delivery Unit (RDU) prices will increase an average of 5.2 percent.

Information on the Parcel Return Service annual permit fee and annual account maintenance fee can be found in the ''Other'' section below and in the Domestic Mailing Services **Federal Register** Notice.

Mailer Services

Premium Forwarding Service

Premium Forwarding Service® (PFS®) prices will increase an average of 3.8 percent. The enrollment fee paid at the retail counter will increase to $19.35 and the residential and commercial enrollment fee paid online will increase to $17.75 per application. The price of the weekly reshipment charge for PFS-Residential will increase to $19.35.

Premium Forwarding Service Commercial

The Postal Service will add 1-foot and 2-foot managed mail tray box flat rate pricing as an option to the current shipment containers for Premium Forwarding Service Commercial® dispatches.

USPS Package Intercept

The USPS Package Intercept™ fee will increase 3.2 percent to $12.95.

Pickup on Demand Service

The Pickup on Demand® service daily fee will increase 10.0 percent to $22.00.

Recipient Services

Post Office Box Service

The competitive Post Office Box™ service prices will increase an average of 6.5 percent within the existing price ranges.

Enterprise Post Office Box Online Fee Payment

The Postal Service is providing customers using the Enterprise PO Box Online (EPOBOL) system the option to prorate semi-annual fees one time to align payment periods for multiple boxes. The prorated fee for each such box will be based on the number of months between the expiration of the current fee and the month of the payment alignment. Additional information on prorating of the semi-annual EPOBOL fees can be found in the Domestic Mailing Services **Federal Register** Notice.

Other

Address Enhancement Service

Address Enhancement Service competitive product prices will be increasing between 1.9 and 7.9 percent.

Topological Integrated Geographic Encoding and Referencing (Tiger/ZIP+4)

The Postal Service is retiring Topological Integrated Geographic Encoding and Referencing (Tiger/ZIP+4) service.

Annual Mailing and Account Maintenance Fees

The Postal Service is eliminating the payment of annual mailing fees for Parcel Select and Parcel Select Lightweight. The annual return service permit fee and annual account maintenance fee for Parcel Return Service will also be eliminated. Additional information on the elimination of annual mailing and account maintenance fees can be found in the Domestic Mailing Services **Federal Register** Notice.

Permit Imprint Application Fee

The Postal Service is eliminating the payment of permit imprint application fees for Priority Mail Express, Priority Mail, First-Class Package Service, Parcel Select, and Parcel Select Lightweight competitive products. Additional information on the elimination of the permit imprint application fee can be found in the Domestic Mailing Services **Federal Register** Notice.

Resources

The Postal Service provides additional resources to assist customers with this price change for competitive products. These tools include price lists, downloadable price files, and **Federal Register** Notices, which may be found on the Postal Explorer® Web site at *http://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

* * * * *

250 Parcel Select

253 Prices and Eligibility

* * * * *

[Delete 1.3, Annual Mailing Fee, in its entirety and renumber current 1.4 as new 1.3.]

* * * * *

4.0 Price Eligibility for Parcel Select and Parcel Select Lightweight

* * * * *

4.3 Parcel Select Lightweight

* * * * *

4.3.1 General Eligibility

Parcel Select Lightweight parcels are presorted machinable or irregular parcels.

The following also applies:

* * * * *

[Revise the text of item c to read as follows:]

c. Postage must be paid under 254.1.1.2.

* * * * *

254 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

[Renumber the text of 1.1 as new 1.1.1 and revise the introductory text of 1.1.1 to read as follows:]

1.1.1 Parcel Select

Parcel Select postage may be paid with:

* * * * *

[Add new 1.1.2 to read as follows:]

1.1.2 Parcel Select Lightweight

Parcel Select Lightweight postage may be paid with permit imprint.

* * * * *

280 First-Class Package Service

* * * * *

285 Mail Preparation

* * * * *

[Add new 2.0 to read as follows:]

2.0 Optional ADC Presort

Each optional ADC presorted First-Class Package Service mailing must meet the applicable standards in 280 and must be labeled as follows:

a. Line 1: L015.

b. Line 2: ''FC PKG ADC.''

* * * * *

500 Additional Mailing Services

* * * * *

505 Return Services

* * * * *

4.0 Parcel Return Service

4.1 Prices and Fees

[Revise the heading and text of 4.1.1 to read as follows:]

4.1.1 Permit

The participant must obtain a permit and pay postage at the Post Office where the permit is held through an advance deposit account (see Notice 123—*Price List*).

* * * * *

4.2 Basic Standards

* * * * *

4.2.2 Conditions for Mailing

Parcels may be mailed as PRS when all of the following conditions apply:

* * * * *

[Revise the text of item c to read as follows:]

c. Parcels show the permit number.

* * * * *

4.2.7 Reapplying After Cancellation

To receive a new PRS permit after cancellation under 5.1, the mailer must:

* * * * *

[Delete item b and renumber current items c and d as new items b and c.]

* * * * *

507 Mailer Services

* * * * *

3.0 Premium Forwarding Service

* * * * *

3.3 Premium Forwarding Service Commercial

* * * * *

3.3.3 Conditions

* * * PFS-Commercial service is subject to these conditions:

* * * * *

c. The postage is charged per shipment container as follows:

[Revise the text of item c1 to read as follows:]

1. A sack and its contents are considered one piece for calculation of the price of postage and must not exceed 70 pounds. Postage is calculated by the weight of the sack and the zone, based on the ZIP Code of the servicing Post Office and the delivery address for the shipment, minus the tare weight.

[Renumber item c2 as new item c3 and add new item c2 as follows:]

2. A 1-foot managed mail (MM) tray box or 2-foot MM tray box are considered one piece for the applicable Premium Forwarding Service Commercial branded flat rate tray box price.

* * * * *

509 Other Services

1.0 Address Information System Services

1.1 General Information

[Revise the second sentence of 1.1 to read as follows:]

* * * These services are described in 1.2 through 1.34. * * *

* * * * *

[Delete 1.29, Topological Integrated Geographic Encoding and Referencing, in its entirety and renumber current 1.30 through 1.35 as new 1.29 through 1.34.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–25712 Filed 10–25–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The U.S. Postal Service® amends its regulations governing the use of mail covers to make the definitions of sealed and unsealed mail consistent with current classifications.

DATES: This rule is effective October 26, 2016. The relevant changes to the Mail Classification Schedule were implemented on August 28, 2016.

ADDRESSES: Questions or comments on this action are welcome. Mail or deliver written comments to Steven Sultan, Acting Assistant Postal Inspector in Charge, Office of Counsel, U.S. Postal Inspection Service, 475 L'Enfant Plaza SW., Room 3114, Washington, DC 20260–3100.

FOR FURTHER INFORMATION CONTACT: Steven Sultan, Acting Assistant Postal Inspector in Charge, Office of Counsel, U.S. Postal Inspection Service, 202–268–7385, *SESultan@uspis.gov.*

SUPPLEMENTARY INFORMATION: We are amending our mail cover regulations to accommodate various changes to 39 CFR Appendix A to Subpart A of Part 3020—*Mail Classification Schedule*, including the following:

- Products added to or removed from the market dominant or competitive product list;
- Changes in product names;
- Removal of Priority Mail International® Flat Rate Envelopes and Small Flat Rate Boxes from the letter post stream to the parcel post stream; [1] and

[1] *Mail Classification Schedule Changes Pertaining to Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate*

Continued

• Changes that implement management's decision that all Priority Mail International items are to be unsealed.

These changes will provide current information to the public.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for 39 CFR part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Sec. 662, Pub. L. 104–208, 110 Stat. 3009–378.

■ 2. In § 233.3, paragraphs (c)(3) and (4) are revised to read as follows:

§ 233.3 Mail covers.

* * * * *

(c) * * *

(3) *Sealed mail* is mail that under postal laws and regulations is included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Sealed mail includes: First-Class Mail; Priority Mail; Priority Mail Express; Outbound International Expedited Services (Priority Mail Express International; as well as Global Express Guaranteed items containing only documents); Outbound Single-Piece First-Class Package International Service; International Priority Airmail, except M-bags; International Surface Air Lift, except M-bags; Outbound Single-Piece First-Class Mail International; Global Bulk Economy Contracts, except M-bags; and International Transit Mail.

(4) *Unsealed mail* is mail that under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Unsealed mail includes: Periodicals; Standard Mail (Commercial and Nonprofit); Package Services; incidental First-Class Mail attachments and enclosures; Parcel Select; Parcel Return Service; First Class Package Service; USPS Retail Ground; Global Express Guaranteed items containing non-documents; Outbound Priority Mail International; International Direct Sacks—M-bags; and all items sent via ''Free Matter for the Blind or Handicapped'' under 39 U.S.C. 3403 and ''Free Matter for the Blind'' under International Mail Manual 270.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–25805 Filed 10–25–16; 8:45 am]

BILLING CODE 7710–12–P

Boxes, 81 FR22131 (April 14, 2016). See also Mail Classification Schedule Changes Pertaining to Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate Boxes—Notice of Modified Effective Date, 81 FR 33560 (May 26, 2016).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XE949

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers

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

ACTION: Temporary rule; approval of quota transfers.

SUMMARY: NMFS announces its approval of two transfers of 2016 commercial bluefish quota from the States of New Hampshire and North Carolina to the State of New York. The approval of these transfers complies with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement also informs the public of the revised commercial quotas for New Hampshire, North Carolina, and New York.

DATES: Effective October 25, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281–9112.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring commercial bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can request approval of a transfer of bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfers based on the criteria in § 648.162(e).

New Hampshire has agreed to transfer 20,000 lb (9,072 kg), and North Carolina 50,000 lb (22,680 kg) of their 2016 commercial bluefish quotas to New York. These states have certified that the transfers meet all pertinent state requirements. These quota transfers were requested by New York to ensure that its 2016 quota would not be exceeded. The Regional Administrator has approved these quota transfers based on his determination that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: New Hampshire, 247 lb (112 kg); North Carolina, 1,341,100 lb (608,313kg) and New York, 747, 289 lb (338,965 kg). These quota adjustments revise the quotas specified in the final rule implementing the 2016–2018 Atlantic Bluefish Specifications published on August 4, 2016 (81 FR 51370), and reflect all subsequent commercial bluefish quota transfers completed to date. For information of previous transfers for fishing year 2016 visit the Greater Atlantic Region's quota monitoring page at *http://go.usa.gov/xZT8H.*

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25908 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130808697–6907–02]

RIN 0648–XC808

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Multi-Year Specifications for Monitored and Prohibited Harvest Species Stock Categories

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual catch limits (ACL) and, where necessary, other annual reference points (overfishing limits (OFL) and acceptable biological catches (ABC)) for certain stocks in the monitored and prohibited harvest species categories under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The ACLs are: Jack mackerel, 31,000 metric tons (mt); northern subpopulation of northern anchovy, 9,750 mt; central subpopulation of northern anchovy, 25,000 mt; and krill, zero. Additionally, an OFL of 39,000 mt, an ABC of 9,750 mt and an annual catch target (ACT) of 1,500 mt are being implemented for the northern subpopulation of northern anchovy. This rule is intended to conserve and manage these stocks off the U.S. West Coast. If the ACL for any one of these stocks is reached, then fishing for that stock will be closed until it reopens at the start of the next fishing season.

DATES: The Annual Catch Limits established in this final rule are effective from January 1, 2017, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The six species managed under the CPS FMP are Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy (northern and central subpopulations), market squid and krill. The CPS FMP is implemented by regulations at 50 CFR part 660, subpart I.

Management unit stocks in the CPS FMP are classified under three management categories: actively managed, monitored and prohibited harvest species. Active stocks are characterized by periodic stock assessments, and/or periodic or annual adjustments of target harvest levels. Management of monitored stocks, by contrast, generally involves tracking landings against the relevant ACL (previously the ABCs) and qualitative comparison to available abundance data, without regular stock assessments or annual adjustments to target harvest levels. Species in both categories may be subject to management measures such as catch allocation, gear regulations, closed areas, closed seasons, or other forms of ''active'' management. For example, trip limits and a limited entry permit program are already in place for all CPS finfish. The monitored category includes jack mackerel, two sub-populations of the northern anchovy stock, and market squid. Krill is the only stock in the prohibited harvest category. The CPS monitored stocks have not been managed to a hard quota like the active category stocks by NMFS (although the state of California manages market squid with an annual limit). Instead, landings have been monitored against harvest reference levels to determine if overfishing is occurring and to gauge the need for more active management such as requiring periodic stock assessments and regular adjustments to quotas. Catches of the three finfish stocks in the monitored category—northern anchovy (northern and central subpopulations) and jack mackerel—have remained well below their respective ABC (now ACL levels for jack mackerel and the central anchovy subpopulation) since implementation of the CPS FMP in 2000, with average catches over the last 10 years of approximately 7,300 mt (270 mt and 660 mt for the central and northern subpopulations of northern anchovy and jack mackerel, respectively).

In September 2011, NMFS approved Amendment 13 to the CPS FMP, which modified the framework process used to set and adjust fishery specifications and for setting ACLs and accountability measures (AMs). Amendment 13 was intended to ensure the FMP conforms with the 2007 amendments to the MSA and NMFS' revised MSA National Standard 1 guidelines at 50 CFR part 600. Specifically, Amendment 13 maintained the existing reference points and the primary harvest control rules for the monitored stocks (jack mackerel, northern anchovy and market squid), including the large buffer built into the ABC control rule for the finfish stocks, as well as the overfishing criteria for market squid, but modified these reference points and control rules to align with the revised advisory guidelines and to comply with the new statutory requirement to establish a process for setting ACLs and AMs. This included a default management framework under which the OFL for each monitored stock was set equal to the maximum sustainable yield (MSY) value and ABC was reduced from the OFL by 75 percent as an uncertainty buffer (based on the existing ABC control rule where ABC equals 25 percent of OFL/MSY). This default framework is used unless there is determined to be a more appropriate OFL; as is the case for the northern subpopulation of northern anchovy, or stock-specific ABC control rule, like the proxy for the fishing rate that is expected to result in MSY (F_{MSY} proxy) for market squid of Egg Escapement ≥ 30 percent. ACLs are then set equal to the ABC or could be set lower than the ABC, along with ACTs, if deemed necessary. These control rules and harvest policies for monitored CPS stocks are simpler and more precautionary than those used for actively managed stocks in recognition of the low fishing effort and low landings for these stocks, as well as the lack of current estimates of stock biomass.

Through this action, NMFS is implementing the ACLs shown in Table 1 for jack mackerel, the two subpopulations of northern anchovy, and krill, as well as an OFL, ABC and ACT for the northern subpopulation of northern anchovy.

TABLE 1—ACLS FOR MONITORED CPS FINFISH, INCLUDING OFL, ABC, AND ACT FOR THE NORTHERN SUBPOPULATION OF NORTHERN ANCHOVY

Stock	OFL	ABC	ACL	ACT
Jack mackerel	126,000 mt	31,000 mt	31,000 mt	

TABLE 1—ACLS FOR MONITORED CPS FINFISH, INCLUDING OFL, ABC, AND ACT FOR THE NORTHERN SUBPOPULATION OF NORTHERN ANCHOVY—Continued

Stock	OFL	ABC	ACL	ACT
Northern anchovy, (northern subpopulation).	39,000 mt	9,750 mt	9,750 mt	1,500 mt
Northern anchovy, (central subpopulation).	100,000 mt	25,000 mt	25,000 mt	
Market squid	F_{MSY} proxy resulting in Egg Escapement ≥30%	F_{MSY} proxy resulting in Egg Escapement ≥30%	ACL not required (Less than 1-year lifecycle and no overfishing).	
Krill	Undefined	Undefined	0	

The OFLs and ABCs listed in Table 1 for jack mackerel, the central subpopulation of northern anchovy, market squid and krill are included for information purposes only. The OFL and ABC specifications for those stocks are set in the FMP; NMFS is not establishing or revising them by this action.

These catch levels and reference points were recommended to NMFS by the Council and were based on recommendations from its advisory bodies according to the framework in the FMP established through Amendment 13, including OFL and ABC recommendations from its Science and Statistical Committee (SSC). The ACLs for these monitored stocks will be in place for the calendar year fishing season (January 1–December 31), and would remain in place for each subsequent calendar year until new scientific information becomes available to warrant changing them, or if landings increase and consistently reach the ABC/ACL level, necessitating a change to active management under the FMP. These ACLs provide a means to monitor these stocks on an annual basis and prevent overfishing, as each year the total harvest of each stock will be assessed against their respective ACLs. Furthermore, if the harvest level of a fishery reaches an ACL, the directed fishery would be closed through the end of the year. These ACLs and other reference points remain in place until changed according to the FMP framework. While this rule announces the ACLs for calendar year 2017 only, in a future rulemaking NMFS intends to propose regulatory text codifying the ACLs in 50 CFR part 660 subpart I.

Market squid, because of their short life-cycle, fall under the statutory exception from the requirement to set ACLs and AMs. Section 303(a)(15) of the MSA states that the requirement for ACLs ''shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species''. Market squid have a lifecycle of less than 1 year and have not been determined to be subject to overfishing; therefore, an ACL is not required and is not being implemented for market squid.

NMFS is not establishing or changing the specifications for krill by this rulemaking. Krill are a prohibited harvest species. The targeting, harvesting and transshipment of krill are all explicitly prohibited; therefore, the ACL for krill is zero. Because the harvest level is zero, setting an OFL or ABC for krill would serve no function and is not done in this action.

If an ACL is reached, or is expected to be reached for one of these fisheries, the directed fishery would be closed until the beginning of the next fishing season. The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure. Additionally, nearing or exceeding one of these ACLs would trigger a review of whether the fishery should be moved into the actively managed category of the FMP.

The proposed rule also referenced ACTs in the paragraph above that describes closing fisheries upon attainment of ACLs and reviewing whether the fishery should be moved to the actively managed category. That was an error and NMFS did not intend to propose closing the fishery upon attainment of the ACT, or describe the ACT as trigger point for any post-season AMs, as ACTs are not designed to trigger automatic closures or management category review; therefore, reference to ACTs has been removed from that paragraph. The purpose of the ACT for the northern subpopulation of northern anchovy is only to assist with in-season tracking of fishery landings to help ensure the ACL is not exceeded.

Further background on this action can be found in the proposed rule that solicited public comments for this action (80 FR 72676, November 20, 2015) and is not repeated here.

NMFS received 50 comment letters on the proposed rule. Twenty-six of these comment letters were of very similar form and substance, and were focused only on northern anchovy fishing in Monterey Bay, CA, and the proposed ACL for the central subpopulation of northern anchovy. Additionally, many of the other comment letters provided multiple comments. One comment letter from a non-governmental organization was also represented to NMFS as having been electronically signed by 27,151 individuals. Many of the comments provided, such as reconsideration of the existing OFL and ABC values and control rules, as well as other aspects of CPS management such as spatial management or stock re-categorization, are beyond the scope of this rulemaking and will not be addressed here. However, NMFS found the comments valuable and will consider them for future management planning, and will ensure the Council is aware of the comments. Although changes to the OFL or ABC levels or revisiting these values or the default ABC control rule for monitored stocks was not being proposed in this rulemaking, for information purposes only, NMFS will respond to comments on some aspects of the existing OFL and ABC values, which were previously endorsed by the Council's SSC and NMFS as the best available science. No changes were made in response to the comments received. NMFS summarizes and responds to the comments below.

Comments and Responses

Comment 1: The proposed ACL for the central subpopulation of northern anchovy is too high and a more precautionary/lower quota should be set and additional precautionary measures be adopted, such as area closures. Various rationale were stated for this comment including concern that: the northern anchovy stock may be at a low abundance level, based partially on a recent scientific journal article (MacCall et al. 2016) describing a collapse of anchovy off California; that fishing may be resulting in potential impacts to northern anchovy predators in certain

locations; and that the ACL is based on an outdated biomass estimate and should be revised based on more current information.

Response: Northern anchovy, like other small pelagic species, can undergo wide natural fluctuations in total abundance, even in the absence of fishing. This is caused by the fact that northern anchovy recruitment (the number of young fish that enter a population in a given year) is highly variable and likely correlated with prevailing oceanographic conditions. The ACL for the central subpopulation of northern anchovy (CSNA) is currently set equal to its ABC value of 25,000 mt, which is 75,000 mt lower than its OFL. This substantial reduction in allowable catch from the OFL (the estimate of the level of catch above which overfishing is occurring), is primarily in recognition of the high uncertainty in the OFL value and the knowledge that the yearly abundance of this stock can fluctuate as described above. These catch levels are derived from the default OFL specification and ABC control rule framework for monitored stocks, which were used for CSNA, under which its OFL was set equal to its MSY value and its ABC level was reduced from this OFL by 75 percent to account for scientific uncertainty in the OFL and to prevent overfishing, among other considerations. This ABC value is also the upper bound for which the ACL can be set. As previously stated, the existing OFL and ABC values are not subject to this rulemaking. This management framework, including the non-discretionary reduction in allowable catch built into the harvest policy for CPS stocks in the monitored category, was previously recommended by the Council's SSC, adopted by the Council and approved by NMFS as best available science and determined to appropriately account for uncertainty and protect the stock from overfishing. Therefore, until new scientific information becomes available and approved for revising the ABC, it is not necessary to further reduce the ACL from the ABC for precautionary reasons regarding scientific uncertainty in the level of catch intended to prevent overfishing.

Although it is true that the last formal stock assessment for CSNA was completed in 1995, contrary to the perceptions expressed in some of the comments received, the ACL for CSNA is not based on this assessment or any single estimate of biomass. As described above, the ACL has been reduced down from the OFL, which has been set equal to its estimate of MSY—an estimate that is intended to reflect the largest average fishing mortality rate or yield that can be taken from a stock over the long term.

NMFS is aware of the scientific journal article referenced in the comments (MacCall et al. 2016) and the methods used by authors of this article were partially reviewed at the workshop described below. NMFS agrees there is evidence that CSNA did likely go through a decline in the recent past and abundance may still be at some relatively low state. Additionally, NMFS agrees with the finding in the paper that any decline is a result of ''natural phenomena'' and not fishing. NMFS notes, however, that the time period for which the article discusses a potential decline is from 2008 and 2011, and does not provide analysis for years past 2011. The estimates of biomass in the article also increased by an order of magnitude between 2003 and 2005, highlighting the variability mentioned above that this stock can exhibit. Preliminary data examined by NMFS from 2015 shows that anchovy recruitment along portions of the U.S. West Coast appears to be stronger than previous recruitment levels over the past 10 years. The extent of this potential decline and whether or not the stock is still at low levels is currently unclear. Much of the available compiled data on the central subpopulation of northern anchovy is either outdated or from surveys that are best at providing regional indices of relative availability and variability of the stock, but are not estimates of overall biomass, which are typically best derived from stock assessments. Thus, while the increased recruitment signals seen in 2015 are positive, it would be premature to assess their overall contribution to the stock without conducting a formal assessment of the data. It is important to note that NMFS' decision to approve the ACL for the CSNA is not based on this recent survey data. Similarly, it would not be appropriate to reduce the ACL further below the ABC based on potentially outdated information or information that has not been formally reviewed.

Relating to the comment that the stock has not been assessed recently, and that NMFS should set the ACL based on updated information, NMFS points out that the Council, in coordination with NMFS Southwest Fisheries Science Center, recently held a workshop to examine available approaches to assessing short-lived, data poor species as well the current available data and how it may be used. A report from this workshop is now available and was reviewed by the Council at its September 2016 meeting. Additionally, NMFS is currently analyzing some of the data described above about CSNA and, based on the recommendations from this workshop, is scheduled to provide an assessment of the available information on the stock in the fall of 2016. Although the current management framework for anchovy is not set up to explicitly utilize the abundance information that may be produced, it will hopefully allow NMFS to have a better understanding of the current state of this stock.

With regards to the ACL being implemented for CSNA and the potential indirect impact to CSNA predators through the removal of a prey source, because the ACL is set equal to the ABC, and the ABC has already been substantially reduced to protect CSNA from overfishing, harvesting up to the ACL level should equate to very little risk to the CSNA as a result of fishing. Therefore, it is unlikely that removing up to the ACL will reduce the total abundance of CSNA in a manner that would indirectly impact predator populations. Additionally, given that harvest rates of CSNA have generally been well below this ACL, with little expectation they will increase significantly in the short term, and the fact that CSNA is only one component of much larger forage base that most predators in the California Current Ecosystem (CCE) along the U.S. west coast depend on, harvest at the level of the ACL would likely not have a discernable impact as a removal of a prey source. Furthermore, there is no direct evidence that the current fishing levels are having direct competition effects on species that feed on CSNA. The likely reason for this is that most studies have shown that predators of CPS in the CCE have more opportunistic diets rather than depending on one specific prey item. For example, many documented predators of sardines showed no signs of population stress or decline during periods of very low sardine abundance in the CCE from the 1950s through the 1980s when their diets reflected an absence of this prey resource.

With regards to the comment that spatial fishing area closures may be necessary due to the potential for localized effects of prey limitations through localized depletion of CSNA by fishing, spatial closures such as those requested by some commenters are outside the scope of this action. The only part of this action that relates to CSNA is the ACL for the stock. However, NMFS appreciates some of the commenter's concerns regarding spatial effects. Although additional analysis is needed, recent research suggests that CSNA distribution, as well as other species, including other forage species,

may have shifted both spatially and temporally in recent years due to severe environmental changes in the ocean, such as the ''Warm Blob'' and early El Niño effects. Although most predators of small pelagic species off the west coast are not dependent on the availability of a single species (as described above) but rather on a suite of species whose total and regional abundances may also shift each year, these recent shifts in distribution over time and space may be limiting prey availability to some predators during certain times of the year. NMFS has been working to better understand diet linkages between forage fish species and higher order predators to enhance the ecosystem science used in our fisheries management.

Comment 2: Anchovy fishing within the waters of Monterey Bay, CA, is negatively impacting humpback whales and fishing should be restricted or prohibited in that area.

Response: NMFS appreciates the many comments received by both the general public and business owners concerned about Humpback whales, as they are an important trust resource of NMFS. NMFS found many of the comments and the firsthand information provided in them valuable and will consider it in future management actions; however, changes to CPS management such as area closures are outside the scope of this action. However, NMFS will respond in part to these comments. Humpback whales are globally distributed and are highly migratory; spending spring, summer, and fall feeding in temperate or high-latitude areas of the North Atlantic, North Pacific and Southern Ocean and migrating to the tropics in winter to breed and calve. Humpback whales are believed to be largely opportunistic foragers (Fleming et al., 2015), who target a wide variety of prey species (Whitteveen, 2006). They are known to feed on several types of small schooling fish and krill, and their prey consumption is likely an indicator of dominant prey types in the ecosystem. Recent NMFS status reports show humpbacks are increasing in abundance throughout much of their range with some populations no longer warranting listing under the Endangered Species Act. Humpbacks off the central California coast are highly migratory, breeding in Costa Rica and Mexico and traveling to central California to forage. Coupling their diverse diet and migratory patterns, it is unlikely that the removal of a portion of one prey source in one localized geographic area would have a substantial negative impact on their population.

Comment 3: One commenter stated that the default framework for setting an OFL for the northern subpopulation of northern anchovy was not used, and although not clear from the comment, that presumably had the default framework been used, a different value would have been calculated. Additionally, the comment stated that NMFS did not explain how scientific uncertainty was accounted for in the established OFL.

Response: As it relates to the specific information used to determine the OFL for the northern subpopulation of northern anchovy, NMFS has determined the best available scientific information was used. This value was determined by the Council's SSC and was determined to represent the best available science and therefore recommended to NMFS by the Council. With regards to not using the default framework, as described in the preamble of the proposed rule, the default framework established through Amendment 13 set the OFLs for the central subpopulation of northern anchovy and jack mackerel equal to the existing MSY values in the FMP that were established through Amendment 8 to the FMP. An MSY value was undetermined for the northern subpopulation of northern anchovy at that time; therefore, the default framework could not be used for the northern subpopulation of northern anchovy. In 2015, Amendment 14 to the CPS FMP established an F_{MSY} of 0.3 as the MSY reference point for the northern subpopulation of northern anchovy. However, because the default framework in the FMP for setting OFLs and ABCs is based on applying a percentage to numerical MSY/OFLs, it was necessary to determine a numerical OFL value through the specifications process.

In formulating its recommendation on an appropriate OFL estimate, the SSC reviewed all of the available information on the stock, which although limited, included information such as egg and larvae survey data, density and distribution data, stock productivity and vulnerability information and landings data, which was prepared and presented to them by the Council's CPSMT (Agenda Item I.2.c, CPSMT Report 1, November 2010 and references contained within). Furthermore, the SSC also noted that because the northern subpopulation of anchovy has been lightly fished, with inconsistent effort, that the time series of catch was an unreliable indicator of annual stock status for setting the OFL. In the preamble to the proposed rule, NMFS also explained how uncertainty is accounted for in estimating the OFL. The OFL of 39,000 mt was reduced by 75 percent to 9,750 mt (*i.e.,* the ABC) explicitly to account for uncertainty in the OFL.

Comment 4: The comment stated that the control rules and management reference points for jack mackerel are ''fraught with doubt'' because the most recent stock assessment is outdated and that NMFS has not explained how scientific uncertainty is accounted for in the jack mackerel ACL. The commenter also recommends NMFS set the ACL for jack mackerel at 1,000 tons based on recent catch as it would better reflect the scientific guidance and best available science.

Response: Although the existing control rules are not subject to this rulemaking, NMFS points out that as is the case for the central subpopulation of northern anchovy (and explained in response to comment one), the existing OFL and ABC control rules for jack mackerel and the resulting values are not based on a single stock assessment. NMFS recognizes that formal stock assessments have not been conducted in many years for either northern anchovy or jack mackerel. However, management of these stocks is not based on single point estimates of biomass; therefore, the fact that the most recent assessments are outdated is not relevant to the current quotas which are based on MSY principles. The OFL is based on the principle of MSY, which is a long-term average and intended to reflect a fishing mortality rate that does not jeopardize the capacity of a stock or stock complex to produce MSY. This OFL is then reduced by 75 percent by the ABC control rule to account for scientific uncertainty in the OFL, which was explained in the preamble to the proposed rule, as well as in this final rule and was also explained in the environmental assessment and other documents that accompanied Amendment 13 to the CPS FMP, which established the ABC control rule. Similar to the other monitored finfish stocks, because jack mackerel is lightly fished, with inconsistent effort over time, the existing time series of catch is likely an unreliable indicator of stock status, making it an unreliable source of information for estimating abundance or setting catch levels.

Comment 5: The California Department of Fish and Wildlife (CDFW) expressed support for the proposed action, but voiced concern over the potential increase in staff workload and monitoring costs that the proposed action may cause. Additionally, CDFW asked for clarification on whether establishing

ACLs for the two subpopulations of northern anchovy might require improved monitoring of the two stocks in the ocean area where the populations can overlap.

Response: CDFW is an important co-manager in the management of CPS and NMFS appreciates its input. Based on current fishery operations and landings, NMFS does not expect that changes in monitoring practices will be necessary as a result of this action because the ACLs being implemented are the same as the ABC levels that have been in place in the FMP since 1999. However, NMFS recognizes that these fisheries are dynamic and aspects of the fishery, such as ports of landing, could change, requiring additional work from CDFW. If this were to occur, NMFS would work closely with CDFW to help ensure the burden was minimized and work to find efficiencies in current monitoring procedures to lessen any additional costs. With regards to how catch is currently tracked and reported for the two subpopulations of northern anchovy, similarly this action does not require a change in current practices for differentiating landings between these two subpopulations at this time. However, as the comment points out, we are seeing oceanographic changes that could re-distribute the current core harvesting and landings areas (Los Angeles, CA, Monterey CA, and off near the mouth of the Columbia River in Oregon and Washington). If this were to occur, along with an increase in landings of both these subpopulations, status quo procedures would likely need to change in a manner described in the comment. If this need arises, NMFS will work closely with the CDFW to ensure this is done in an efficient manner.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

These final specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are marine commercial fishing businesses and were considered small under the SBA's size standards, and thus they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

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

Dated: October 11, 2016.

Samuel D. Rauch III,

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

[FR Doc. 2016–24989 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE990

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA. This action is necessary to prevent exceeding the 2016 Pacific halibut prohibited species catch limit specified for vessels using trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 22, 2016, through 2400 hrs, A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 Pacific halibut prohibited species catch (PSC) limit for vessels using trawl gear was established as 1,515 metric tons by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.21(d)(6)(i), the Regional Administrator has determined that the 2016 Pacific halibut PSC limit allocated to vessels using trawl gear in the GOA has been reached. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for

directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closing directed fishing for groundfish by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25902 Filed 10–21–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 207
Wednesday, October 26, 2016

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2016–0016]

RIN 1557–AE06

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1550]

RIN 7100–AE 61

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–AE45

Enhanced Cyber Risk Management Standards

AGENCY: The Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; and the Federal Deposit Insurance Corporation.

ACTION: Joint advance notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are inviting comment on an advance notice of proposed rulemaking (ANPR) regarding enhanced cyber risk management standards (enhanced standards) for large and interconnected entities under their supervision and those entities' service providers. The agencies are considering establishing enhanced standards to increase the operational resilience of these entities and reduce the impact on the financial system in case of a cyber event experienced by one of these entities. The ANPR addresses five categories of cyber standards: Cyber risk governance; cyber risk management; internal dependency management; external dependency management; and incident response, cyber resilience, and situational awareness. The agencies are considering implementing the enhanced standards in a tiered manner, imposing more stringent standards on the systems of those entities that are critical to the functioning of the financial sector.

DATES: Comments must be received by January 17, 2017.

ADDRESSES: Comments should be directed to:

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1550 and RIN 7100–AE–61 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers 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 will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Enhanced Cyber Risk Management Standards'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2016–0016'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2016–0016'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov.* Enter ''Docket ID OCC–2016–0016'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on

''View All'' and then using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FDIC: You may submit comments, identified by RIN 3064–AE45, by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web site.

• *Email: Comments@fdic.gov.* Include the RIN 3064–AE45 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE45 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

Board: Anna Lee Hewko, Associate Director, (202) 530–6260; or Matthew Hayduk, Manager, (202) 973–6190; or Julia Philipp, Senior Supervisory Financial Analyst, (202) 452–3940; or Christopher Olson, Senior Supervisory Financial Analyst, (202) 912–4609, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Special Counsel, (202) 452–2036; or Claudia Von Pervieux, Counsel, (202) 452–2552; or Michelle Kidd, Counsel, (202) 736–5554, Legal Division; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

OCC: Bethany Dugan, Deputy Comptroller for Operational Risk, (202) 649–6949; or Kevin Greenfield, Director, Bank Information Technology, (202) 649–6954; or Eric Gott, Risk Team Lead for Governance and Operational Risk, Large Bank Supervision, (202) 649–7181; or Patrick Kelly, Bank Examiner, Critical Infrastructure Protection, (202) 649–5519; or Carl Kaminski, Special Counsel, Beth Knickerbocker, Counsel, or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FDIC: Donald Saxinger, Senior Examination Specialist, IT Supervision Branch, Division of Risk Management Supervision, (703) 254–0214; or John Dorsey, Counsel, (202) 898–3807. Supervision & Legislation Branch, Legal Division.

I. Background

With advances in financial technology, financial institutions and consumers alike have become increasingly dependent on technology to facilitate financial transactions. In addition, the largest, most complex financial institutions rely heavily on technology to engage in national and international banking activities and to provide critical services to the financial sector and the U.S. economy.

As technology dependence in the financial sector continues to grow, so do opportunities for high-impact technology failures and cyber-attacks. Due to the interconnectedness of the U.S. financial system, a cyber incident or failure at one interconnected entity may not only impact the safety and soundness of the entity, but also other financial entities with potentially systemic consequences. For example, depository institutions and depository institution holding companies play an important role in U.S. payment, clearing, and settlement arrangements and provide access to credit for businesses and households. Nonbank financial companies that the Financial Stability Oversight Council (FSOC) has determined should be supervised by the Board (referred to in the ANPR as nonbank financial companies) perform critical functions for the U.S. financial system, and financial market infrastructures (FMIs) facilitate the payment, clearing, and recording of monetary and other financial transactions and services and play critical roles in fostering financial stability in the United States. Third parties that provide payments processing, core banking, and other financial technology services to these participants in the financial sector also provide services that are vital to the financial sector.

The Board, the OCC, and the FDIC have incorporated information security into their supervisory review of information technology (IT) programs at supervised banking organizations for many years. The agencies also review the services of third-party service providers that support those entities, and the Board includes information security as part of the supervisory program for nonbank financial companies and FMIs.

In response to expanding cyber risks, the agencies are considering establishing enhanced standards for the largest and most interconnected entities under their supervision, as well as for services that these entities receive from third parties. The term ''covered entities'' is used throughout this document to refer to entities potentially covered by the standards described in this ANPR. The enhanced standards would be designed to increase covered entities' operational resilience and reduce the potential impact on the financial system in the event of a failure, cyber-attack, or the failure to implement appropriate cyber risk management.

The agencies are considering implementing the enhanced standards in a tiered manner, imposing more stringent standards on the systems of covered entities that are critical to the functioning of the financial sector, referred to in this ANPR as ''sector-critical systems.''

The agencies are seeking comment on all aspects of the enhanced standards described in this ANPR. The agencies plan to use information collected in this ANPR to develop a more detailed proposal for consideration. The agencies will again invite public comment on a detailed proposal before adopting any final rule.

II. Relationship to Existing Requirements and Guidance

a. Existing Supervisory Programs

As noted, the agencies have existing supervisory programs that contain general expectations for cybersecurity practices at financial institutions and third-party service providers. The enhanced standards would be integrated into the existing supervisory framework by establishing enhanced supervisory

expectations for the entities and services that potentially pose heightened cyber risk to the safety and soundness of the financial sector.

Through the Federal Financial Institutions Examination Council (FFIEC), the agencies issued the Uniform Rating System for Information Technology (URSIT) in 1978 (revised January 20, 1999).[1] The URSIT rating is used by federal and state regulators to uniformly assess IT risks at financial institutions, their affiliates, and service providers [2] for the purpose of identifying those institutions that require special supervisory attention. The URSIT framework includes elements to assess data security and other risk management factors necessary to determine the quality, integrity, and reliability of the financial institution's or third-party service provider's IT. The proposed enhanced standards would not replace the URSIT ratings but could be used, in part, to inform the cyber-related elements of the URSIT rating for covered entities. For example, supervisory work related to the proposed external dependency management standard discussed in this ANPR could be used, in part, to inform the development and acquisition component of the URSIT rating.

In 2003, the FFIEC published the first in a series of booklets on IT that make up the IT Handbook. The IT Handbook provides guidance to examiners in reviewing financial institutions and services provided by third parties. Certain booklets, such as the Business Continuity Planning booklet and the Information Security booklet, incorporate the agencies' expectations regarding cybersecurity risk management. The IT Handbook also includes work programs that an examiner may use to aid in assessing a company's URSIT rating. IT Handbook guidance would continue to be used for covered entities to assess IT risk management.

In 1999, Title V, Subtitle A of the Gramm-Leach-Bliley Act (GLBA) [3] required that each agency establish appropriate administrative, technical, and physical controls for the safeguarding of financial institutions' customer information. In 2000, the agencies published the *Interagency Guidelines Establishing Information Security Standards* (Guidelines) implementing the GLBA safeguarding requirements.[4] The Guidelines require insured depository institutions to implement information security programs to ensure the security and confidentiality of customer information; protect against any anticipated threats or hazards to the security or integrity of such information; protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer; and ensure the proper disposal of customer and consumer information.

Additionally, the agencies have interagency guidelines that establish safety and soundness standards, including operational and managerial standards, for depository institutions.[5] These guidelines require an insured depository institution to have internal controls and information systems appropriate to the size of the institution and to the nature, scope, and risk of its activities and that provide for, among other requirements, effective risk assessment and adequate procedures to safeguard and manage assets. Insured depository institutions are also required to have internal audit systems based on the same criteria that provide for adequate testing and review of information systems. The Guidelines and safety and soundness standards would continue to apply to covered entities that are insured depository institutions.

b. FFIEC Cybersecurity Assessment Tool

In June 2015, the FFIEC issued the Cybersecurity Assessment Tool (Assessment) as a voluntary self-assessment tool that financial institutions, including covered entities, may use to help assess their cyber risks and determine their cybersecurity preparedness.

The Assessment provides institutions with a repeatable and measurable process to determine whether the institutions have appropriate controls and risk management in place relative to the inherent risk profile of the institution. The Assessment incorporates baseline cybersecurity-related categories from the FFIEC IT Handbook, as well as key concepts from the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) and other industry best practices. However, the Assessment does not establish binding minimum standards.

c. NIST Cybersecurity Framework

The NIST CSF is a voluntary framework for organizations to better understand, manage, and reduce their cybersecurity risk. The CSF is intended to be customized by different business sectors and individual organizations to best suit their risks, situation, and needs. It was also designed to improve communications, awareness, and understanding among IT, planning and operating units, and senior executives, to better address cyber risks. The NIST CSF Core consists of five concurrent and continuous functions: *Identify, Protect, Detect, Respond, and Recover.* Taken together, these functions provide a high-level, strategic view of the lifecycle of an organization's management of cybersecurity risk.

Similar to the NIST CSF, the enhanced standards would provide a clear set of objectives for sound cyber risk management. However, the binding requirements set forth in the enhanced standards would be designed specifically to address the cyber risks of the largest, most interconnected U.S. financial entities.

d. CPMI–IOSCO Guidance

In June 2016, the Committee on Payments and Market Infrastructures (CPMI) and the Board of the International Organization of Securities Commissions (IOSCO) released ''Guidance on cyber resilience for financial market infrastructures.'' [6] According to CPMI and IOSCO, the guidance ''aims to add momentum to and instill international consistency in the industry's ongoing efforts to enhance FMIs' ability to preempt cyber-attacks, respond rapidly and effectively to them, and achieve faster and safer target recovery objectives if they succeed.'' [7] The guidance is intended to supplement the CPMI–IOSCO Principles for Financial Market Infrastructures (PFMI) and is ''not intended to impose additional standards on FMIs beyond those set out in the PFMI, but provides detail related to the preparations and measures that FMIs should undertake to enhance their cyber resilience capabilities with the objective of limiting the escalating risks that cyber threats pose to financial stability.'' [8] The agencies reviewed the CPMI–IOSCO guidance and took it into consideration as they developed the proposed enhanced standards described in this ANPR.

[1] 64 FR 3109, January 20, 1999.

[2] The agencies have statutory authority to supervise and examine services provided by third-party service providers to regulated financial institutions under the Bank Service Company Act (12 U.S.C. 1867(c)).

[3] 15 U.S.C. 6801–6809.

[4] *See* 12 CFR part 208, App. D–2 and 12 CFR part 225, App. F (Board); 12 CFR 30, App. B (OCC); and 12 CFR part 364, App. B and 12 CFR part 391, subpart B, App. B (FDIC).

[5] *See* 12 CFR part 30, App. A and D, 12 CFR part 208, App. D–1, 12 CFR part 225, App. F.

[6] *See http://www.bis.org/cpmi/publ/d146.pdf.*

[7] *See http://www.bis.org/cpmi/publ/d146.htm.*

[8] *See http://www.bis.org/cpmi/publ/d146.pdf.*

e. Interagency Paper on Sound Practices To Strengthen the Resilience of the U.S. Financial System

In April 2003, the Board, the OCC, and the Securities and Exchange Commission issued the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System* (Sound Practices Paper).[9] The Sound Practices Paper focuses on minimizing the immediate systemic effects of a wide-scale disruption on critical financial markets and on establishing the appropriate back-up capacity for recovery and resumption of clearance and settlement activities in wholesale financial markets. As discussed in sections IV and VI, the agencies took the Sound Practices Paper into consideration as they developed the proposed enhanced standards described in this ANPR.

III. Scope of Application

The agencies are considering applying the enhanced standards to certain entities with total consolidated assets of $50 billion or more on an enterprise-wide basis. A cyber-attack or disruption at one or more of these entities could have a significant impact on the safety and soundness of the entity, other financial entities, and the U.S. financial sector. The agencies are considering applying the enhanced standards to these entities on an enterprise-wide basis because cyber risks in one part of an organization could expose other parts of the organization to harm.

Each agency would apply these standards to large institutions subject to their jurisdiction.[10] Thus, the Board is considering applying the enhanced standards on an enterprise-wide basis to all U.S. bank holding companies with total consolidated assets of $50 billion or more, the U.S. operations of foreign banking organizations with total U.S. assets of $50 billion or more, and all U.S. savings and loan holding companies with total consolidated assets of $50 billion or more.[11] In this regard, the proposed standards would apply to subsidiaries of depository institution holding companies (other than depository institutions supervised by the OCC and FDIC) in view of the subsidiaries' potential to act as points of cyber vulnerability to the covered entities. The Board is also considering applying the standards to nonbank financial companies supervised by the Board pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directs the Board to establish enhanced prudential standards, including overall risk management standards, for these entities.[12] Similarly, the Board is considering applying the standards to financial market utilities designated by FSOC (designated FMUs) for which the Board is the Supervisory Agency pursuant to sections 805 and 810 of the Dodd-Frank Act; other FMIs over which the Board has primary (not backup) supervisory authority because the FMIs are members of the Federal Reserve System; and FMIs that are operated by the Federal Reserve Banks (collectively referred to as ''Board-supervised FMIs'').[13]

The OCC is considering applying the standards to any national bank, federal savings association (and any subsidiaries thereof), or federal branch of a foreign bank that is a subsidiary of a bank holding company or savings and loan holding company with total consolidated assets of $50 billion or more, or any national bank, federal savings association, or federal branch of a foreign bank that has total consolidated assets of $50 billion or more that does not have a parent holding company. The Board is considering applying the standards to any state member bank (and any subsidiaries thereof) that is a subsidiary of a bank holding company with total consolidated assets of $50 billion or more, and to any state member bank that has total consolidated assets of $50 billion or more that is not a subsidiary of a bank holding company. The FDIC is considering applying the standards to any state nonmember bank or state savings association (and any subsidiaries thereof) that is a subsidiary of a bank holding company or savings and loan holding company with total consolidated assets of $50 billion or more. Additionally, the FDIC is considering applying the standards to any state nonmember bank or state savings association that has total consolidated assets of $50 billion or more that does not have a parent holding company.

As noted, the agencies are considering whether to apply the standards to third-party service providers with respect to services provided to depository institutions and their affiliates that are covered entities (covered services). This would ensure consistent, direct application of the standards regardless of whether a depository institution or its affiliate conducted the operation itself, or whether it engaged a third-party service provider to conduct the operation. Direct application of the standards to these service providers could have potential benefits, including facilitating supervisory action in the event that a covered service was not meeting a proposed standard and establishing an obligation for meeting the standard on the depository institution or its affiliate, as well as on the third-party provider of the covered service. The Board also is considering requiring nonbank financial companies and Board-supervised FMIs to verify that any services the nonbank financial company or Board-supervised FMI receives from third parties are subject to the same standards that would apply if the services were being conducted by the nonbank financial company or Board-supervised FMI itself.

Other financial entities, including community banks that are not covered entities, would continue to be subject to existing guidance, standards, and examinations related to the provision of banking services by third parties.

Questions on the Scope of Application

1. How should the agencies consider broadening or narrowing the scope of entities to which the proposed standards would apply? What, if any, alternative size thresholds or measures of risk to the safety and soundness of the financial sector and the U.S. economy should the agencies consider in determining the scope of application of the standards? For example, should ''covered entity'' be defined according to the number of connections an entity (including its service providers) has to other entities in the financial sector, rather than asset size? If so, how should the agencies define ''connections'' for this purpose?

2. What are the costs and benefits of applying the standards to covered entities on an enterprise-wide basis? If the agencies were to consider exempting certain subsidiaries within a covered entity from the standards, what criteria should be used to assess any such exemptions? What safeguards should the agencies require from a subsidiary seeking to be exempted from the standards to ensure that an exempted subsidiary does not expose the covered entity to material cyber risk?

3. What, if any, special considerations should be made regarding application of the standards to savings and loan holding companies that engage significantly in insurance or commercial activities?

[9] Available at: *http://www.sec.gov/news/studies/34–47638.htm.*

[10] 12 U.S.C. 321, 1818, 1831p-1 (Board); 12 U.S.C. 1, 93a, 161, 481, 1463, 1464, 1818, 1831p-1, 3901, 3909 (OCC); 12 U.S.C. 1818, 1819, 1831p-1 (FDIC).

[11] 12 U.S.C. 1467a(g), 5365.

[12] 12 U.S.C. 5365.

[13] 12 U.S.C. 5464(a), 5469; 12 U.S.C. 330, 1818, 1831a; 12 U.S.C. 248(j).

4. What are the most effective ways to ensure that services provided by third-party service providers to covered entities are performed in such a manner as to minimize cyber risk? What are the advantages and disadvantages of applying the standards to services by requiring covered entities to maintain appropriate service agreements or otherwise receive services only from third-party service providers that meet the standards with regard to the services provided, rather than applying the requirements directly to third-party service providers?

5. What are the advantages and disadvantages of applying the standards directly to service providers to covered entities? What challenges would such an approach pose?

6. What factors are most important in determining an appropriate balance between protecting the safety and soundness of the financial sector through the possible application of the standards and the implementation burden and costs associated with implementing the standards?

IV. Sector-Critical Systems

The financial sector operates through a network of interrelated markets and financial participants. As a result, a technology failure or cyber-attack at one covered entity could have wide-ranging effects on the safety and soundness of other financial entities, both within and outside the United States. While this interconnectedness warrants comprehensive cyber risk management by all financial market participants, it is especially important in the case of covered entities with sector-critical systems.

Thus, the agencies are considering establishing a two-tiered approach, with the enhanced standards applying to all systems of covered entities, and an additional, higher set of expectations, referred to in the ANPR as ''sector-critical standards,'' applying to those systems of covered entities that are critical to the financial sector.

As discussed below in the ANPR, the agencies are proposing sector-critical standards in four of the five categories of standards that would require covered entities with sector-critical systems to substantially mitigate the risk of a disruption due to a cyber event to their sector-critical systems.

Previously in the Sound Practices Paper, the Board and the OCC, together with the Securities and Exchange Commission, introduced definitions of ''critical financial markets'' and ''firms that play significant roles in critical financial markets,'' which emphasized the need to protect the most critical elements of the financial system from serious new risks posed in the post-September 11 environment. In the Sound Practices Paper, ''critical financial markets'' are defined as the markets for federal funds, foreign exchange, and commercial paper; U.S. Government and agency securities; and corporate debt and equity securities. The Sound Practices Paper further provides: ''firms that play significant roles in critical financial markets are those that participate (on behalf of themselves or their customers) with sufficient market share in one or more critical financial markets such that their failure to settle their own or their customers' material pending transactions by the end of the business day could present systemic risk. While there are different ways to gauge the significance of such firms in critical markets, as a guideline, the agencies consider a firm significant in a particular critical market if it consistently clears or settles at least five percent of the value of transactions in that critical market.''

While the scope of the Sound Practices Paper was limited to the resumption of clearance and settlement activities in wholesale financial markets, the definitions presented in the Sound Practices Paper provide a starting point for identifying systems (that is, sector-critical systems) that should be subject to the more stringent, sector-critical standards. Thus, consistent with the Sound Practices Paper, the agencies are considering whether systems that support the clearing or settlement of at least five percent of the value of transactions (on a consistent basis) in one or more of the markets for federal funds, foreign exchange, commercial paper, U.S. Government and agency securities, and corporate debt and equity securities, should be considered sector-critical systems for the purpose of the sector-critical standards. The agencies also are considering whether systems that support the clearing or settlement of at least five percent of the value of transactions (on a consistent basis) in other markets (for example, exchange-traded and over-the-counter derivatives), or that support the maintenance of a significant share (for example, five percent) of the total U.S. deposits or balances due from other depository institutions in the United States, should be considered sector-critical systems.

Because a cyber event may impact the safety and soundness of multiple financial participants and create systemic risk beyond these specific markets, the agencies are considering additional factors to identify sector-critical systems, such as substitutability and interconnectedness. Systems that provide key functionality to the financial sector for which alternatives are limited or nonexistent, or would take excessive time to implement (for example, due to incompatibility) also could have a material impact on financial stability if significantly disrupted. Systems that act as key nodes to the financial sector due to their extensive interconnectedness to other financial entities could have a material impact on financial stability if significantly disrupted.

Consistent with the approach to other services, any services provided by third parties that support a covered entity's sector-critical systems would be subject to the same sector-critical standards.

Questions on Sector-Critical Systems

7. Do covered entities currently have access to sufficient information to determine whether any of their systems would be considered sector-critical systems for the purpose of the standards? If not, what additional information would be necessary for an entity to identify whether it has one or more sector-critical systems for the purposes of the standards?

8. What are the advantages and disadvantages of requiring covered entities to identify and report to the agencies their systems that support operations and meet the applicable thresholds to be considered sector-critical systems? Alternatively, what are the advantages and disadvantages of having the agencies develop a process to identify the systems of covered entities that support operations and meet the applicable thresholds to be considered sector-critical systems and to notify covered entities which of their systems would be subject to the sector-critical standards?

9. What thresholds for transaction value in one or more critical financial markets should the agencies consider for identifying sector-critical systems? Similarly, what, if any, additional thresholds should the agencies consider for identifying sector-critical systems that could have a material impact on financial stability if disrupted? For example, how should the agencies identify systems that provide functionality to the financial sector and for which alternatives are limited, nonexistent, or would take excessive time to implement? How should such factors be weighted? Commenters are encouraged to provide quantitative as well as qualitative support and analysis for proposed alternative methodologies, thresholds and/or factors.

10. What are the advantages and disadvantages of determining that a covered entity which holds a substantial amount of U.S. deposits and/or balances due from other depository institutions in the United States plays a significant role in a critical financial market? At what level of activity should a covered entity's systems related to holding U.S. deposits and/or balances due from other depository institutions in the United States be determined to be critical to the sector?

11. What factors should the agencies consider in a measure of interconnectedness resulting in a system being determined as critical to the financial sector, and how should such factors be weighted? Commenters are asked to provide quantitative as well as qualitative support and analysis for proposed alternative methodologies, thresholds and/or factors.

12. In some cases, entities, such as smaller banking organizations, may provide services considered sector-critical services either directly to the financial sector or through covered entities. What criteria should the agencies use to evaluate whether a financial entity that would not otherwise be subject to the enhanced standards should be subject to the sector-critical standards? How should the agencies weigh the costs of imposing the sector-critical standards to such smaller banking organizations against the potential benefits to the financial system?

V. Enhanced Cyber Risk Management Standards

As noted, the agencies are considering enhanced cyber risk management standards for covered entities to increase the entities' operational resilience and reduce the potential impact on the financial system as a result of, for example, a cyber-attack at a firm or the failure to implement appropriate cyber risk management.

The enhanced standards would emphasize the need for covered entities to demonstrate effective cyber risk governance; continuously monitor and manage their cyber risk within the risk appetite and tolerance levels approved by their boards of directors; [14] establish and implement strategies for cyber resilience and business continuity in the event of a disruption; establish protocols for secure, immutable, transferable storage of critical records; and maintain continuing situational awareness of their operational status and cybersecurity posture on an enterprise-wide basis. The agencies are considering establishing a two-tiered approach, with the proposed enhanced standards applying to all systems of covered entities and an additional, higher set of expectations, or ''sector-critical standards,'' applying to those systems of covered entities that are critical to the financial sector. The ''sector-critical standards'' would require covered entities to substantially mitigate the risk of a disruption due to a cyber event to their sector-critical systems.

As noted, the standards would be organized into five categories:

Category 1: Cyber risk governance;

Category 2: Cyber risk management;

Category 3: Internal dependency management;

Category 4: External dependency management; and

Category 5: Incident response, cyber resilience, and situational awareness.

The term ''internal dependency'' in this ANPR refers to the business assets (*i.e.,* workforce, data, technology, and facilities) of a covered entity upon which such entity depends to deliver services, as well as the information flows and interconnections among those assets. The term ''external dependency'' refers to an entity's relationships with outside vendors, suppliers, customers, utilities (such as power and telecommunications), and other external organizations and service providers that the covered entity depends on to deliver services, as well as the information flows and interconnections between the entity and those external parties.

The categories are organized in this order to emphasize the core *cyber risk governance* and *cyber risk management* standards the agencies would expect a covered entity to develop to establish a foundation for making informed risk-based decisions in support of its business objectives. Standards in the *internal dependency management, external dependency management,* and *incident response, cyber resilience, and situational awareness* categories are designed to work together and to be mutually reinforcing.

In the discussion of the individual enhanced standards that follows, a reference to application of the enhanced standards to covered entities is intended to include application of the enhanced standards to services provided to the covered entities, unless otherwise specified. The proposed standards for covered entities are described first; additional proposed standards for sector-critical systems then are listed separately.

Category 1—Cyber Risk Governance

A key aspect of *cyber risk governance* is developing and maintaining a formal cyber risk management strategy, as well as a supporting framework of policies and procedures to implement the strategy, that is integrated into the overall strategic plans and risk governance structures of covered entities. Therefore, the agencies are considering standards under the *cyber risk governance* category that would be similar to the governance standards generally expected for large, complex financial organizations.[15] For example, the standards would provide that the board of directors, or an appropriate board committee,[16] of a covered entity must be responsible for approving the

[14] With regard to providers of services, depending on the size and structure of the organization and the relative size of the unit providing services to a depository institution, its subsidiaries or affiliates, it may be appropriate for some functions to be performed by business line executive management instead of the board of directors or a board committee of the organization. For these firms, ''enterprise-wide,'' for purposes of the ANPR, encompasses the governance processes, policies, procedures, and controls related to or impacting the performance of services by a third party for a depository institution, its subsidiaries, or affiliates.

[15] For OCC-regulated covered entities, see 12 CFR part 30 Appendix D. An OCC-regulated covered entity would be expected to incorporate its cyber risk management strategy and framework into its overall risk management framework required pursuant to the ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches'' set forth at 12 CFR part 30 Appendix D. These OCC guidelines establish minimum standards for the design and implementation of a risk governance framework for large insured national banks, insured federal savings associations, and insured federal branches of foreign banks. Among other items, the OCC guidelines state that the board of directors of a covered bank should require management to establish and implement an effective framework that complies with the guidelines and approve any significant changes to the framework; the board should actively oversee a covered bank's risk-taking activities and hold management accountable for adhering to the framework; and each covered bank should have a comprehensive written statement that articulates the bank's risk appetite and serves as a basis for the framework (*i.e.,* a risk appetite statement). The OCC guidelines set forth roles and responsibilities for front line units, independent risk management, and internal audit. A Board-regulated covered entity would be expected to incorporate its cyber risk management strategy and framework into its overall corporate strategy and the institutional risk appetite maintained by the entity's board of directors. *See* SR letter 12–17, ''Consolidated Supervision Framework for Large Financial Institutions,'' which outlines the general supervisory expectation that large bank holding companies and nonbank financial companies maintain a clearly articulated corporate strategy and institutional risk appetite; *see also* 12 CFR part 252, subparts D and O, which establishes risk management requirements for certain large bank holding companies and nonbank financial companies.

[16] In the discussion of the enhanced standards that follows, a reference to the board of directors is intended to include the board of directors or an appropriate board committee.

entity's cyber risk management strategy and holding senior management accountable for establishing and implementing appropriate policies consistent with the strategy.

Specifically, the agencies are considering, as an enhanced standard in this category, a requirement that covered entities develop a written, board-approved, enterprise-wide cyber risk management strategy that is incorporated into the overall business strategy and risk management of the firm.[17] The strategy would articulate how the entity intends to address its inherent cyber risk (that is, its cyber risk before mitigating controls or other factors are taken into consideration) and how the entity would maintain an acceptable level of residual cyber risk (that is, its remaining cyber risk after mitigating controls and other factors have been taken into consideration) and maintain resilience on an ongoing basis.

A covered entity also would be required to establish cyber risk tolerances consistent with the firm's risk appetite and strategy, and manage cyber risk appropriate to the nature of the operations of the firm. Thus, as part of the enhanced standard in this category, the agencies are considering requiring the entity's board of directors to review and approve the enterprise-wide cyber risk appetite and tolerances of the covered entity. The enhanced standard also would provide that a covered entity must reduce its residual cyber risk to the appropriate level approved by the board of directors.

Covered entities would need to be able to identify and assess those activities and exposures that present cyber risk, then determine ways to aggregate them to assess the entity's residual cyber risk. This is important because cyber risk has the potential to produce losses large enough to threaten an entity's financial health, its reputation, or its ability to maintain core operations if faced with a material cyber event.

The board of directors of a covered entity would oversee and hold senior management accountable for implementing the entity's cyber risk management framework. In this regard, the agencies are considering requiring the board of directors to have adequate expertise in cybersecurity or to maintain access to resources or staff with such expertise. Consistent with existing agency expectations, the enhanced standards would require the board of directors to have and maintain the ability to provide credible challenge to management in matters related to cybersecurity and the evaluation of cyber risks and resilience.

The agencies also are considering requiring senior leaders with responsibility for cyber risk oversight to be independent of business line management. In this regard, these senior leaders would need to have direct, independent access to the board of directors and would independently inform the board of directors on an ongoing basis of the firm's cyber risk exposure and risk management practices, including known and emerging issues and trends.

A covered entity would be required to establish an enterprise-wide cyber risk management framework that would include policies and reporting structures to support and implement the entity's cyber risk management strategy. The entity would be required to include in its framework delineated cyber risk management and oversight responsibilities for the organization, including reporting structures and expectations for independent risk management, internal control, and internal audit personnel; established mechanisms for evaluating whether the organization has sufficient resources to address the cyber risks facing the organization; and established policies for addressing any resource shortfalls or knowledge gaps. The entity also would be required to include in its cyber risk management framework mechanisms for identifying and responding to cyber incidents and threats, as well as procedures for testing the effectiveness of the entity's cybersecurity protocols and updating them as the threat landscape evolves.

Questions on Cyber Risk Governance

13. How would a covered entity determine that it is managing cyber risk consistent with its stated risk appetite and tolerances? What other implementation challenges does managing cyber risk consistent with a covered entity's risk appetite and tolerances present?

14. What are the incremental costs and benefits of establishing the contemplated standards for the roles, responsibilities, and adequate cybersecurity expertise (or access to adequate cybersecurity expertise) of the board of directors? To what extent do covered entities already have governance structures in place that are broadly consistent with the proposed cyber risk governance standards?

Category 2—Cyber Risk Management

In general, the enhanced standards would require covered entities, to the greatest extent possible and consistent with their organizational structure, to integrate cyber risk management into the responsibilities of at least three independent functions (such as the three lines of defense risk-management model) with appropriate checks and balances. This would allow covered entities to more accurately and effectively identify, monitor, measure, manage, and report on cyber risk.

Business Units

The agencies are considering requiring units responsible for the day-to-day business functions of a covered entity to assess, on an ongoing basis, the cyber risks associated with the activities of the business unit. Business units also would need to ensure that information regarding those risks is shared with senior management, including the chief executive officer (CEO), as appropriate, in a timely manner so that senior management can address and respond to emerging cyber risks and cyber incidents as they develop.

As part of this proposed enhanced standard, business units would be required to adhere to procedures and processes necessary to comply with the covered entity's cyber risk management framework. Such procedures and processes would be designed to ensure that the applicable business unit's cyber risk is effectively identified, measured, monitored, and controlled, consistent with the covered entity's risk appetite and tolerances. Business units would assess the cyber risks and potential vulnerabilities associated with every business asset (that is, their workforce, data, technology, and facilities), service, and IT connection point for the respective unit, and update these assessments as threats, technology, and processes evolve. To this end, the covered entity would be expected to ensure that business units maintain, or have access to, resources and staff with the skill sets needed to comply with the unit's cybersecurity responsibilities.

Independent Risk Management

The agencies are considering a requirement that covered entities incorporate enterprise-wide cyber risk management into the responsibilities of an independent risk management function. This function would report to the covered entity's chief risk officer and board of directors, as appropriate, regarding implementation of the firm's cyber risk management framework throughout the organization.

[17] For Board-regulated covered entities, this would be part of the larger global risk management framework that is required by 12 CFR 252.33.

Independent risk management would be required to analyze cyber risk at the enterprise level to identify and ensure effective response to events with the potential to impact one or multiple operating units. Additionally, independent risk management would be continually required to assess the firm's overall exposure to cyber risk and promptly notify the CEO and board of directors, as appropriate, when its assessment of a particular cyber risk differs from that of a business unit, as well as of any instances when a unit of the covered entity has exceeded the entity's established cyber risk tolerances.

On a continuous basis, independent risk management would be required to identify, measure, and monitor cyber risk across the enterprise, and to determine whether cyber risk controls are appropriately in place across the enterprise consistent with the entity's established risk appetite and tolerances. On an ongoing basis, the independent risk management function would be required to identify and assess the covered entity's material aggregate risks and determine whether actions need to be taken to strengthen risk management or reduce risk given changes in the covered entity's risk profile or other conditions, placing particular emphasis on sector-critical systems.

Additionally, the agencies are considering requiring covered entities to assess the completeness, effectiveness, and timeliness with which they reduce the aggregate residual cyber risk of their systems to the appropriate, board-of-directors approved level. The Board is considering requiring covered entities, at the holding company level, to measure (quantitatively) the completeness, effectiveness, and timeliness with which they reduce the aggregate residual cyber risk of their systems to the appropriate, board-of-directors approved level. As noted, this is important because cyber risk has the potential to produce losses large enough to threaten an entity's financial health, its reputation, or its ability to maintain core operations if faced with a material cyber event.

Therefore, the independent risk management function would be required to establish and maintain an up-to-date understanding of the structure of a covered entity's cybersecurity programs and supporting processes and systems, as well as their relationships to the evolving cyber threat landscape.

To satisfy these requirements, it is essential that a covered entity's independent risk management function have and maintain sufficient independence, stature, authority, resources, and access to the board of directors to ensure that the operations of the entity are consistent with the cyber risk management framework. The reporting lines must be clear and separate from those for other operations and business units.

Audit Function

Audit evaluates the effectiveness of risk management, internal controls, and governance processes, among other things, and advises management and the board of directors on whether a covered entity's policies and procedures are adequate to keep up with emerging risks and industry regulations. As such, audit plays an important role in risk management, internal control, and corporate governance.

Consistent with a strong overall governance process, the agencies consider cyber risk and cyber risk management as important to the internal audit function at covered entities. Therefore, the agencies are considering explicitly requiring the audit function to assess whether the cyber risk management framework of a covered entity complies with applicable laws and regulations and is appropriate for its size, complexity, interconnectedness, and risk profile.

Further, as part of this enhanced standard, audit would be required to incorporate an assessment of cyber risk management into the overall audit plan of the covered entity. The plan would be required to provide for an evaluation of the adequacy of compliance with the board-approved cyber risk management framework and cyber risk policies, procedures, and processes established by the firm's business units or independent risk management. Such an evaluation would be required to include the entire security lifecycle, including penetration testing and other vulnerability assessment activities as appropriate based on the size, complexity, scope of operations, and interconnectedness of the covered entity. The audit plan would be required to provide for an assessment of the business unit and independent risk management functions' capabilities to adapt as appropriate and remain in compliance with the covered entity's cyber risk management framework and within its stated risk appetite and tolerances.

Questions on Cyber Risk Management

15. The agencies seek comment on the appropriateness of requiring covered entities to regularly report data on identified cyber risks and vulnerabilities directly to the CEO and board of directors and, if warranted, the frequency with which such reports should be made to various levels of management. What policies do covered entities currently follow in reporting material cyber risks and vulnerabilities to the CEO and board of directors?

16. The agencies seek comment on requiring covered entities to organize themselves in a manner that is consistent with the contemplated enhanced standards for cyber risk management. Besides the approach outlined in the ANPR, what other approaches could ensure that entities are effectively identifying, monitoring, measuring, managing, and reporting on cyber risk?

Category 3—Internal Dependency Management

Standards within the *internal dependency management* category are intended to ensure that covered entities have effective capabilities in place to identify and manage cyber risks associated with their business assets (that is, their workforce, data, technology, and facilities) throughout their lifespans. These risks may arise from a wide range of sources, including insider threats, data transmission errors, or the use of legacy systems acquired through a merger.

A key aspect of the *internal dependency management* category is ensuring that covered entities continually assess and improve, as necessary, their effectiveness in reducing the cyber risks associated with internal dependencies on an enterprise-wide basis. As part of the overall cyber risk management strategy, as discussed in the c*yber risk governance* section of this ANPR, the agencies are considering a requirement that a covered entity integrate an internal dependency management strategy into the entity's overall strategic risk management plan. The strategy would guide and inform measures taken to reduce cyber risks associated with a covered entity's internal dependencies. The internal dependency management strategy would be designed to ensure that: Roles and responsibilities for internal dependency management are well defined; policies, standards, and procedures to identify and manage cyber risks associated with internal assets, including those connected to or supporting sector-critical systems, are established and regularly updated throughout those assets' lifespans; appropriate oversight is in place to monitor effectiveness in reducing cyber risks associated with internal dependencies; and appropriate compliance mechanisms are in place.

Another key aspect of the *internal dependency management* category is having current and complete awareness of all internal assets and business functions that support a firm's cyber risk management strategy. The agencies are considering a requirement that covered entities maintain an inventory of all business assets on an enterprise-wide basis prioritized according to the assets' criticality to the business functions they support, the firm's mission and the financial sector. Thus, covered entities would be required to maintain a current and complete listing of all internal assets and business functions, including mappings to other assets and other business functions, information flows, and interconnections. Covered entities would track connections among assets and cyber risk levels throughout the life cycles of the assets and support relevant data collection and analysis across the organization. This would contribute to establishing and implementing mechanisms to prioritize monitoring, incident response, and recovery of systems critical to the entity and to the financial sector. A covered entity's tracking capability would need to enable timely notification of internal cyber risk management issues to designated internal stakeholders. In addition, covered entities would support the reduction of the cyber risk exposure of business assets to the enterprise and the sector until the board-approved risk appetite and tolerances are achieved; and support timely responses to cyber threats to, and vulnerabilities of, the enterprise and the financial sector.

Another key aspect within the *internal dependency management* category is establishing and applying appropriate controls to address the inherent cyber risk of a covered entity's assets. The agencies are considering a requirement that covered entities establish and apply appropriate controls to address the inherent cyber risk of their assets (taking into account the prioritization of the entity's business assets and the cyber risks they pose to the entity) by:

- Assessing the cyber risk of assets and their operating environments prior to deployment;
- continually applying controls and monitoring assets and their operating environments (including deviations from baseline cybersecurity configurations) over the lifecycle of the assets; and
- assessing relevant cyber risks to the assets (including insider threats to systems and data) and mitigating identified deviations, granted exceptions and known violations to internal dependency cyber risk management policies, standards, and procedures.

As part of this enhanced standard, the agencies are considering requiring covered entities to continually apply appropriate controls to reduce the cyber risk of business assets to the enterprise and the financial sector to the board-approved level. The agencies are also considering a requirement that covered entities periodically conduct tests of back-ups to business assets to achieve resilience.

Category 4—External Dependency Management

As noted, the term ''external dependencies'' refers to an entity's relationships with outside vendors, suppliers, customers, utilities, and other external organizations and service providers that the entity depends on to deliver services, as well as the information flows and interconnections between the entity and those external parties. In addition, the external dependency management category includes the management of interconnection risks associated with non-critical external parties that maintain trusted connections to important systems. Standards within the *external dependency management* category are intended to ensure that covered entities have effective capabilities in place to identify and manage cyber risks associated with their external dependencies and interconnection risks throughout these relationships.

A key aspect of the *external dependency management* category is ensuring that covered entities continually assess and improve, as necessary, their effectiveness in reducing the cyber risks associated with external dependencies and interconnection risks enterprise-wide. As part of the overall cyber risk management strategy, as discussed in the *cyber risk governance* section of this ANPR, the agencies are considering a requirement that a covered entity integrate an external dependency management strategy into the entity's overall strategic risk management plan to address and reduce cyber risks associated with external dependencies and interconnection risks. This external dependency management strategy would ensure that roles and responsibilities for external dependency management are well defined; policies, standards, and procedures for external dependency management throughout the lifespan of the relationship (for example, due diligence, contracting and sub-contracting, onboarding, ongoing monitoring, change management, off boarding) are established and regularly updated; appropriate metrics are in place to measure effectiveness in reducing cyber risks associated with external dependencies; and appropriate compliance mechanisms are in place.

As part of an external dependency management strategy, the agencies are considering a requirement that covered entities establish effective policies, plans, and procedures to identify and manage real-time cyber risks associated with external dependencies, particularly those connected to or supporting sector-critical systems and operations, throughout their lifespans.

Another key aspect of the *external dependency management* category is having the ability to monitor in real time all external dependencies and trusted connections that support a covered entity's cyber risk management strategy. The agencies are considering a requirement that covered entities have a current, accurate, and complete awareness of, and prioritize, all external dependencies and trusted connections enterprise-wide based on their criticality to the business functions they support, the firm's mission, and the financial sector. Thus, covered entities would be able to generate and maintain a current, accurate, and complete listing of all external dependencies and business functions, including mappings to supported assets and business functions. Covered entities would be required to prioritize monitoring, incident response, and recovery of systems critical to the enterprise and the financial sector; support the continued reduction of the cyber risk exposure of external dependencies to the enterprise and the sector until the board-approved cyber risk appetite and tolerances are achieved; support timely responses to cyber risks to the enterprise and the sector; monitor the universe of external dependencies that connect to assets supporting systems critical to the enterprise and the sector; support relevant data collection and analysis across the organization; and track connections among external dependencies, organizational assets, and cyber risk levels throughout their lifespans. A covered entity's tracking capability would enable timely notification of cyber risk management issues to designated stakeholders.

Another key aspect within the *external dependency management* category is establishing and applying appropriate controls to address the cyber risk presented by each external partner throughout the lifespan of the relationship. The agencies are

considering a requirement that covered entities analyze and address the cyber risks that emerge from reviews of their external relationships, and identify and periodically test alternative solutions in case an external partner fails to perform as expected. As part of this requirement and in order to address the rapidly changing and complex threat landscape, the agencies are considering a requirement that covered entities continually apply and evaluate appropriate controls to reduce the cyber risk of external dependencies to the enterprise and the sector.

Questions on Internal and External Dependency Management

17. The agencies request comment on the comprehensiveness and effectiveness of the proposed standards for internal and external dependency management in achieving the agencies' objective of increasing the resilience of covered entities, third-party service providers to covered entities, and the financial sector.

18. What challenges and burdens would covered entities encounter in maintaining an internal and external dependency management strategy consistent with that described by the agencies?

19. How do the proposed internal and external dependency management standards compare with processes already in place at banking organizations?

20. What other approaches could the agencies use to evaluate a covered entity's internal and external dependency management strategies? Please be specific as to each approach.

21. How would the proposed standards for internal and external dependency management impact a covered entity's use of a third-party service provider?

22. What additional issues should the agencies consider related to internal and external dependency management and the covered entities' use of third-party service providers? How should those issues be evaluated by the agencies? Please be specific.

Category 5—Incident Response, Cyber Resilience, and Situational Awareness

Standards within the *incident response, cyber resilience, and situational awareness* category would be designed to ensure that covered entities plan for, respond to, contain, and rapidly recover from disruptions caused by cyber incidents, thereby strengthening their cyber resilience as well as that of the financial sector. Covered entities would be required to be capable of operating critical business functions in the face of cyber-attacks and continuously enhance their cyber resilience. In addition, covered entities would be required to establish processes designed to maintain effective situational awareness capabilities to reliably predict, analyze, and respond to changes in the operating environment.

The agencies are considering a requirement that covered entities establish and maintain effective incident response and cyber resilience governance, strategies, and capacities that enable the organizations to anticipate, withstand, contain, and rapidly recover from a disruption caused by a significant cyber event. The agencies are considering a requirement that covered entities establish and implement plans to identify and mitigate the cyber risks they pose through interconnectedness to sector partners and external stakeholders to prevent cyber contagion. In addition, the agencies are considering a requirement that covered entities establish and maintain enterprise-wide cyber resilience and incident response programs, based on their enterprise-wide cyber risk management strategies and supported by appropriate policies, procedures, governance, staffing, and independent review. These cyber resilience and incident response programs would be required to include effective escalation protocols linked to organizational decision levels, cyber contagion containment procedures, communication strategies, and processes to incorporate lessons learned back into the program. Cyber resilience strategies and exercises would be required to consider wide-scale recovery scenarios and be designed to achieve institutional resilience, support the achievement of financial sector-wide resilience, and minimize risks to or from interconnected parties.

The IT Handbook calls for examiners to determine whether covered entities have established plans to address recovery and resilience strategies for cyber-attacks that may disrupt access, corrupt data, or destroy data or systems.[18] In addition to establishing recovery time objectives (RTOs), recovery and resilience strategies should address the potential for malware or corrupted data to replicate or propagate through connected systems or high availability solutions. For cyber-attacks that may potentially corrupt or destroy critical data, recovery strategies should be designed to achieve recovery point objectives based on the criticality of the data necessary to keep the institution operational.

In this category, the agencies also are considering a requirement that covered entities establish and implement strategies to meet the entity's obligations for performing core business functions in the event of a disruption, including the potential for multiple concurrent or widespread interruptions and cyber-attacks on multiple elements of interconnected critical infrastructure, such as energy and telecommunications.

The preservation of critical records in the event of a large-scale or significant cyber event is essential to maintaining confidence in the banking system and to facilitating resolution or recovery processes after a catastrophic event. The agencies are therefore considering requiring covered entities to establish protocols for secure, immutable, off-line storage of critical records, including financial records of the institution, loan data, asset management account information, and daily deposit account records, including balances and ownership details, formatted using certain defined data standards to allow for restoration of these records by another financial institution, service provider, or the FDIC in the event of resolution.

Transition plans are essential in the event a service is terminated or an entity cannot meet its obligations. Thus, the agencies are considering a requirement that covered entities establish plans and mechanisms to transfer business, where feasible, to another entity or service provider with minimal disruption and within prescribed time frames if the original covered entity or service provider is unable to perform. As a result, if performance is not feasible and contractual termination/remediation provisions have been exercised, client data would be returned to the original covered entity or service provider in a method that is transferable to an alternate entity or service provider with minimal disruption to the operations of the covered entity.

Testing the cyber resilience of operations and services helps to identify potential threats to the ongoing performance of the operation or service. A prolonged disruption of a significant operation could generate systemic risk. The agencies are considering a requirement that covered entities conduct specific testing that addresses disruptive, destructive, corruptive, or any other cyber event that could affect their ability to service clients; and significant downtime that would threaten the business resilience of clients. In addition, the agencies are considering a requirement that the

[18] FFIEC IT Examination Handbook, Business Continuity Planning, Appendix J.

testing address external interdependencies, such as connectivity to markets, payment systems, clearing entities, messaging services, and other critical service providers or partners; that the testing of cyber resilience be undertaken jointly where critical dependencies exist; and that the testing validate the effectiveness of internal and external communication protocols with stakeholders.

A key element of situational awareness is the timely identification, analysis, and tracking of data about the state of, and potential cyber risks to, the organization. The agencies are considering a requirement that covered entities maintain an ongoing situational awareness of their operational status and cybersecurity posture to pre-empt cyber events and respond rapidly to them. Covered entities also would be required to establish and maintain threat profiles [19] for identified threats to the firm; establish and maintain threat modeling [20] capabilities; gather actionable cyber threat intelligence and perform security analytics on an ongoing basis; and establish and maintain capabilities for ongoing vulnerability management.

Questions on Incident Response, Cyber Resilience, and Situational Awareness

23. How well do the proposed standards for incident response, cyber resilience, and situational awareness address the safety and soundness of individual financial institutions and potential systemic cyber risk to the financial sector, including with respect to the testing strategies and approaches? How could they be improved?

24. What is the extent to which it would be operationally and/or commercially feasible to comply with requirements to use certain defined data standards in order to increase the substitutability of third-party relationships to reduce recovery times for systems impacted by a significant cyber event?

25. How do covered entities currently evaluate their incident response and cyber resilience capabilities? What factors should the agencies consider essential in considering a covered entity's incident response and cyber response capabilities?

26. How do covered entities currently evaluate their situational awareness capabilities? What factors should the agencies consider essential in considering a covered entity's situational awareness capabilities?

27. What other factors should be included within the incident response, cyber resilience, and situational awareness category?

28. What additional requirements should the agencies consider to improve the resilience or situational awareness of a covered entity or the ability of a covered entity to respond to a cyber-attack?

VI. Standards for Sector-Critical Systems of Covered Entities

As noted, the agencies are considering two tiers of standards, with more stringent standards to apply to systems of covered entities that are critical to the functioning of the financial sector.

In particular, the agencies are considering a requirement that covered entities minimize the residual cyber risk of sector-critical systems by implementing the most effective, commercially available controls. Minimizing residual cyber risk means substantially mitigating the risk of a disruption or failure due to a cyber event.

As a second sector-critical standard, the agencies are considering requiring covered entities to establish an RTO of two hours for their sector-critical systems, validated by testing, to recover from a disruptive, corruptive, or destructive cyber event. Testing programs would include a range of scenarios, including severe but plausible scenarios, and would challenge matters such as communications protocols, governance arrangements, and resumption and recovery practices. As stated in the Sound Practices Paper, an RTO is the ''amount of time in which a firm aims to recover clearing and settlement activities after a wide-scale disruption with the overall goal of completing material pending transactions on the scheduled settlement date.'' The scope of application of this proposed sector-critical standard could go beyond the core clearing and settlement organizations discussed in the Sound Practices Paper to include other large, interconnected financial systems where a cyber-attack or disruption also could have a significant impact on the U.S. financial sector. With advances in technology and consistent with the two-hour RTO for core clearing and settlement activities in the Sound Practices Paper, the agencies are considering establishing a two-hour RTO for the sector-critical systems of covered entities.

Additionally, the Board is considering requiring Board-supervised covered entities, at the holding company level, to measure (quantitatively) their ability to reduce the aggregate residual cyber risk of their sector-critical systems and their ability to reduce such risk to a minimal level. Such measurement would take into account the risks associated with internal dependencies, external dependencies, and trusted connections with access to sector-critical systems.

Questions on Standards for Sector-Critical Systems of Covered Entities

29. The agencies request comment on the appropriateness and feasibility of establishing a two-hour RTO for all sector-critical systems. What would be the incremental costs to covered entities of moving toward a two-hour RTO objective for these systems?

30. What impact would a two-hour RTO have on covered entities' use of third-party service providers? What challenges or burdens would be presented by the requirement of a two-hour RTO for covered entities who rely on third-party service providers for their critical systems? How should the agencies weigh such costs against other costs associated with implementing the enhanced standards outlined in this ANPR?

31. How should the agencies implement the two-hour RTO objective? For example, would an extended implementation timeline help to mitigate costs, and if so, what timeline would be reasonable?

32. Should different RTOs be set for different types of operations and, if so, how? Should RTOs be expected to become more stringent over time as technology advances?

33. The Board requests comment on the benefits of requiring Board-supervised covered entities, at the holding company level, to measure the residual cyber risk of their sector-critical systems on a quantitative basis. How would this approach to measuring cyber risk compare with efforts already underway at holding companies to manage and measure their cyber risk? For example, what processes do holding companies already have in place to measure their residual cyber risk? What challenges and costs would holding companies face in measuring their residual cyber risk quantitatively? What are the benefits of requiring holding companies to reduce the residual risk of their sector-critical systems to a minimal level, taking into account the risks associated with internal and external dependencies connected to or supporting their sector-critical systems?

[19] Threat profiles include information about critical assets, threat actors, and details about how threat actors might attempt to compromise those critical assets.

[20] Threat modeling refers to using a structured process to identify how critical assets might be compromised by a threat actor and why, what level of protection is needed for those critical assets, and what the impact would be if that protection failed.

VII. Approach to Quantifying Cyber Risk

The agencies are seeking to develop a consistent, repeatable methodology to support the ongoing measurement of cyber risk within covered entities. Such a methodology could be a valuable tool for covered entities and their regulators to assess how well an entity is managing its aggregate cyber risk and mitigating the residual cyber risk of its sector-critical systems. At this time the agencies are not aware of any consistent methodologies to measure cyber risk across the financial sector using specific cyber risk management objectives. The agencies are interested in receiving comments on potential methodologies to quantify inherent and residual cyber risk and compare entities across the financial sector.

The agencies are familiar with different methodologies to measure cyber risk for the financial sector. Among others, these include existing methodologies like the FAIR Institute's Factor Analysis of Information Risk standard and Carnegie Mellon's Goal-Question-Indicator-Metric process. Building upon these and other methodologies, the agencies are considering how best to measure cyber risk in a consistent, repeatable manner.

Questions on Approach to Quantifying Cyber Risk Section

34. What current tools and practices, if any, do covered entities use to assess the cyber risks that their activities, systems and operations pose to other entities within the financial sector, and to assess the cyber risks that other entities' activities, systems and operations pose to them? How is such risk currently identified, measured, and monitored?

35. What other models, frameworks, or reference materials should the agencies review in considering how best to measure and monitor cyber risk?

36. What methodologies should the agencies consider for the purpose of measuring inherent and residual cyber risk quantitatively and qualitatively? What risk factors should agencies consider incorporating into the measurement of inherent risk? How should the risk factors be consistently measured and weighted?

VIII. Considerations for Implementation of the Enhanced Standards

The agencies are considering various regulatory approaches to establishing enhanced standards for covered entities. The approaches range from establishing the standards through a policy statement or guidance to imposing the standards through a detailed regulation. Under one approach, the agencies could propose the standards as a combination of a regulatory requirement to maintain a risk management framework for cyber risks along with a policy statement or guidance that describes minimum expectations for the framework, such as policies, procedures, and practices commensurate with the inherent cyber risk level of the covered entity. This approach would be similar to the approach that the agencies have taken in other areas of prudential supervision, such as the *Interagency Guidelines Establishing Standards for Safety and Soundness* and the *Interagency Guidelines Establishing Information Security Standards.*[21]

Under a second approach, the agencies could propose regulations that impose specific cyber risk management standards. For example, the standards could require covered entities to establish a cybersecurity framework commensurate with the covered entity's structure, risk profile, complexity, activities, and size. Such standards would address the five categories of cyber risk management, discussed above, that the agencies consider key to a comprehensive cyber risk management program: (1) Cyber risk governance; (2) cyber risk management; (3) internal dependency management; (4) external dependency management; and (5) incident response, cyber resilience, and situational awareness. Within each category, a covered entity would be expected to establish and maintain policies, procedures, practices, controls, personnel and systems that address the applicable category, and to establish and maintain a corporate governance structure that implements the cyber risk management program on an enterprise-wide basis and along business line levels, monitors compliance with the program, and adjusts corporate practices to address the changes in risk presented by the firm's operations.

Under a third approach, the agencies could propose a regulatory framework that is more detailed than the second approach. As with the second approach, the regulation could contain standards for the five categories of cyber risk management. However, in contrast to the second approach, the regulation would include details on the specific objectives and practices a firm would be required to achieve in each area of concern in order to demonstrate that its cyber risk management program can adapt to changes in a firm's operations and to the evolving cyber environment.

In considering which option, or combination of options, to pursue to implement the standards, the agencies will consider whether the approach adopted ensures that the enhanced standards are clear, the additional effort required to implement the standards, whether the standards are sufficiently adaptable to address the changing cyber environment, and the potential costs and other burdens associated with implementing the standards.

Questions on Considerations for Implementation of the Enhanced Standards

37. What are the potential benefits or drawbacks associated with each of the options for implementing the standards discussed above?

38. What are the trade-offs, in terms of the potential costs and other burdens, among the three options discussed above? The agencies invite commenters to submit data about the trade-offs among the three options discussed above.

39. Which approach has the potential to most effectively implement the agencies' expectations for enhanced cyber risk management?

Dated: October 19, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 19th day of October, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Federal Deposit Insurance Corporation by

Robert E. Feldman,

Executive Secretary.

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[21] *See* 12 CFR part 208, App. D–1, D–2; 12 CFR part 225, App. F (Board); 12 CFR part 364, App. A, B (FDIC); 12 CFR part 30, App. A, B, and D (OCC).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324, 329, and 382

RIN 3064–AE46

Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to add a new part to its rules to improve the resolvability of systemically important U.S. banking organizations and systemically important foreign banking organizations and enhance the resilience and the safety and soundness of certain state savings associations and state-chartered banks that are not members of the Federal Reserve System (''state non-member banks'' or ''SNMBs'') for which the FDIC is the primary federal regulator (together, ''FSIs'' or ''FDIC-supervised institutions''). Under this proposed rule, covered FSIs would be required to ensure that covered qualified financial contracts (QFCs) to which they are a party provide that any default rights and restrictions on the transfer of the QFCs are limited to the same extent as they would be under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Federal Deposit Insurance Act (FDI Act). In addition, covered FSIs would generally be prohibited from being party to QFCs that would allow a QFC counterparty to exercise default rights against the covered FSI based on the entry into a resolution proceeding under the FDI Act, or any other resolution proceeding of an affiliate of the covered FSI.

The proposal would also amend the definition of ''qualifying master netting agreement'' in the FDIC's capital and liquidity rules, and certain related terms in the FDIC's capital rules. These proposed amendments are intended to ensure that the regulatory capital and liquidity treatment of QFCs to which a covered FSI is party would not be affected by the proposed restrictions on such QFCs. The requirements of this proposed rule are substantively identical to those contained in the notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System (FRB) on May 3, 2016 (FRB NPRM) regarding ''covered entities'', and the notice of proposed rulemaking issued by the Office of the Comptroller of the Currency (OCC) on August 19, 2016 (OCC NPRM), regarding ''covered banks''.

DATES: Comments must be received by December 12, 2016, except that comments on the Paperwork Reduction Act analysis in part VI of the **SUPPLEMENTARY INFORMATION** must be received on or before December 27, 2016.

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

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

Agency Web site: http://www.FDIC.gov/regulations/laws/federal/.

Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

Email: comments@FDIC.gov.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AE46'' in the subject matter line. Comments received will be posted without change to: *http://www.FDIC.gov/regulations/laws/federal/,* including any personal information provided.

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I. Introduction

A. Background

This proposed rule addresses one of the ways the failure of a major financial firm could destabilize the financial system. The disorderly failure of a large, interconnected financial company could cause severe damage to the U.S. financial system and, ultimately, to the economy as a whole, as illustrated by the failure of Lehman Brothers in September 2008. Protecting the financial stability of the United States is a core objective of the Dodd-Frank Act,[1] which Congress passed in response to the 2007–2009 financial crisis and the ensuing recession. One way the Dodd-Frank Act helps to protect the financial stability of the United States is by reducing the damage that such a company's failure would cause to the financial system if it were to occur. This strategy centers on measures designed to help ensure that a failed company's resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[2]

On May 3, 2016, the FRB issued a Notice of Proposed Rulemaking, the FRB NPRM, pursuant to section 165 of the Dodd-Frank Act.[3] The FRB's proposed rule stated that it is intended as a further step to increase the resolvability of U.S. global systemically important banking organizations (GSIBs)[4] and global systemically important foreign banking organizations (foreign GSIBs) that operate in the United States (collectively, ''covered

[1] The Dodd-Frank Act was enacted on July 21, 2010 (Pub. L. 111–203). According to its preamble, the Dodd-Frank Act is intended ''[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', [and] to protect the American taxpayer by ending bailouts.''

[2] The Dodd-Frank Act itself pursues this goal through numerous provisions, including by requiring systemically important financial companies to develop resolution plans (also known as ''living wills'') that lay out how they could be resolved in an orderly manner under bankruptcy if they were to fail and by creating a new back-up resolution regime, the Orderly Liquidation Authority, applicable to systemically important financial companies. 12 U.S.C. 5365(d), 5381–5394.

[3] The FRB received seventeen comment letters on the FRB NPRM during the comment period, which ended on August 5, 2016.

[4] Under the GSIB surcharge rule's methodology, there are currently eight U.S. GSIBs: Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company. *See* FRB NPRM, 81 FR 29169, 29175 (May 11, 2016). This list may change in the future in light of changes to the relevant attributes of the current U.S. GSIBs and of other large U.S. bank holding companies.

entities'').[5] Subsequent to the FRB NPRM, the OCC issued the OCC NPRM, which applies the same QFC requirements to ''covered banks'' within the OCC's jurisdiction.

The FDIC is issuing this parallel proposed rule applicable to FSIs that are subsidiaries of a ''covered entity'' as defined in the FRB NPRM and to subsidiaries of such FSIs (collectively, ''covered FSIs''). The policy objective of this proposal focuses on improving the orderly resolution of a GSIB by limiting disruptions to a failed GSIB through its FSI subsidiaries' financial contracts with other companies. The FRB NPRM, the OCC NPRM, and this proposal complement the ongoing work of the FRB and the FDIC on resolution planning requirements for GSIBs, and the FDIC intends this proposed rule to work in tandem with the FRB NPRM and the OCC NPRM.[6]

As discussed in Part I.D. below, the FDIC has a strong interest in preventing a disorderly termination of covered FSIs' QFCs upon a GSIB's entry into resolution proceedings. In fulfilling the FDIC's responsibilities as (i) the primary federal supervisor for SNMBs and state savings associations; [7] (ii) the insurer of deposits and manager of the Deposit Insurance Fund (DIF); and (iii) the resolution authority for all FDIC-insured institutions under the FDI Act and, if appointed by the Secretary of the Treasury, for large complex financial institutions under Title II of the Dodd-Frank Act, the FDIC's interests include ensuring that large complex financial institutions are resolvable in an orderly manner, and that FDIC-insured institutions operate safely and soundly.[8]

The proposed rule specifically addresses QFCs, which are typically entered into by various operating entities in a GSIB group, including covered FSIs. These covered FSIs are affiliates of U.S. GSIBs or foreign GSIBs that have OTC derivatives exposure, making these entities interconnected with other large financial firms. The exercise of default rights against an otherwise healthy covered FSI resulting from the failure of its affiliate—*e.g.,* its top-tier U.S. holding company—may cause it to weaken or fail. Accordingly, FDIC-supervised affiliates of U.S. or foreign GSIBs are exposed, through the interconnectedness of their QFCs and their affiliates' QFCs, to destabilizing effects if their counterparties or the counterparties of their affiliates exercise default rights upon the entry into resolution of the covered FSI itself or its GSIB affiliate.

These potentially destabilizing effects are best addressed by requiring all GSIB entities to amend their QFCs to include contractual provisions aimed at avoiding such destabilization. It is imperative that all entities within the GSIB group amend their QFCs in a similar way, thereby eliminating an incentive for counterparties to concentrate QFCs in entities subject to fewer restrictions. Therefore, the application of this proposed rule to the QFCs of covered FSIs is not only necessary for the safety and soundness of covered FSIs individually and collectively, but also to avoid potential destabilization of the overall banking system.

This proposed rule imposes substantively identical requirements contained in the FRB NPRM on covered FSIs. The FDIC consulted with the FRB and the OCC in developing this proposed rule, and intends to continue coordinating with the FRB and the OCC in developing the final rule.

Qualified financial contracts, default rights, and financial stability. Like the FRB NPRM, this proposal pertains to several important classes of financial transactions that are collectively known as QFCs.[9] QFCs include swaps, other derivatives contracts, repurchase agreements (also known as ''repos'') and reverse repos, and securities lending and borrowing agreements.[10] GSIBs enter into QFCs for a variety of purposes, including to borrow money to finance their investments, to lend money, to manage risk, and to enable their clients and counterparties to hedge risks, make markets in securities and derivatives, and take positions in financial investments.

QFCs play a role in economically valuable financial intermediation when markets are functioning normally. But they are also a major source of financial interconnectedness, which can pose a threat to financial stability in times of market stress. This proposal—along with the FRB NPRM and OCC NPRM—focuses on a context in which that threat is especially great: The failure of a GSIB that is party to large volumes of QFCs, likely including QFCs with counterparties that are themselves systemically important.

QFC continuity is important for the orderly resolution of a GSIB because it helps to ensure that the GSIB entities remain viable and to avoid instability caused by asset fire sales. Together, the FRB and FDIC have identified the exercise of certain default rights in financial contracts as a potential obstacle to orderly resolution in the context of resolution plans filed pursuant to section 165(d) of the Dodd-Frank Act,[11] and have instructed systemically important firms to demonstrate that they are ''amending, on an industry-wide and firm-specific basis, financial contracts to provide for a stay of certain early termination rights of external counterparties triggered by insolvency proceedings.'' [12] More recently, in April 2016,[13] the FRB and FDIC noted the important changes that have been made to the structure and operations of the largest financial firms, including the adherence by all U.S. GSIBs and their affiliates to the ISDA 2015 Universal Resolution Stay Protocol.[14]

Direct defaults and cross-defaults. Like the FRB NPRM and the OCC NPRM, this proposal focuses on two

[5] *See* FRB NPRM at § 252.83(a) (defining ''covered entity'' to include: (1) A bank holding company that is identified as a global systemically important [bank holding company] pursuant to 12 CFR 217.402; (2) A subsidiary of a company identified in paragraph (a)(1) of [section 252.83(a)] (other than a subsidiary that is a covered bank); or (3) A U.S. subsidiary, U.S. branch, or U.S. agency of a global systemically important foreign banking organization (other than a U.S. subsidiary, U.S. branch, or U.S. agency that is a covered bank, section 2(h)(2) company or a DPC branch subsidiary)). In addition to excluding a ''covered bank'' from the definition of a ''covered entity,'' the FDIC expects that in its final rule, the FRB would also exclude ''covered FSIs'' from the NPRM's definition of a ''covered entity.'' 81 FR 29169 (May 11, 2016)

[6] For additional background regarding the interconnectivity of the largest financial firms, *see* FRB NPRM, 81 FR 29175–29176 (May 11, 2016).

[7] Although the FDIC is the insurer for all insured depository institutions in the United States, it is the primary federal supervisor only for state-chartered banks that are not members of the Federal Reserve System, state-chartered savings associations, and insured state-licensed branches of foreign banks. As of March 31, 2016, the FDIC had primary supervisory responsibility for 3,911 SNMBs and state-chartered savings associations.

[8] *See https://www.fdic.gov/about/strategic/strategic/supervision.html.*

[9] The proposal would adopt the definition of ''qualified financial contract'' set out in section 210(c)(8)(D) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D). *See* proposed rule § 382.1.

[10] The definition of ''qualified financial contract'' is broader than this list of examples, and the default rights discussed are not common to all types of QFCs.

[11] 12 U.S.C. 5365(d).

[12] FRB and FDIC, ''Agencies Provide Feedback on Second Round Resolution Plans of 'First-Wave' Filers'' (August 5, 2014), available at *https://www.fdic.gov/news/news/press/2014/pr14067.html. See also* FRB and FDIC, ''Agencies Provide Feedback on Resolution Plans of Three Foreign Banking Organizations'' (March 23, 2015), available at *https://www.fdic.gov/news/news/press/2015/pr15027.html;* FRB and FDIC, ''Guidance for 2013 165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012'' 5–6 (April 15, 2013), available at *https://www.fdic.gov/news/news/press/2013/pr13027.html.*

[13] *See https://www.fdic.gov/news/news/press/2016/pr16031a.pdf,* at 13.

[14] International Swaps and Derivatives Association, Inc., ''ISDA 2015 Universal Resolution Stay Protocol'' (November 4, 2015), available at *http://assets.isda.org/media/ac6b533f-3/5a7c32f8-pdf.*

distinct scenarios in which a non-defaulting party to a QFC is commonly able to exercise default rights. These two scenarios involve a default that occurs when either the GSIB entity that is a direct party [15] to the QFC or an affiliate of that entity enters a resolution proceeding.[16] The first scenario occurs when a GSIB entity that is itself a direct party to the QFC enters a resolution proceeding; this preamble refers to such a scenario as a ''direct default'' and refers to the default rights that arise from a direct default as ''direct default rights.'' The second scenario occurs when an affiliate of the GSIB entity that is a direct party to the QFC (such as the direct party's parent holding company) enters a resolution proceeding; this preamble refers to such a scenario as a ''cross-default'' and refers to default rights that arise from a cross-default as ''cross-default rights.'' A GSIB parent entity will often guarantee the derivatives transactions of its subsidiaries and those derivatives contracts could contain cross-default rights against a subsidiary of the GSIB that would be triggered by the bankruptcy filing of the GSIB parent entity even though the subsidiary continues to meet all of its financial obligations.

Importantly, like the FRB NPRM and the OCC NPRM, this proposal does not affect all types of default rights, and, where it affects a default right, the proposal does so only temporarily for the purpose of allowing the relevant resolution authority to take action to continue to provide for continued performance on the QFC. Moreover, the proposal is concerned only with default rights that run *against* a GSIB entity—that is, direct default rights and cross-default rights that arise from the entry into resolution of a GSIB entity. The proposal would not affect default rights that a GSIB entity (or any other entity) may have against a counterparty that is not a GSIB entity. This limited scope is appropriate because, as described above, the risk posed to financial stability by the exercise of QFC default rights is greatest when the defaulting counterparty is a GSIB entity.

Resolution Strategies

Single-point-of-entry resolution. Cross-default rights are especially significant in the context of a GSIB failure because GSIBs typically enter into large volumes of QFCs through different entities controlled by the GSIB. For example, a U.S. GSIB is made up of a U.S. bank holding company and numerous operating subsidiaries that are owned, directly or indirectly, by the bank holding company. As stated in the FRB NPRM, from the standpoint of financial stability, the most important of these operating subsidiaries are generally a U.S. insured depository institution, a U.S. broker-dealer, or similar entities organized in other countries.

Many complex GSIBs have developed resolution strategies that rely on the single-point-of-entry (SPOE) resolution strategy. In an SPOE resolution of a GSIB, only a single legal entity—the GSIB's top-tier bank holding company—would enter a resolution proceeding. The effect of losses that led to the GSIB's failure would pass up from the operating subsidiaries that incurred the losses to the holding company and would then be imposed on the equity holders and unsecured creditors of the holding company through the resolution process. This strategy is designed to help ensure that the GSIB subsidiaries remain adequately capitalized, and that operating subsidiaries of the GSIB are able to stabilize and continue meeting their financial obligations without immediately defaulting or entering resolution themselves. The expectation that the holding company's equity holders and unsecured creditors would absorb the GSIB's losses in the event of failure would help to maintain the confidence of the operating subsidiaries' creditors and counterparties (including their QFC counterparties), reducing their incentive to engage in potentially destabilizing funding runs or margin calls and thus lowering the risk of asset fire sales. A successful SPOE resolution would also avoid the need for separate resolution proceedings for separate legal entities run by separate authorities across multiple jurisdictions, which would be more complex and could therefore destabilize the resolution. An SPOE resolution can also avoid the need for insured bank subsidiaries, including covered FSIs, to be placed into receivership or similar proceedings as the likelihood of their continuing to operate as going concerns will be significantly enhanced if the parent's entry into resolution proceedings does not trigger the exercise of cross-default rights. Accordingly, this proposed rule, by limiting such cross-default rights based on an affiliate's entry into resolution proceedings, assists in stabilizing both the covered FSIs and the larger banking system.

Multiple-Point-of-Entry Resolution. This proposal would also yield benefits for other approaches to resolution. For example, preventing early terminations of QFCs would increase the prospects for an orderly resolution under a multiple-point-of-entry (MPOE) strategy involving a foreign GSIB's U.S. intermediate holding company going into resolution or a resolution plan that calls for a GSIB's U.S. insured depository institution to enter resolution under the FDI Act. As discussed above, this proposal would help support the continued operation of affiliates of an entity experiencing resolution to the extent the affiliate continues to perform on its QFCs.

U.S. Bankruptcy Code. While insured depository institutions are not subject to resolution under the Bankruptcy Code, if a bank holding company were to fail, it would likely be resolved under the Bankruptcy Code. When an entity goes into resolution under the Bankruptcy Code, attempts by the debtor's creditors to enforce their debts through any means other than participation in the bankruptcy proceeding (for instance, by suing in another court, seeking enforcement of a preexisting judgment, or seizing and liquidating collateral) are generally blocked by the imposition of an automatic stay.[17] A key purpose of the automatic stay, and of bankruptcy law in general, is to maximize the value of the bankruptcy estate and the creditors' ultimate recoveries by facilitating an orderly liquidation or restructuring of the debtor. The automatic stay thus solves a collective action problem in which the creditors' individual incentives to become the first to recover as much from the debtor as possible, before other creditors can do so, collectively cause a value-destroying disorderly liquidation of the debtor.[18]

[15] In general, a ''direct party'' refers to a party to a financial contract other than a credit enhancement (such as a guarantee). The definition of ''direct party'' and related definitions are discussed in more detail below on page 38.

[16] This preamble uses phrases such as ''entering a resolution proceeding'' and ''going into resolution'' to encompass the concept of ''becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.'' These phrases refer to proceedings established by law to deal with a failed legal entity. In the context of the failure of a systemically important banking organization, the most relevant types of resolution proceeding include the following: For most U.S.-based legal entities, the bankruptcy process established by the U.S. Bankruptcy Code (Title 11, United States Code); for U.S. insured depository institutions, a receivership administered by the Federal Deposit Insurance Corporation (FDIC) under the FDI Act (12 U.S.C. 1821); for companies whose ''resolution under otherwise applicable Federal or State law would have serious adverse effects on the financial stability of the United States,'' the Dodd-Frank Act's Orderly Liquidation Authority (12 U.S.C. 5383(b)(2)); and, for entities based outside the United States, resolution proceedings created by foreign law.

[17] *See* 11 U.S.C. 362.

[18] *See, e.g., Aiello* v. *Providian Financial Corp.,* 239 F.3d 876, 879 (7th Cir. 2001).

However, the Bankruptcy Code largely exempts QFC [19] counterparties from the automatic stay through special ''safe harbor'' provisions.[20] Under these provisions, any rights that a QFC counterparty has to terminate the contract, set off obligations, and liquidate collateral in response to a direct default are not subject to the stay and may be exercised against the debtor immediately upon default. (The Bankruptcy Code does not itself confer default rights upon QFC counterparties; it merely permits QFC counterparties to exercise certain rights created by other sources, such as contractual rights created by the terms of the QFC.)

The Bankruptcy Code's automatic stay also does not prevent the exercise of cross-default rights against an affiliate of the party entering resolution. The stay generally applies only to actions taken against the party entering resolution or the bankruptcy estate,[21] whereas a QFC counterparty exercising a cross-default right is instead acting against a distinct legal entity that is not itself in resolution: The debtor's affiliate.

Title II of the Dodd-Frank Act and the Orderly Liquidation Authority. Title II of the Dodd-Frank Act (Title II) imposes somewhat broader stay requirements on QFCs of companies that enter resolution under that back-up resolution authority. In general, a U.S. bank holding company (such as the top-tier holding company of a U.S. GSIB) that fails would be resolved under the Bankruptcy Code. With Title II, Congress recognized, however, that a financial company might fail under extraordinary circumstances in which an attempt to resolve it through the bankruptcy process would have serious adverse effects on financial stability in the United States. Title II of the Dodd-Frank Act establishes the Orderly Liquidation Authority, an alternative resolution framework intended to be used rarely to manage the failure of a firm that poses a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard.[22] Title II authorizes the Secretary of the Treasury, upon the recommendation of other government agencies and a determination that several preconditions are met, to place a financial company into a receivership conducted by the FDIC as an alternative to bankruptcy.[23]

Title II empowers the FDIC to transfer QFCs to a bridge financial company or some other financial company that is not in a resolution proceeding and should therefore be capable of performing under the QFCs.[24] To give the FDIC time to effect this transfer, Title II temporarily stays QFC counterparties of the failed entity from exercising termination, netting, and collateral liquidation rights ''solely by reason of or incidental to'' the failed entity's entry into Title II resolution, its insolvency, or its financial condition.[25] Once the QFCs are transferred in accordance with the statute, Title II permanently stays the exercise of default rights for those reasons.[26]

Title II addresses cross-default rights through a similar procedure. It empowers the FDIC to enforce contracts of subsidiaries or affiliates of the failed covered financial company that are ''guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of'' the failed company, so long as, in the case of guaranteed or supported QFCs, the FDIC takes certain steps to protect the QFC counterparties' interests by the end of the business day following the company's entry into Title II resolution.[27]

These stay-and-transfer provisions of the Dodd-Frank Act are intended to mitigate the threat posed by QFC default rights. At the same time, the provisions allow for appropriate protections for QFC counterparties of the failed financial company. The provisions stay the exercise of default rights based on the failed company's entry into resolution, the fact of its insolvency, or its financial condition. And the stay period is temporary, unless the FDIC transfers the QFCs to another financial company that is not in resolution (and should therefore be capable of performing under the QFCs) or, in the case of cross-default rights relating to guaranteed or supported QFCs, the FDIC takes the action required in order to continue to enforce those contracts.[28]

The Federal Deposit Insurance Act. Under the FDI Act, a failing insured depository institution would generally enter a receivership administered by the FDIC.[29] The FDI Act addresses direct default rights in the failed bank's QFCs with stay-and-transfer provisions that are substantially similar to the provisions of Title II of the Dodd-Frank Act discussed above.[30] However, the FDI Act does not address cross-default rights, leaving the QFC counterparties of the failed depository institution's affiliates free to exercise any contractual rights they may have to terminate, net, and liquidate collateral based on the depository institution's entry into resolution. Moreover, as with Title II, there is a possibility that a court of a foreign jurisdiction might decline to enforce the FDI Act's stay-and-transfer provisions under certain circumstances.

B. Overview of the Proposal

The FDIC invites comment on all aspects of this proposed rulemaking, which is intended to increase GSIB resolvability by addressing two QFC-related issues and thereby enhance resiliency of FSIs and the overall banking system. First, the proposal seeks to address the risk that a court in a foreign jurisdiction may decline to enforce the QFC stay-and-transfer provisions of Title II and the FDI Act discussed above. The proposed rule directly enhances the prospects of orderly resolution by establishing the applicability of U.S. special resolution regimes to all counterparties, whether they are foreign or domestic. Although domestic entities are clearly subject to the temporary stay provisions of Title II and the FDI Act, these stays may be difficult to enforce in a cross-border context. As a result, domestic counterparties of a failed U.S. financial institution may be disadvantaged relative to foreign counterparties, as domestic counterparties would be subject to the stay, and accompanying potential market volatility, while, if the stay was not enforced by foreign authorities, foreign counterparties could close out immediately. Furthermore, a mass close out by such foreign counterparties would likely exacerbate market volatility, which in turn would likely magnify harm to the stayed U.S. counterparties' positions. This proposed rule would reduce the risk of these adverse consequences by requiring

[19] The Bankruptcy Code does not use the term ''qualified financial contract,'' but the set of transactions covered by its safe harbor provisions closely tracks the set of transactions that fall within the definition of ''qualified financial contract'' used in Title II of the Dodd-Frank Act and in this proposal.

[20] 11 U.S.C. 362(b)(6), (7), (17), (27), 362(o), 555, 556, 559, 560, 561. The Bankruptcy Code specifies the types of parties to which the safe harbor provisions apply, such as financial institutions and financial participants. *Id.*

[21] *See* 11 U.S.C. 362(a).

[22] Section 204(a) of the Dodd-Frank Act, 12 U.S.C. 5384(a).

[23] *See* section 203 of the Dodd-Frank Act, 12 U.S.C. 5383.

[24] *See* 12 U.S.C. 5390(c)(9).

[25] 12 U.S.C. 5390(c)(10)(B)(i)(I). This temporary stay generally lasts until 5:00 p.m. eastern time on the business day following the appointment of the FDIC as receiver.

[26] 12 U.S.C. 5390(c)(10)(B)(i)(II).

[27] 12 U.S.C. 5390(c)(16); 12 CFR 380.12.

[28] *See id.*

[29] 12 U.S.C. 1821(c).

[30] *See* 12 U.S.C. 1821(e)(8)–(10).

covered FSIs to condition the exercise of default rights in covered contracts on the stay provisions of Title II and the FDI Act.

Second, the proposal seeks to address the potential disruption that may occur if a counterparty to a QFC with an affiliate of a GSIB entity that goes into resolution under the Bankruptcy Code or the FDI Act is allowed to exercise cross-default rights. Affiliates of a GSIB that goes into resolution under the Bankruptcy Code may face disruptions to their QFCs as their counterparties exercise cross-default rights. Thus, a healthy covered FSI whose parent bank holding company entered resolution proceedings could fail due to its counterparties exercising cross-default rights. This proposed rule would address this issue by generally restricting the exercise of cross-default rights by counterparties against a covered FSI.

Scope of application. The proposal's requirements would apply to all ''covered FSIs.'' ''Covered FSIs'' include: Any state savings associations (as defined in 12 U.S.C. 1813(b)(3)) or state non-member bank (as defined in 12 U.S.C. 1813(e)(2)) that is a direct or indirect subsidiary of (i) a global systemically important bank holding company that has been designated pursuant to section 252.82(a)(1) of the FRB's Regulation YY (12 CFR 252.82); or (ii) a global systemically important foreign banking organization [31] that has been designated pursuant to section 252.87 of the FRB's Regulation YY (12 CFR 252.87). This proposed rule also makes clear that the mandatory contractual stay requirements apply to the subsidiaries of any covered FSI. Under the proposed rule, the term ''covered FSI'' *also* includes ''any subsidiary of a covered FSI.'' For the reasons noted above, all subsidiaries of covered FSIs should also be subject to mandatory contractual stay requirements—*e.g.,* to avoid concentrating QFCs in entities subject to fewer restrictions.

''Qualified financial contract'' or ''QFC'' would be defined to have the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Act,[32] and would include, among other things, derivatives, repos, and securities lending agreements. Subject to the exceptions discussed below, the proposal's requirements would apply to any QFC to which a covered FSI is party (covered QFC).[33]

Required contractual provisions related to the U.S. special resolution regimes. Covered FSIs would be required to ensure that covered QFCs include contractual terms explicitly providing that any default rights or restrictions on the transfer of the QFC are limited to the same extent as they would be pursuant to the U.S. special resolution regimes—that is, Title II and the FDI Act.[34] The proposed requirements are not intended to imply that the statutory stay-and-transfer provisions would not in fact apply to a given QFC, but rather to help ensure that all covered QFCs—including QFCs that are governed by foreign law, entered into with a foreign party, or for which collateral is held outside the United States—would be treated the same way in the context of an FDIC receivership under the Dodd-Frank Act or the FDI Act. This provision would address the first issue listed above and would decrease the QFC-related threat to financial stability posed by the failure and resolution of an internationally active GSIB. This section of the proposal is also consistent with analogous legal requirements that have been imposed in other national jurisdictions [35] and with the Financial Stability Board's ''Principles for Cross-border Effectiveness of Resolution Actions.'' [36]

Prohibited cross-default rights. A covered FSI would be prohibited from entering into covered QFCs that would allow the exercise of cross-default rights—that is, default rights related, directly or indirectly, to the entry into resolution of an affiliate of the direct party—against it.[37] Covered FSIs would similarly be prohibited from entering into covered QFCs that would provide for a restriction on the transfer of a credit enhancement supporting the QFC from the covered FSI's affiliate to a transferee upon or following the entry into resolution of the affiliate.

The FDIC does not propose to prohibit covered FSIs from entering into QFCs that contain direct default rights. Under the proposal, a counterparty to a direct QFC with a covered FSI also could, to the extent not inconsistent with Title II or the FDI Act, be granted and could exercise the right to terminate the QFC if the covered FSI fails to perform its obligations under the QFC.

As an alternative to bringing their covered QFCs into compliance with the requirements set out in this section of the proposed rule, covered FSIs would be permitted to comply by adhering to the ISDA 2015 Resolution Stay Protocol.[38] The FDIC views the ISDA 2015 Resolution Stay Protocol as consistent with the requirements of the proposed rule.

The purpose of this section of the proposal is to help ensure that, when a GSIB entity enters resolution under the Bankruptcy Code or the FDI Act,[39] its affiliates' covered QFCs will be protected from disruption to a similar extent as if the failed entity had entered resolution under Title II. In particular, this section would facilitate resolution under the Bankruptcy Code by preventing the QFC counterparties of a GSIB's subsidiary from exercising default rights on the basis of the entry into bankruptcy by the GSIB's top-tier

[31] The definition of covered FSI does not include insured state-licensed branches of FBOs. Any insured state-licensed branches of global systemically important FBOs would be covered by the Board NPRM. Therefore, unlike the FRB NPRM, the FDIC is not including in this proposal any exclusion for certain QFCs subject to a multi-branch netting arrangement.

[32] 12 U.S.C. 5390(c)(8)(D). *See* proposed rule § 382.1.

[33] In addition, the proposed rule states at § 382.2(d) that it does not modify or limit, in any manner, the rights and powers of the FDIC as receiver under the FDI Act or Title II of the Dodd-Frank Act, including, without limitation, the rights of the receiver to enforce provisions of the FDI Act or Title II of the Dodd-Frank Act that limit the enforceability of certain contractual provisions. For example, the suspension of payment and delivery obligations to QFC counterparties during the stay period as provided under the FDI Act and Title II when an entity is in receivership under the FDI Act or Title II remains valid and unchanged irrespective of any contrary contractual provision and may continue to be enforced by the FDIC as receiver. Similarly, the use by a counterparty to a QFC of a contractual provision that allows the party to terminate a QFC on demand, or at its option at a specified time, or from time to time, for any reason, to terminate a QFC on account of the appointment of the FDIC as receiver (or the insolvency or financial condition of the company) remains unenforceable, and the QFC may be enforced by the FDIC as receiver notwithstanding any such purported termination.

[34] *See* proposed rule § 382.3.

[35] *See, e.g.,* Bank of England Prudential Regulation Authority, Policy Statement, ''Contractual stays in financial contracts governed by third-country law'' (November 2015), available at *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.*

[36] Financial Stability Board, ''Principles for Cross-border Effectiveness of Resolution Actions'' (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

The Financial Stability Board (FSB) was established in 2009 to coordinate the work of national financial authorities and international standard-setting bodies and to develop and promote the implementation of effective regulatory, supervisory, and other financial sector policies to advance financial stability. The FSB brings together national authorities responsible for financial stability in 24 countries and jurisdictions, as well as international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. *See generally* Financial Stability Board, available at *http://www.fsb.org.*

[37] *See* proposed rule § 382.3(b) and § 382.4(b).

[38] *See* proposed rule § 382.5(a).

[39] The FDI Act does not stay cross-default rights against affiliates of an insured depository institution based on the entry of the insured depository institution into resolution proceedings under the FDI Act.

holding company or any other affiliate of the subsidiary. This section generally would not prevent covered QFCs from allowing the exercise of default rights upon a failure by the direct party to satisfy a payment or delivery obligation under the QFC, the direct party's entry into bankruptcy, or the occurrence of any other default event that is not related to the entry into a resolution proceeding or the financial condition of an affiliate of the direct party.

Process for approval of enhanced creditor protection conditions. As noted above, in the context of addressing the potential disruption that may occur if a counterparty to a QFC with an affiliate of a GSIB entity that goes into resolution under the Bankruptcy Code or the FDI Act is allowed to exercise cross-default rights, the proposed rule generally restricts the exercise of cross-default rights by counterparties against a covered FSI. The proposal would allow the FDIC, at the request of a covered FSI, to approve as compliant with the requirements of 382.5 proposed creditor protection provisions for covered QFCs.[40]

The FDIC could approve such a request if, in light of several enumerated considerations,[41] the alternative approach would mitigate risks to the financial stability of the United States presented by a GSIB's failure to at least the same extent as the proposed requirements. The FDIC expects to consult with the FRB and OCC during its consideration of a request under this section.

Amendments to certain definitions in the FDIC 's capital and liquidity rules. The proposal would also amend certain definitions in the FDIC's capital and liquidity rules to help ensure that the regulatory capital and liquidity treatment of QFCs to which a covered FSI is party is not affected by the proposed restrictions on such QFCs. Specifically, the proposal would amend the definition of ''qualifying master netting agreement'' in the FDIC's regulatory capital and liquidity rules and would similarly amend the definitions of the terms ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' in the FDIC's regulatory capital rules.[42]

C. Consultation With U.S Financial Regulators

In developing this proposal, the FDIC consulted with the FRB and the OCC as a means of promoting alignment across regulations and avoiding redundancy. The proposal reflects input that the FDIC received during this consultation process. Furthermore, the FDIC expects to consult with foreign financial regulatory authorities regarding this proposal and the establishment of other standards that would maximize the prospects for the cooperative and orderly cross-border resolution of a failed GSIB on an international basis.

D. Overview of Statutory Authority and Purpose

The FDIC is issuing this proposed rule under its authorities under the FDI Act (12 U.S.C. 1811 *et seq.*), including its general rulemaking authorities.[43] The FDIC views the proposed rule as consistent with its overall statutory mandate.[44] An overarching purpose of this proposed rule is to limit disruptions to an orderly resolution of a GSIB and its subsidiaries, thereby furthering financial stability generally. Another purpose is to enhance the safety and soundness of covered FSIs by addressing the two main issues raised by covered QFCs (noted above): Cross-border recognition and cross-default rights.

As discussed above and in the FRB NPRM, the exercise of default rights by counterparties of a failed GSIB can have significant impacts on financial stability. These financial stability concerns are necessarily intertwined with the safety and soundness of covered FSIs and the banking system—the disorderly exercise of default rights can produce a sudden, contemporaneous threat to the safety and soundness of individual institutions, including insured depository institutions, throughout the system, which in turn threatens the system as a whole.F Furthermore, the failure of multiple insured depository institutions in the same time period can stress the DIF, which is managed by the FDIC. Covered FSIs could themselves be a contributing factor to financial destabilization due to the interconnectedness of these institutions to each other and to other entities within the financial system.

While the covered FSI may not itself be considered systemically important, as part of a GSIB, the disorderly resolution of the covered FSI could result in a significant negative impact on the financial system. Additionally, the application of this proposed rule to the QFCs of covered FSIs should avoid creating what may otherwise be an incentive for GSIBs and their counterparties to concentrate QFCs in entities that are subject to fewer counterparty restrictions.

Question 1: The FDIC invites comment on all aspects of this notice of proposed rulemaking.

II. Proposed Restrictions on QFCs of Covered FSIs

A. Covered FSIs (Section 382.2(a) of the Proposed Rule)

The proposed rule would apply to ''covered FSIs.'' The term ''covered FSI'' would be defined to include: Any state savings associations (as defined in 12 U.S.C. 1813(b)(3)) or state non-member bank (as defined in 12 U.S.C. 1813(e)(2)) that is a direct or indirect subsidiary of (i) a global systemically important bank holding company that has been designated pursuant to section 252.82(a)(1) of the FRB's Regulation YY (12 CFR 252.82); or (ii) a global systemically important foreign banking organization that has been designated pursuant to section 252.87 of the FRB's Regulation YY (12 CFR 252.87). The mandatory contractual stay requirements would also apply to the subsidiaries of any covered FSI. Under the proposed rule, the term ''covered FSI'' also includes any ''subsidiary of covered FSI.''

Question 2: The FDIC invites comment on the proposed definition of the term ''covered FSI.''

B. Covered QFCs

General definition. The proposal would apply to any ''covered QFC,'' generally defined as any QFC that a covered FSI enters into, executes, or otherwise becomes party to.[45] ''Qualified financial contract'' or ''QFC'' would be defined as in section 210(c)(8)(D) of Title II of the Dodd-Frank Act and would include swaps, repo and reverse repo transactions, securities lending and borrowing transactions, commodity contracts, securities contracts, and forward agreements.[46]

The proposed definition of ''covered QFC'' is intended to limit the proposed restrictions to those financial transactions whose disorderly unwind has substantial potential to frustrate the

[40] *See* proposed rule § 382.5(c).

[41] *See id.*

[42] *See* proposed rule §§ 324.2 and 329.3.

[43] *See* 12 U.S.C. 1819.

[44] The FDIC is (i) the primary federal supervisor for SNMBs and state savings associations; (ii) insurer of deposits and manager of the deposit insurance fund (DIF); and (iii) the resolution authority for all FDIC-insured institutions under the Federal Deposit Insurance Act and for large complex financial institutions under Title II of the Dodd-Frank Act. *See* 12 U.S.C. 1811, 1816, 1818, 1819, 1820(g), 1828, 1828m, 1831p–1, 1831–u, 5301 *et seq.*

[45] *See* proposed rule § 382.3(a). For convenience, this preamble generally refers to ''a covered FSI's QFCs'' or ''QFCs to which a covered FSI is party'' as shorthand to encompass this definition.

[46] *See* proposed rule § 382.1; 12 U.S.C. 5390(c)(8)(D).

orderly resolution of a GSIB and its affiliates, as discussed above. By adopting the Dodd-Frank Act's definition, the proposed rule would extend the benefits of the stay-and-transfer protections to the same types of transactions in the event a GSIB enters bankruptcy. In this way, the proposal enhances the prospects for an orderly resolution in bankruptcy (as opposed to resolution under Title II of the Dodd-Frank Act) of a GSIB.

Question 3: The FDIC invites comment on the proposed definitions of ''QFC'' and ''covered QFC.''

Exclusion of cleared QFCs. The proposal would exclude from the definition of ''covered QFC'' all QFCs that are cleared through a central counterparty.[47] The FDIC, in consultation with the FRB and OCC, will continue to consider the appropriate treatment of centrally cleared QFCs, in light of differences between cleared and non-cleared QFCs with respect to contractual arrangements, counterparty credit risk, default management, and supervision.

Question 4: The FDIC invites comment on the proposed exclusion of cleared QFCs, including the potential effects on the financial stability of the United States of excluding cleared QFCs as well as the potential effects on U.S. financial stability of subjecting covered entities' relationships with central counterparties to restrictions analogous to this proposal's restrictions on covered entities' non-cleared QFCs. In addition, the FDIC invites comment on whether the proposed exclusion of covered entity QFCs in § 382.7 is sufficiently clear. Where a credit enhancement supports a covered QFC, and where a direct party to a covered QFC is a covered FSI, covered entity, or covered bank, would an alternative process better facilitate compliance with this proposal?

C. Definition of ''Default Right''

As discussed above, a party to a QFC generally has a number of rights that it can exercise if its counterparty defaults on the QFC by failing to meet certain contractual obligations. These rights are generally, but not always, contractual in nature. One common default right is a setoff right: the right to reduce the total amount that the non-defaulting party must pay by the amount that its defaulting counterparty owes. A second common default right is the right to liquidate pledged collateral and use the proceeds to pay the defaulting party's net obligation to the non-defaulting party. Other common rights include the ability to suspend or delay the non-defaulting party's performance under the contract or to accelerate the obligations of the defaulting party. Finally, the non-defaulting party typically has the right to terminate the QFC, meaning that the parties would not make payments that would have been required under the QFC in the future. The phrase ''default right'' in the proposed rule is broadly defined to include these common rights as well as ''any similar rights.'' [48] Additionally, the definition includes all such rights regardless of source, including rights existing under contract, statute, or common law.

However, the proposed definition excludes two rights that are typically associated with the business-as-usual functioning of a QFC. First, same-day netting that occurs during the life of the QFC in order to reduce the number and amount of payments each party owes the other is excluded from the definition of ''default right.'' [49] Second, contractual margin requirements that arise solely from the change in the value of the collateral or the amount of an economic exposure are also excluded from the definition.[50] The function of these exclusions is to leave such rights unaffected by the proposed rule.

However, certain QFCs are also commonly subject to rights that would increase the amount of collateral or margin that the defaulting party (or a guarantor) must provide upon an event of default. The financial impact of such default rights on a covered entity could be similar to the impact of the liquidation and acceleration rights discussed above. Therefore, the proposed definition of ''default right'' includes such rights (with the exception discussed in the previous paragraph for margin requirements that depend solely on the value of collateral or the amount of an economic exposure).[51]

Finally, contractual rights to terminate without the need to show cause, including rights to terminate on demand and rights to terminate at contractually specified intervals, are excluded from the definition of ''default right'' for purposes of the proposed rule's restrictions on cross-default rights (section 382.4 of the proposed rule).[52] This is consistent with the proposal's objective of restricting only default rights that are related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity, while leaving other default rights unrestricted.[53]

Question 5: The FDIC invites comment on all aspects of the proposed definition of ''default right.''

D. Required Contractual Provisions Related to the U.S. Special Resolution Regimes (Section 382.3 of the Proposed Rule)

Under the proposal, a covered QFC would be required to explicitly provide both (a) that the transfer of the QFC (and any interest or obligation in or under it and any property securing it) from the covered entity to a transferee will be effective to the same extent as it would be under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States and (b) that default rights with respect to the covered QFC that could be exercised against a covered entity could be exercised to no greater extent than they could be exercised under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States.[54] The proposal would define the term ''U.S. special resolution regimes'' to mean the FDI Act [55] and Title II of the Dodd-Frank Act,[56] along with regulations issued under those statutes.[57]

The proposed requirements are not intended to imply that a given covered QFC is not governed by the laws of the United States or of a state of the United States, or that the statutory stay-and-transfer provisions would not in fact apply to a given covered QFC. Rather, the requirements are intended to provide certainty that all covered QFCs would be treated the same way in the context of a receivership under the Dodd-Frank Act or the FDI Act. The stay-and-transfer provisions of the U.S. special resolution regimes should be enforced with respect to all contracts of any U.S. GSIB entity that enters resolution under a U.S. special resolution regime as well as all transactions of the subsidiaries of such an entity. Nonetheless, it is possible that a court in a foreign jurisdiction would decline to enforce those provisions in cases brought before it (such as a case

[47] *See* proposed rule § 382.7(a).

[48] *See* proposed rule § 382.1.

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] *See* proposed rule §§ 382.1, 382.4.

[53] The definition of ''default right'' in this proposal parallels the definition contained in the ISDA Protocol. The proposed rule does not modify or limit the FDIC's powers in its capacity as receiver under the FDI Act or the Dodd-Frank Act with respect to a counterparties' contractual or other rights.

[54] *See* proposed rule § 382.3.

[55] 12 U.S.C. 1811–1835a.

[56] 12 U.S.C. 5381–5394.

[57] *See* proposed rule § 382.1.

regarding a covered QFC between a covered FSI and a non-U.S. entity that is governed by non-U.S. law and secured by collateral located outside the United States). By requiring that the effect of the statutory stay-and-transfer provisions be incorporated directly into the QFC contractually, the proposed requirement would help ensure that a court in a foreign jurisdiction would enforce the effect of those provisions, regardless of whether the court would otherwise have decided to enforce the U.S. statutory provisions themselves.[58] For example, the proposed provisions should prevent a U.K. counterparty of a U.S. GSIB from persuading a U.K. court that it should be permitted to seize and liquidate collateral located in the United Kingdom in response to the U.S. GSIB's entry into Title II resolution. And the knowledge that a court in a foreign jurisdiction would reject the purported exercise of default rights in violation of the required provisions would deter counterparties from attempting to exercise such rights.

This requirement would advance the proposal's goal of removing QFC-related obstacles to the orderly resolution of a GSIB. As discussed above, restrictions on the exercise of QFC default rights are an important prerequisite for an orderly GSIB resolution.[59]

Question 6: The FDIC invites comment on all aspects of this section of the proposal.

E. Prohibited Cross-Default Rights (Section 382.4 of the Proposed Rule)

Definitions. Section 382.4 of the proposal applies in the context of insolvency proceedings[60] and pertains to cross-default rights in QFCs between covered FSIs and their counterparties, many of which are subject to credit enhancements (such as a guarantee) provided by an affiliate of the covered FSI. Because credit enhancements on QFCs are themselves ''qualified financial contracts'' under the Dodd-Frank Act's definition of that term (which this proposal would adopt), the proposal includes the following additional definitions in order to facilitate a precise description of the relationships to which it would apply.

First, the proposal distinguishes between a credit enhancement and a ''direct QFC,'' defined as any QFC that is not a credit enhancement.[61] The proposal also defines ''direct party'' to mean a covered FSI that is itself a party to the direct QFC, as distinct from an entity that provides a credit enhancement.[62] In addition, the proposal defines ''affiliate credit enhancement'' to mean ''a credit enhancement that is provided by an affiliate of the party to the direct QFC that the credit enhancement supports,'' as distinct from a credit enhancement provided by either the direct party itself or by an unaffiliated party.[63] Moreover, the proposal defines ''covered affiliate credit enhancement'' to mean an affiliate credit enhancement provided by a covered entity, covered bank, or covered FSI, and defines ''covered affiliate support provider'' to mean the covered entity, covered bank, or covered FSI that provides the covered affiliate credit enhancement.[64] Finally, the proposal defines the term ''supported party'' to mean any party that is the beneficiary of a covered affiliate credit enhancement (that is, the QFC counterparty of a direct party, assuming that the direct QFC is subject to a covered affiliate credit enhancement).[65]

General prohibitions. Subject to the substantial exceptions discussed below, the proposal would prohibit a covered FSI from being party to a covered QFC that allows for the exercise of any default right that is related, directly or indirectly, to the entry into resolution of an affiliate of the covered FSI.[66] The proposal also would generally prohibit a covered FSI from being party to a covered QFC that would prohibit the transfer of any credit enhancement applicable to the QFC (such as another entity's guarantee of the covered FSI's obligations under the QFC), along with associated obligations or collateral, upon the entry into resolution of an affiliate of the covered FSI.[67]

A primary purpose of the proposed restrictions is to facilitate the resolution of a GSIB outside of Title II, including under the Bankruptcy Code. As discussed above, the potential for mass exercises of QFC default rights is one reason why a GSIB's failure could do severe damage to financial stability. In the context of an SPOE resolution, if the GSIB parent's entry into resolution led to the mass exercise of cross-default rights by the subsidiaries' QFC counterparties, then the subsidiaries could themselves fail or experience financial distress. Moreover, the mass exercise of QFC default rights could entail asset fire sales, which likely would affect other financial companies and undermine financial stability. Similar disruptive results can occur with an MPOE resolution of an affiliate of an otherwise performing entity triggers default rights on QFCs involving the performing entity.

In an SPOE resolution, this damage could be avoided if actions of the following two types are prevented: The exercise of direct default rights against the top-tier holding company that has entered resolution, and the exercise of cross-default rights against the operating subsidiaries based on their parent's entry into resolution. (Direct default rights against the subsidiaries would not be exercisable because the subsidiaries would not enter resolution.) In an MPOE resolution, this damage could occur from exercise of default rights against a performing entity based on the failure of an affiliate.

Under Title II, the stay-and-transfer provisions would address both direct default rights and cross-default rights. But, as explained above, no similar statutory provisions would apply to a resolution under the Bankruptcy Code. This proposal attempts to address these obstacles to orderly resolution under the Bankruptcy Code by extending the stay-and-transfer provisions to any type of resolution of an affiliate of a covered FSI that is not an insured depository institution. Similarly, the proposal would facilitate a transfer of the GSIB parent's interests in its subsidiaries, along with any credit enhancements it provides for those subsidiaries, to a solvent financial company by prohibiting covered FSIs from having QFCs that would allow the QFC counterparty to prevent such a transfer or to use it as a ground for exercising default rights.[68]

[58] *See generally* Financial Stability Board, ''Principles for Cross-border Effectiveness of Resolution Actions'' (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

[59] *See* FRB NPRM, 81 FR 29178 (May 11, 2016) for additional discussion regarding consistency of this proposal with similar regulatory efforts in foreign jurisdictions.

[60] *See* proposed rule § 382.4 (noting that section does not apply to proceedings under Title II of the Dodd-Frank Act).

[61] *See* proposed rule § 382.4(c)(2).

[62] *See* proposed rule § 382.4(c)(1).

[63] *See* proposed rule § 382.4(c)(3).

[64] *See* proposed rule § 382.4(f)(2).

[65] *See* proposed rule § 382.4(f)(4).

[66] *See* proposed rule § 382.4(b)(1).

[67] *See* proposed rule § 382.4(b)(2). This prohibition would be subject to an exception that would allow supported parties to exercise default rights with respect to a QFC if the supported party would be prohibited from being the beneficiary of a credit enhancement provided by the transferee under any applicable law, including the Employee Retirement Income Security Act of 1974 and the Investment Company Act of 1940. This exception is substantially similar to an exception to the transfer restrictions in section 2(f) of the ISDA 2014 Resolution Stay Protocol (2014 Protocol) and the ISDA 2015 Universal Resolution Stay Protocol, which was added to address concerns expressed by asset managers during the drafting of the 2014 Protocol.

[68] *See* proposed rule § 382.4(b).

The proposal also is intended to facilitate other approaches to GSIB resolution. For example, it would facilitate a similar resolution strategy in which a U.S. depository institution subsidiary of a GSIB enters resolution under the FDI Act while its subsidiaries continue to meet their financial obligations outside of resolution.[69] Similarly, the proposal would facilitate the orderly resolution of a foreign GSIB under its home jurisdiction resolution regime by preventing the exercise of cross-default rights against the foreign GSIB's U.S. operations. The proposal would also facilitate the resolution of the U.S. intermediate holding company of a foreign GSIB, and the recapitalization of its U.S. operating subsidiaries, as part of a broader MPOE resolution strategy under which the foreign GSIB's operations in other regions would enter separate resolution proceedings. Finally, the proposal would broadly prevent the unanticipated failure of any one GSIB entity from bringing about the disorderly failures of its affiliates by preventing the affiliates' QFC counterparties from using the first entity's failure as a ground for exercising default rights against those affiliates that continue meet to their obligations.

The proposal is intended to enhance the potential for orderly resolution of a GSIB under the Bankruptcy Code, the FDI Act, or a similar resolution regime. By doing so, the proposal would advance the Dodd-Frank Act's goal of making orderly GSIB resolution under the Bankruptcy Code workable.[70]

The proposal could also benefit the counterparties of a subsidiary of a failed GSIB, by preventing the disorderly failure of an otherwise-solvent subsidiary and allowing it to continue to meet its obligations. While it may be in the individual interest of any given counterparty to exercise any available rights against a subsidiary of a failed GSIB, the mass exercise of such rights could harm the counterparties' collective interest by causing an otherwise-solvent subsidiary to fail. Therefore, like the automatic stay in bankruptcy, which serves to maximize creditors' ultimate recoveries by preventing a disorderly liquidation of the debtor, the proposal would mitigate this collective action problem to the benefit of the failed firm's creditors and counterparties by preventing a disorderly resolution. And because many creditors and counterparties of GSIBs are themselves systemically important financial firms, improving outcomes for those creditors and counterparties would further protect the financial stability of the United States.

General creditor protections. While the proposed restrictions would facilitate orderly resolution, they would also diminish the ability of covered FSI's QFC counterparties to include certain protections for themselves in covered QFCs. In order to reduce this effect, the proposal includes several substantial exceptions to the proposed restrictions.[71] These permitted creditor protections are intended to allow creditors to exercise cross-default rights outside of an orderly resolution of a GSIB (as described above) and therefore would not be expected to undermine such a resolution.

First, in order to ensure that the proposed prohibitions would apply only to cross-default rights (and not direct default rights), the proposal would provide that a covered QFC may permit the exercise of default rights based on the direct party's entry into a resolution proceeding, other than a proceeding under a U.S. or foreign special resolution regime.[72] This provision would help ensure that, if the direct party to a QFC were to enter bankruptcy, its QFC counterparties could exercise any relevant direct default rights. Thus, a covered FSI's direct QFC counterparties would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, and would be able to take advantage of default rights that would fall within the Bankruptcy Code's safe harbor provisions.

The proposal would also allow, in the context of an insolvency proceeding, and subject to the statutory requirements and restrictions thereunder, covered QFCs to permit the exercise of default rights based on (i) the failure of the direct party; (ii) the direct party not satisfying a payment or delivery obligation; or (iii) a covered affiliate support provider or transferee not satisfying its payment or delivery obligations under the direct QFC or credit enhancement.[73] Moreover, the proposal would allow covered QFCs to permit the exercise of a default right in one QFC that is triggered by the direct party's failure to satisfy its payment or delivery obligations under another contract between the same parties.

The proposed exceptions for the creditor protections described above are intended to help ensure that the proposal permits a covered FSI's QFC counterparties to protect themselves from imminent financial loss and does not create a risk of delivery gridlocks or daisy-chain effects, in which a covered entity's failure to make a payment or delivery when due leaves its counterparty unable to meet its own payment and delivery obligations (the daisy-chain effect would be prevented because the covered entity's counterparty would be permitted to exercise its default rights, such as by liquidating collateral). These exceptions are generally consistent with the treatment of payment and delivery obligations, following the applicable stay period, under the U.S. special resolution regimes.

Additional creditor protections for supported QFCs. The proposal would allow additional creditor protections for a non-defaulting counterparty that is the beneficiary of a credit enhancement from an affiliate of the covered FSI that is a covered entity, covered bank, or covered FSI under the proposal.[74] The proposal would allow these creditor protections in recognition of the supported party's interest in receiving the benefit of its credit enhancement.

Where a covered QFC is supported by a covered affiliate credit enhancement,[75] the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights[76] under the circumstances discussed below after the expiration of a stay period. Under the proposal, the applicable stay period would begin when the receiver is appointed and would end at the later of 5:00 p.m. (eastern time) on the next business day and 48 hours after the entry into resolution.[77] This portion of

[69] As discussed above, the FDI Act would prevent the exercise of direct default rights against the depository institution, but it does not address the threat posed to orderly resolution by cross-default rights in the QFCs of the depository institution's subsidiaries. This proposal would facilitate orderly resolution under the FDI Act by filling that gap.

[70] *See* 12 U.S.C. 5365(d).

[71] *See* proposed rule § 382.4(e).

[72] *See* proposed rule § 382.4(e)(1). Special resolution regimes typically stay direct default rights, but may not stay cross-default rights. For example, as discussed above, the FDI Act stays direct default rights, see 12 U.S.C. 1821(e)(10)(B), but does not stay cross-default rights, whereas Title II stays direct default rights and cross-defaults arising from a parent's receivership, see 12 U.S.C. 5390(c)(10)(B), 5390(c)(16).

[73] *See* proposed rule § 382.4(e).

[74] *See* proposed rule § 382.4(g).

[75] Note that the exception in § 382.4(g) of the proposed rule would not apply with respect to credit enhancements that are not covered affiliate credit enhancements. In particular, it would not apply with respect to a credit enhancement provided by a non-U.S. entity of a foreign GSIB, which would not be a covered entity under the proposal.

[76] *See* 12 U.S.C. 1821(e)(8)(G)(ii), 5390(c)(8)(F)(ii) (suspending payment and delivery obligations for one business day or less).

[77] *See* proposed rule § 382.4(h)(1).

the proposal is similar to the stay treatment provided in a resolution under Title II or the FDI Act.[78]

Under the proposal, default rights could be exercised at the end of the stay period if the covered affiliate credit enhancement has not been transferred away from the covered affiliate support provider and that support provider becomes subject to a resolution proceeding other than a proceeding under Chapter 11 of the Bankruptcy Code or the FDI Act.[79] Default rights could also be exercised at the end of the stay period if the transferee (if any) of the credit enhancement enters an insolvency proceeding, protecting the supported party from a transfer of the credit enhancement to a transferee that is unable to meet its financial obligations.

Default rights could also be exercised at the end of the stay period if the original credit support provider does not remain, and no transferee becomes, obligated to the same (or substantially similar) extent as the original credit support provider was obligated immediately prior to entering a resolution proceeding (including a Chapter 11 proceeding) with respect to (a) the credit enhancement applicable to the covered QFC, (b) all other credit enhancements provided by the credit support provider on any other QFCs between the same parties, and (c) all credit enhancements provided by the credit support provider between the direct party and affiliates of the direct party's QFC counterparty.[80] Such creditor protections would be permitted in order to prevent the support provider or the transferee from ''cherry picking'' by assuming only those QFCs of a given counterparty that are favorable to the support provider or transferee. Title II and the FDI Act contain similar provisions to prevent cherry picking.

Finally, if the covered affiliate credit enhancement is transferred to a transferee, then the non-defaulting counterparty could exercise default rights at the end of the stay period unless either (a) all of the support provider's ownership interests in the direct party are also transferred to the transferee or (b) reasonable assurance is provided that substantially all of the support provider's assets (or the net proceeds from the sale of those assets) will be transferred to the transferee in a timely manner. These conditions would help to assure the supported party that the transferee would be providing substantively the same credit enhancement as the covered affiliate support provider.[81]

Creditor protections related to FDI Act proceedings. Moreover, in the case of a covered QFC that is supported by a covered affiliate credit enhancement, both the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights related to the credit support provider's entry into resolution proceedings under the FDI Act[82] under the following circumstances: (a) After the FDI Act stay period,[83] if the credit enhancement is not transferred under the relevant provisions of the FDI Act[84] and associated regulations, and (b) during the FDI Act stay period, to the extent that the default right permits the supported party to suspend performance under the covered QFC to the same extent as that party would be entitled to do if the covered QFC were with the credit support provider itself and were treated in the same manner as the credit enhancement.[85] This provision is intended to ensure that a QFC counterparty of a subsidiary of a covered FSI that goes into FDI Act receivership can receive the equivalent level of protection that the FDI Act provides to QFC counterparties of the covered FSI itself.[86]

Prohibited terminations. In case of a legal dispute as to a party's right to exercise a default right under a covered QFC, the proposal would require that a covered QFC must provide that, after an affiliate of the direct party has entered a resolution proceeding, (a) the party seeking to exercise the default right bears the burden of proof that the exercise of that right is indeed permitted by the covered QFC; and (b) the party seeking to exercise the default right must meet a ''clear and convincing evidence'' standard, a similar standard,[87] or a more demanding standard.

The purpose of this proposed requirement is to deter the QFC counterparty of a covered entity from thwarting the purpose of this proposal by exercising a default right because of an affiliate's entry into resolution under the guise of other default rights that are unrelated to the affiliate's entry into resolution.

Agency transactions. In addition to entering into QFCs as principals, GSIBs may engage in QFCs as agents for other principals. For example, a GSIB subsidiary may enter into a master securities lending arrangement with a foreign bank as agent for a U.S.-based pension fund. The GSIB subsidiary would document its role as agent for the pension fund, often through an annex to the master agreement, and would generally provide to its customer (the principal party) a securities replacement guarantee or indemnification for any shortfall in collateral in the event of the default of the foreign bank.[88] Similarly, a covered FSI may also enter into a QFC as agent acting on behalf of a principal.

This proposal would apply to a covered QFC regardless of whether the covered FSI is acting as a principal or as an agent. Section 382.3 and section 382.4 do not distinguish between agents and principals with respect to default rights or transfer restrictions applicable to covered QFCs. Section 382.3 would limit default rights and transfer restrictions that a counterparty may have against a covered FSI consistent with the U.S. special resolution regimes.[89] Section 382.4 would ensure that, subject to the enumerated creditor protections, counterparties could not exercise cross-default rights under the covered QFC against the covered FSI, acting as agent or principal, based on the resolution of an affiliate of the covered FSI.[90]

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[78] *See* 12 U.S.C. 1821(e)(10)(B)(I), 5390(c)(10)(B)(i), 5390(c)(16)(A). While the proposed stay period is similar to the stay periods that would be imposed by the U.S. special resolution regimes, it could run longer than those stay periods under some circumstances.

[79] *See* proposed rule § 382.4(g)(1). Chapter 11 (11 U.S.C. 1101–1174) is the portion of the Bankruptcy Code that provides for the reorganization of the failed company, as opposed to its liquidation, and, relative to special resolution regimes, is generally well-understood by market participants.

[80] *See* proposed rule § 382.4(g)(3).

[81] 12 U.S.C. 5390(c)(16)(A).

[82] As discussed above, the FDI Act stays direct default rights against the failed depository institution but does not stay the exercise of cross-default rights against its affiliates.

[83] Under the FDI Act, the relevant stay period runs until 5:00 p.m. (eastern time) on the business day following the appointment of the FDIC as receiver. 12 U.S.C. 1821(e)(10)(B)(I).

[84] 12 U.S.C. 1821(e)(9)–(10).

[85] *See* proposed rule § 382.4(i).

[86] *See id.* (noting that the general creditor protections in section 382.4(e), and the additional creditor protections for supported QFCs in section 382.4(g), are inapplicable to FDI Act proceedings).

[87] The reference to a ''similar'' burden of proof is intended to allow covered QFCs to provide for the application of a standard that is analogous to clear and convincing evidence in jurisdictions that do not recognize that particular standard. A covered QFC would not be permitted to provide for a lower standard.

[88] The definition of QFC under Title II of the Dodd-Frank Act includes security agreements and other credit enhancements as well as master agreements (including supplements). 12 U.S.C. 5390(c)(8)(D).

[89] *See* proposed rule § 382.3(a)(3).

[90] *See* proposed rule § 382.4(d). If a covered FSI (acting as agent) is a direct party to a covered QFC, then the general prohibitions of section 382.4(b) would only affect the substantive rights of the agent's principal(s) to the extent that the covered QFC provides default rights based directly or indirectly on the entry into resolution of an affiliate of the covered FSI (acting as agent). *See also* proposed rule § 382.4(a)(3).

Compliance with the ISDA 2015 Resolution Stay Protocol. As an alternative to compliance with the requirements of section 382.4 that are described above, a covered FSI could comply with the proposed rule to the extent its QFCs are amended by adherence to the current ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and the Other Agreements Annex, as well as subsequent, immaterial amendments to the Protocol.[91]

The Protocol has the same general objective as the proposed rule: to make GSIBs more resolvable by amending their contracts to, in effect, contractually recognize the applicability of U.S. special resolution regimes[92] and to restrict cross-default provisions to facilitate orderly resolution under the U.S. Bankruptcy Code. Moreover, the provisions of the Protocol largely track the requirements of the proposed rule.[93]

Consistent with the FDIC's objective of increasing GSIB resolvability, the proposed rule would allow a covered entity to bring its covered QFCs into compliance by amending them through adherence to the Protocol.

Question 7: The FDIC invites comment on the proposed restrictions on cross-default rights in covered FSI's QFCs. Is the proposal sufficiently clear such that parties to a conforming QFC will understand what default rights are and are not exercisable in the context of a GSIB resolution? How could the proposed restrictions be made clearer?

Question 8: The FDIC invites comment on its proposal to treat as compliant with section 382.4 of the proposal any covered QFC that has been amended by the Protocol. Does adherence to the Protocol suffice to meet the goals of this proposal and appropriately safeguard U.S. financial stability?

F. Process for Approval of Enhanced Creditor Protections (Section 382.5 of the Proposed Rule)

As discussed above, the proposed restrictions would leave many creditor protections that are commonly included in QFCs unaffected. The proposal would also allow any covered FSI to submit to the FDIC a request to approve as compliant with the rule one or more QFCs that contain additional creditor protections—that is, creditor protections that would be impermissible under the restrictions set forth above. A covered FSI making such a request would be required to provide an analysis of the contractual terms for which approval is requested in light of a range of factors that are set forth in the proposed rule and intended to facilitate the FDIC's consideration of whether permitting the contractual terms would be consistent with the proposed restrictions.[94] The FDIC also expects to consult with the FRB and OCC during its consideration of such a request—in particular, when the covered QFC is between a covered FSI and either a covered bank or a covered entity.

The first two factors concern the potential impact of the requested creditor protections on GSIB resilience and resolvability. The next four concern the potential scope of the proposal: adoption on an industry-wide basis, coverage of existing and future transactions, coverage of one or multiple QFCs, and coverage of some or all covered entities, covered banks, and covered FSIs. Creditor protections that may be applied on an industry-wide basis may help to ensure that impediments to resolution are addressed on a uniform basis, which could increase market certainty, transparency, and equitable treatment. Creditor protections that apply broadly to a range of QFCs and covered entities, covered banks and covered FSIs would increase the chance that all of a GSIB's QFC counterparties would be treated the same way during a resolution of that GSIB and may improve the prospects for an orderly resolution of that GSIB. By contrast, proposals that would expand counterparties' rights beyond those afforded under existing QFCs would conflict with the proposal's goal of reducing the risk of mass unwinds of GSIB QFCs. The proposal also includes three factors that focus on the creditor protections specific to supported parties. The FDIC may weigh the appropriateness of additional protections for supported QFCs against the potential impact of such provisions on the orderly resolution of a GSIB.

In addition to analyzing the request under the enumerated factors, a covered FSI requesting that the FDIC approve enhanced creditor protections would be required to submit a legal opinion stating that the requested terms would be valid and enforceable under the applicable law of the relevant jurisdictions, along with any additional relevant information requested by the FDIC.

Question 9: The FDIC invites comment on all aspects of the proposed process for approval of enhanced creditor protections. Should the FDIC provide greater specificity on this process? If so, what processes and procedures could be adopted without imposing undue regulatory burden?

III. Transition Periods

Under the proposal, the final rule would take effect on the first day of the first calendar quarter that begins at least one year after the issuance of the final

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[91] International Swaps and Derivatives Association, Inc., ISDA 2015 Universal Resolution Stay Protocol (November 4, 2015), available at *http://assets.isda.org/media/ac6b533f-3/5a7c32f8-pdf/.* The ISDA 2015 Universal Resolution Stay Protocol (ISDA Protocol) expanded the 2014 ISDA Resolution Stay Protocol to cover securities financing transactions in addition to over-the-counter derivatives documented under ISDA Master Agreements. As between adhering parties, the ISDA Protocol replaces the 2014 ISDA Protocol (which does not cover securities financing transactions). Securities financing transactions (which generally include repurchase agreements and securities lending transactions) are documented under non-ISDA master agreements.

The Protocol was developed by a working group of member institutions of the International Swaps and Derivatives Association, Inc. (ISDA), in coordination with the FRB, the FDIC, the OCC, and foreign regulatory agencies. The Securities Financing Transaction Annex was developed by the International Capital Markets Association, the International Securities Lending Association, and the Securities Industry and Financial Markets Association, in coordination with ISDA. ISDA is expected to continue supplementing the Protocol with ISDA Resolution Stay Jurisdictional Modular Protocols for the United States and other jurisdictions. A jurisdictional module for the United States that is substantively identical to the Protocol in all respects (aside from exempting QFCs between adherents that are not covered entities, covered FSIs, or covered banks) would be consistent with the current proposal. For additional detail on the development of the 2014 and 2015 ISDA Resolution Stay Protocols, *see* FRB NPRM, 81 FR at 29181–29182 (May 11, 2016).

[92] The Protocol also includes other special resolution regimes. Currently, the Protocol includes special resolution regimes in place in France, Germany, Japan, Switzerland, and the United Kingdom. Other special resolution regimes that meet the definition of ''Protocol-eligible Regime'' may be added to the Protocol.

[93] Sections 2(a) and (b) of the Protocol provide the stays required under paragraph (b)(1) of proposed rule § 382.4 for the most common U.S. insolvency regimes. Section 2(f) of the Protocol overrides transfer restrictions as required under paragraph (b)(2) of proposed rule § 382.4 for transfers that are consistent with the Protocol. The Protocol's exemptions from the stay for ''Performance Default Rights'' and the ''Unrelated Default Rights'' described in paragraph (a) of the definition are consistent with the proposal's general creditor protections permitted under paragraph (b) of proposed rule § 382.4. The Protocol's burden of proof provisions (see section 2(i) of the Protocol and the definition of Unrelated Default Rights) and creditor protections for credit enhancement providers in FDI Act proceedings (see Section 2(d) of the Protocol) are also consistent with the paragraphs (j) and (i), respectively, of proposed rule § 382.4. Note also that, although exercise of Performance Default Rights under the Protocol does not require a showing of clear and convincing evidence while these same rights under the proposal (proposed rule § 252.84(e)) would require such a showing, this difference between the Protocol and the proposal does not appear to be meaningful because clearly documented evidence for such default rights (*i.e.,* payment and performance failures, entry into resolution proceedings) should exist.

[94] Proposed rule § 382.5(d)(1)–(10).

rule (effective date).[95] Entities that are covered FSIs when the final rule is issued would be required to comply with the proposed requirements beginning on the effective date. Thus, a covered FSI would be required to ensure that covered QFCs entered into on or after the effective date comply with the rule's requirements.[96] Moreover, a covered FSI would be required to bring a preexisting covered QFC entered into prior to the effective date into compliance with the rule no later than the first date on or after the effective date on which the covered FSI or an affiliate (that is also a covered entity, covered bank, or covered FSI) enters into a new covered QFC with the counterparty to the preexisting covered QFC or an affiliate of the counterparty.[97] (Thus, a covered FSI would not be required to conform a preexisting QFC if that covered FSI and its affiliates do not enter into any new QFCs with the same counterparty or its affiliates on or after the effective date.) Finally, an entity that becomes a covered FSI after the final rule is issued would be required to comply by the first day of the first calendar quarter that begins at least one year after the entity becomes a covered FSI.[98]

By permitting a covered FSI to remain party to noncompliant QFCs entered into before the effective date unless the covered FSI or any affiliate (that is also a covered entity, covered bank, or covered FSI) enters into new QFCs with the same counterparty or its affiliates, the proposal strikes a balance between ensuring QFC continuity if the GSIB were to fail and ensuring that covered FSIs and their existing counterparties can avoid any compliance costs and disruptions associated with conforming existing QFCs by refraining from entering into new QFCs. The requirement that a covered FSI ensure that all existing QFCs with a particular counterparty and its affiliates are compliant before it or any affiliate of the covered FSI (that is also a covered entity, covered bank, or covered FSI) enters into a new QFC with the same counterparty or its affiliates after the effective date will provide covered FSIs with an incentive to seek the modifications necessary to ensure that their QFCs with their most important counterparties are compliant. Moreover, the volume of preexisting, noncompliant covered QFCs outstanding can be expected to decrease over time and eventually to reach zero. In light of these considerations, and to avoid creating potentially inappropriate compliance costs with respect to existing QFCs with counterparties that, together with their affiliates, do not enter new covered QFCs with the GSIB on or after the effective date, it would be appropriate to permit a limited number of noncompliant QFCs to remain outstanding, in keeping with the terms described above. The FDIC will monitor covered FSIs' levels of noncompliant QFCs and evaluate the risk, if any, that they pose to the safety and soundness of the covered FSIs, the banking system, or to U.S. financial stability.

Question 10: The FDIC invites comment on the proposed transition periods and the proposed treatment of preexisting QFCs.

IV. Expected Effects

The proposed rule is intended to promote the financial stability of the United States by reducing the potential that resolution of a GSIB, particularly through bankruptcy, will be disorderly. The proposed rule will help meet this policy objective by more effectively and efficiently managing the exercise of default rights and restrictions contained in QFCs. It would therefore help mitigate the risk of future financial crises and imposition of substantial costs on the U.S. economy.[99] The proposed rule furthers the FDIC's mission and responsibilities, which include resolving failed institutions in the least costly manner and ensuring that FDIC-insured institutions operate safely and soundly. It also furthers the fulfillment of the FDIC's role as the (i) primary federal supervisor for SNMBs and state savings associations; (ii) resolution authority for all FDIC-insured institutions under the FDI Act; and (iii) resolution authority for large complex financial institutions under Title II of the Dodd-Frank Act.

The proposal would likely benefit the counterparties of a subsidiary of a failed GSIB by preventing the disorderly failure of the subsidiary and enabling it to continue to meet its obligations. Preventing the mass exercise of QFC default rights at the time the parent or other affiliate enters resolution proceedings makes it more likely that the subsidiaries or other affiliates will be able to meet their obligations to QFC counterparties. Moreover, the creditor protections permitted under the proposal would allow any counterparty that does not continue to receive payment under the QFC to exercise its default rights, after any applicable stay period.

Because financial crises impose enormous costs on the economy, even small reductions in the probability or severity future financial crises create substantial economic benefits.[100] The proposal would materially reduce the risk to the financial stability of the United States that could arise from the failure of a GSIB by enhancing the prospects for the orderly resolution of such a firm, and would thereby materially reduce the probability and severity of financial crises in the future.

The costs of the proposed rule are likely to be relatively small and only affect twelve covered FSIs. Covered FSIs and their counterparties are likely to incur administrative costs associated with drafting and negotiating compliant QFCs, but to the extent such parties adhere to the ISDA Protocol, these administrative costs would likely be reduced. While potential administrative costs are difficult to accurately predict, these costs are likely to be small relative to the revenue of the organizations affected by the proposed rule, and to the costs of doing business in the financial sector generally.

In addition, the FDIC anticipates that covered FSIs would likely share resources with its parent GSIB and/or GSIB affiliates—which are subject to parallel requirements—to help cover compliance costs. The stay-and-transfer provisions of the Dodd-Frank Act and the FDI Act are already in force, and the ISDA Protocol is already partially effective for the 23 existing GSIB adherents. The partial effectiveness of the ISDA Protocol (regarding Section 1, which addresses recognition of stays on the exercise of default rights and remedies in financial contracts under special resolution regimes, including in the United States, the United Kingdom, Germany, France, Switzerland and Japan) suggests that to the extent covered FSIs already adhere to the ISDA Protocol, some implementation costs will likely be reduced.

The proposal could also impose costs on covered FSIs to the extent that they may need to provide their QFC

[95] Under section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, new FRB regulations that impose requirements on insured depository institutions generally must ''take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.'' 12 U.S.C. 4802(b).

[96] *See* proposed rule §§ 382.3(a)(2)(i); 382.4(a)(2).

[97] *See* proposed rule §§ 382.3(a)(2)(ii), 382.4(a)(2).

[98] *See* proposed rule § 382.2(b).

[99] A recent estimate of the unrealized economic output that resulted from 2007–09 financial crisis in the United States amounted to between $6 and $14 trillion. *See* ''How Bad Was It? The Costs and Consequences of the 2007–09 Financial Crisis,'' Staff Paper No. 20, Federal Reserve Bank of Dallas, July 2013. *https://dallasfed.org/assets/documents/research/staff/staff1301.pdf.*

[100] *See id.*

counterparties with better contractual terms in order to compensate those parties for the loss of their ability to exercise default rights that would be restricted by the proposal. These costs may be higher than drafting and negotiating costs. However, they are also expected to be relatively small because of the limited reduction in the rights of counterparties and the availability of other forms of protection for counterparties.

The proposal could also create economic costs by causing a marginal reduction in QFC-related economic activity. For example, a covered FSI may not enter into a QFC that it would have otherwise entered into in the absence of the proposed rule. Therefore, economic activity that would have been associated with that QFC absent the proposed rule (such as economic activity that would have otherwise been hedged with a derivatives contract or funded through a repo transaction) might not occur.

While uncertainty surrounding the future negotiations of economic actors makes an accurate quantification of any such costs difficult, costs from reduced QFC activity are likely to be very low. The proposed restrictions on default rights in covered QFCs are relatively narrow and would not change a counterparty's rights in response to its direct counterparty's entry into a bankruptcy proceeding (that is, the default rights covered by the Bankruptcy Code's ''safe harbor'' provisions). Counterparties are also able to prudently manage risk through other means, including entering into QFCs with entities that are not GSIB entities and therefore would not be subject to the proposed rule.

Question 11: The FDIC invites comment on all aspects of this evaluation of costs and benefits; in particular, whether covered FSIs expect to be able to share the costs of complying with this rulemaking with affiliated entities.

V. Revisions to Certain Definitions in the FDIC's Capital and Liquidity Rules

This proposal would also amend several definitions in the FDIC's capital and liquidity rules to help ensure that the proposal would not have unintended effects for the treatment of covered FSIs' netting agreements under those rules, consistent with the proposed amendments contained in the FRB NPRM and the OCC NPRM.[101]

The FDIC's regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a ''qualifying master netting agreement'' or agreement that provides for certain rights upon the default of a counterparty.[102] The FDIC has defined ''qualifying master netting agreement'' to mean a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty, thereby reducing its counterparty exposure and market risks.[103] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than on a gross basis, results in a lower measure of exposure and thus a lower capital requirement.

The current definition of ''qualifying master netting agreement'' recognizes that default rights may be stayed if the financial company is in resolution under the Dodd-Frank Act, the FDI Act, a substantially similar law applicable to government-sponsored enterprises, or a substantially similar foreign law, or where the agreement is subject by its terms to any of those laws. Accordingly, transactions conducted under netting agreements where default rights may be stayed in those circumstances may qualify for the favorable capital treatment described above. However, the current definition of ''qualifying master netting agreement'' does not recognize the restrictions that the proposal would impose on the QFCs of covered FSIs. Thus, a master netting agreement that is compliant with this proposal would not qualify as a qualifying master netting agreement. This would result in considerably higher capital and liquidity requirements for QFC counterparties of covered FSIs, which is not an intended effect of this proposal.

Accordingly, the proposal would amend the definition of ''qualifying master netting agreement'' so that a master netting agreement could qualify where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited to the extent necessary to comply with the requirements of this proposal. This revision would maintain the existing treatment for these contracts under the FDIC's capital and liquidity rules by accounting for the restrictions that the proposal would place on default rights related to covered FSIs' QFCs. The FDIC does not believe that the disqualification of master netting agreements that would result in this proposed amendment to the definition of ''qualifying master netting agreement'' in this proposal would accurately reflect the risk posed by the affected QFCs. As discussed above, the implementation of consistent restrictions on default rights in GSIB QFCs would increase the prospects for the orderly resolution of a failed GSIB and thereby protect the financial stability of the United States.

The proposal would similarly revise certain other definitions in the regulatory capital rules to make analogous conforming changes designed to account for this proposal's restrictions and ensure that a banking organization may continue to recognize the risk-mitigating effects of financial collateral received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the FDIC's capital rules. Specifically, the proposal would revise the definitions of ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' to provide that a counterparty's default rights may be limited as required by this proposal without unintended adverse impacts under the FDIC's capital rules.

The interagency rule establishing margin and capital requirements for covered swap entities (swap margin rule) defines the term ''eligible master netting agreement'' in a manner similar to the definition of ''qualifying master netting agreement.'' [104] Thus, it may also be appropriate to amend the definition of ''eligible master netting agreement'' to account for the proposed restrictions on covered FSIs' QFCs. Because the FDIC

[101] On September 20, 2016, the FDIC adopted a separate final rule (the Final QMNA Rule), following the earlier notice of proposed rulemaking issued in January 2015, *see* 80 FR 5063 (Jan. 30, 2015), covering amendments to the definition of ''qualifying master netting agreement'' in the FDIC's capital and liquidity rules and related definitions in its capital rules. The Final QMNA Rule is designed to prevent similar unintended effects from implementation of special resolution regimes in non-U.S. jurisdictions, or by parties' adherence to the ISDA Protocol. The amendments contained in the Final QMNA Rule also are similar to revisions that the FRB and the OCC made in their joint 2014 interim final rule to ensure that the regulatory capital and liquidity rules' treatment of certain financial contracts is not affected by the implementation of special resolution regimes in foreign jurisdictions. *See* 79 FR 78287 (Dec. 30, 2014).

[102] *See* 12 CFR 324.34(a)(2).

[103] *See* the definition of ''qualifying master netting agreement'' in 12 CFR 324.2 (capital rules) and 329.3 (liquidity rules).

[104] 80 FR 74840, 74861–74862 (November 30, 2015). The FDIC's definition of ''eligible master netting agreement'' for purposes of the swap margin rule is codified at 12 CFR 349.2.

issued the swap margin rule jointly with other U.S. regulatory agencies, however, the FDIC would consult with the other agencies before proposing amendments to that rule's definition of ''eligible master netting agreement.''

Question 12: The FDIC invites comment on all aspects of the proposed amendments to the definitions of ''*qualifying master netting agreement*'' *in the regulatory capital and liquidity rules and* ''*collateral agreement,*'' ''*eligible margin loan,*'' *and* ''*repo-style transaction*'' *in the capital rules, including whether the definitions recognize the stay of termination rights under the appropriate resolution regimes.*

VI. Regulatory Analysis

A. Paperwork Reduction Act

The FDIC is proposing to add a new Part 382 to its rules to require certain FDIC-supervised institutions to ensure that covered QFCs to which they are a party provide that any default rights and restrictions on the transfer of the QFCs are limited to the same extent as they would be under the Dodd-Frank Act and the FDI Act. In addition, covered FSIs would generally be prohibited from being party to QFCs that would allow a QFC counterparty to exercise default rights against the covered FSI based on the entry into a resolution proceeding under the Dodd-Frank Act, FDI Act, or any other resolution proceeding of an affiliate of the covered FSI.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 through 3521, (PRA), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. Section 382.5 of the proposed rule contains ''collection of information'' requirements within the meaning of the PRA. Accordingly, the FDIC will obtain an OMB control number relating to the information collection associated with that section.

This information collection consists of amendments to covered QFCs and, in some cases, approval requests prepared and submitted to the FDIC regarding modifications to enhanced creditor protection provisions (in lieu of adherence to the ISDA Protocol). Section 382.5(b) of the proposed rule would require a covered banking entity to request the FDIC to approve as compliant with the requirements of section 382.4 of this subpart provisions of one or more forms of covered QFCs or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. A covered FSI making a request must provide (1) an analysis of the proposal under each consideration of paragraph 382.5(d); (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to its approval that the FDIC requests.

Covered FSIs would also have recordkeeping associated with proposed amendments to their covered QFCs. However, much of the recordkeeping associated with amending the covered QFCs is already expected from a covered FSI. Therefore, the FDIC would expect minimal additional burden to accompany the initial efforts to bring all covered QFCs into compliance. The existing burden estimates for the information collection associated with section 382.5 are as follows:

Title	Times/year	Respondents	Hours per response	Total burden hours
Paperwork for proposed revisions	On occasion	6	40	240
Total Burden				240

Question 13: The FDIC invites comments on:

(a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the FDIC's estimates of the burden of the information collections, 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 collections 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.*

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the FDIC by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by facsimile to 202–395–5806, or by email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that each federal agency either certify that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities or prepare and make available for public comment an initial regulatory flexibility analysis of the proposal.[105] For the reasons provided below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the FDIC is publishing and inviting comment on this initial regulatory flexibility analysis.

The proposed rule would only apply to FSIs that form part of GSIB organizations, which include the largest, most systemically important banking organizations and certain of their subsidiaries. More specifically, the proposed rule would apply to any covered FSI that is a subsidiary of a U.S. GSIB or foreign GSIB—regardless of size—because an exemption for small entities would significantly impair the effectiveness of the proposed stay-and-transfer provisions and thereby undermine a key objective of the proposal: To reduce the execution risk of an orderly GSIB resolution.

The FDIC estimates that the proposed rule would apply to approximately twelve FSIs. As of March 31, 2016, only six of the twelve covered FSIs have derivatives portfolios that could be affected. None of these six banking organizations would qualify as a small entity for the purposes of the RFA.[106] In

[105] See 5 U.S.C. 603, 605.

[106] Under regulations issued by the Small Business Administration, small entities include

addition, the FDIC anticipates that any small subsidiary of a GSIB that could be affected by this proposed rule would not bear significant additional costs as it is likely to rely on its parent GSIB, or a large affiliate, that will be subject to similar reporting, recordkeeping, and compliance requirements.[107] The proposed rule complements the FRB NPRM and OCC NPRM. It is not designed to duplicate, overlap with, or conflict with any other federal regulation.

This initial regulatory flexibility analysis demonstrates that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities, and the FDIC so certifies.[108]

Question 14: The FDIC welcomes written comments regarding this initial regulatory flexibility analysis, and requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact. A final regulatory flexibility analysis will be conducted after consideration of comment received during the public comment period.

C. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4701, requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The FDIC has invited comment on these matters in other sections of this proposal and will continue to consider them as part of the overall rulemaking process.

Question 15: The FDIC invites comment on this section, including any additional comments that will inform the FDIC's consideration of the requirements of RCDRIA.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites comment on how to make this proposed rule easier to understand.

Question 16: Has the FDIC organized the material to inform your needs? If not, how could the FDIC present the rule more clearly?

Question 17: Are the requirements of the proposed rule clearly stated? If not, how could they be stated more clearly?

Question 18: Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

Question 19: Would a different format (such as a different grouping and ordering of sections, a different use of section headings, or a different organization of paragraphs) make the regulation easier to understand? If so, what changes would make the proposal clearer?

Question 20: What else could the FDIC do to make the proposal clearer and easier to understand?

List of Subjects

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Securities, State savings associations, State non-member banks.

12 CFR Part 329

Administrative practice and procedure, Banks, banking, Federal Deposit Insurance Corporation, FDIC, Liquidity, Reporting and recordkeeping requirements.

12 CFR Part 382

Administrative practice and procedure, Banks, banking, Federal Deposit Insurance Corporation, FDIC, Qualified financial contracts, Reporting and recordkeeping requirements, State savings associations, State non-member banks.

For the reasons stated in the supplementary information, the Federal Deposit Insurance Corporation proposes to amend 12 CFR Chapter III, parts 324, 329 and 382 as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 2. Section 324.2 is amended by revising the definitions of ''Collateral agreement,'' ''Eligible margin loan,'' ''Qualifying master netting agreement,'' and ''Repo-style transaction'' to read as follows:

§ 324.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to an FDIC-supervised institution for a single financial contract or for all financial contracts in a netting set and confers upon the FDIC-supervised institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the FDIC-supervised institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the FDIC-supervised institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

banking organizations with total assets of $550 million or less.

[107] S*ee* FRB NPRM, 81 FR 29169 (May 11, 2016) and OCC NPRM, 81 FR 55381 (August 19, 2016).

[108] 5 U.S.C. 605.

[4] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition; or

(3) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 382 of this title or any similar requirements of another U.S. federal banking agency, as applicable.

* * * * *

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked to fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the FDIC-supervised institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 382 of this title or any similar requirements of another U.S. federal banking agency, as applicable.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(b) with respect to that exposure.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, conservatorship, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition; or

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 382 of this title or any similar requirements of another U.S. federal banking agency, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(d) of this chapter with respect to that agreement.

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the FDIC-supervised institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

[7] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

that are substantially similar [8] to the U.S. laws referenced in this paragraph (3)(ii)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 382 of this title or any similar requirements of another U.S. federal banking agency, as applicable; or

(B) The transaction is:

(1) Either overnight or unconditionally cancelable at any time by the FDIC-supervised institution; and

(2) Executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of counterparty default; and

(4) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(e) with respect to that exposure.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 3. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 4. Section 329.3 is amended by revising the definition of ''Qualifying master netting agreement'' to read as follows:

§ 329.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [109] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition; or

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 382 of this title or any similar requirements of another U.S. federal banking agency, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 329.4(a) with respect to that agreement.

* * * * *

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the supplementary information, the Federal Deposit Insurance Corporation proposes to amend 12 CFR Chapter III of the Code of Federal Regulations as follows:

■ 8. Add part 382 to read as follows:

PART 382—RESTRICTIONS ON QUALIFIED FINANCIAL CONTRACTS

Sec.

382.1 Definitions.
382.2 Applicability.
382.3 U.S. Special resolution regimes.
382.4 Insolvency proceedings.
382.5 Approval of enhanced creditor protection conditions.
382.6 [Reserved.]
382.7 Exclusion of certain QFCs.

Authority: 12 U.S.C. 1816, 1818, 1819, 1820(g) 1828, 1828(m), 1831n, 1831o, 1831p–l, 1831(u), 1831w.

PART 382—RESTRICTIONS ON QUALIFIED FINANCIAL CONTRACTS

§ 382.1 Definitions.

Affiliate has the same meaning as in section 12 U.S.C. 1813(w).

Central counterparty (CCP) has the same meaning as in Part 324.2 of the FDIC's Regulations (12 CFR 324.2).

Chapter 11 proceeding means a proceeding under Chapter 11 of Title 11, United States Code (11 U.S.C. 1101–74).

Control has the same meaning as in section 12 U.S.C. 1813(w).

Covered bank has the same meaning as in Part 47.3 of the Office of the Comptroller's Regulations (12 CFR 47.3).

Covered entity has the same meaning as in section 252.82(a) of the Federal Reserve Board's Regulation YY (12 CFR 252.82).

Covered QFC means a QFC as defined in sections 382.3 and 382.4 of this part.

Covered FSI means any state savings association or state non-member bank (as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(e)(2)) that is a direct or indirect subsidiary of (i) a global systemically important bank holding company that has been designated pursuant to section 252.82(a)(1) of the Federal Reserve Board's Regulation YY (12 CFR part 252.82); or (ii) a global systemically important foreign banking organization that has been designated pursuant to Subpart I of 12 CFR part 252 (FRB Regulation YY), and any subsidiary of a covered FSI.

Credit enhancement means a QFC of the type set forth in §§ 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI)) or a credit enhancement that the Federal Deposit Insurance Corporation determines by regulation, rule or order is a QFC pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

[8] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

[109] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

Default right (1) Means, with respect to a QFC, any

(i) Right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

(2) With respect to section 382.4, does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

FDI Act means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.).*

FDI Act proceeding means a proceeding that commences upon the Federal Deposit Insurance Corporation being appointed as conservator or receiver under section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821).

FDI Act stay period means, in connection with an FDI Act proceeding, the period of time during which a party to a QFC with a party that is subject to an FDI Act proceeding may not exercise any right that the party that is not subject to an FDI Act proceeding has to terminate, liquidate, or net such QFC, in accordance with section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) and any implementing regulations.

Global systemically important foreign banking organization means a global systemically important foreign banking organization that has been designated pursuant to Subpart I of 12 CFR part 252 (FRB Regulation YY).

Master agreement means a QFC of the type set forth in section 210(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V)) or a master agreement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

Qualified financial contract (QFC) has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Subsidiary of a covered FSI means any subsidiary of a covered FSI as defined in 12 U.S.C. 1813(w).

U.S. special resolution regimes means the Federal Deposit Insurance Act (12 U.S.C. 1811–1835a) and regulations promulgated thereunder and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381–5394) and regulations promulgated thereunder.

§ 382.2 Applicability.

(a) *Scope of applicability.* This part applies to a ''covered FSI,'' which means any state savings association or state non-member bank (as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(e)(2)) that is a direct or indirect subsidiary of (i) a global systemically important bank holding company that has been designated pursuant to section 252.82(a)(1) of the Federal Reserve Board's Regulation YY (12 CFR part 252.82); or (ii) a global systemically important foreign banking organization that has been designated pursuant to Subpart I of 12 CFR part 252 (FRB Regulation YY), and any subsidiary of a covered FSI.

(b) *Initial applicability of requirements for covered QFCs.* A covered FSI must comply with the requirements of §§ 382.3 and 382.4 beginning on the later of

(1) The first day of the calendar quarter immediately following 365 days (1 year) after becoming a covered FSI; or

(2) The date this subpart first becomes effective.

(c) *Rule of construction.* For purposes of this subpart, the exercise of a default right with respect to a covered QFC includes the automatic or deemed exercise of the default right pursuant to the terms of the QFC or other arrangement.

(d) *Rights of receiver unaffected.* Nothing in this subpart shall in any manner limit or modify the rights and powers of the FDIC as receiver under the FDI Act or Title II of the Dodd-Frank Act, including, without limitation, the rights of the receiver to enforce provisions of the FDI Act or Title II of the Dodd-Frank Act that limit the enforceability of certain contractual provisions.

§ 382.3 U.S. Special resolution regimes.

(a) *QFCs required to be conformed.* (1) A covered FSI must ensure that each covered QFC conforms to the requirements of this section 382.3.

(2) For purposes of this § 382.3, a covered QFC means a QFC that the covered FSI:

(i) Enters, executes, or otherwise becomes a party to; or

(ii) Entered, executed, or otherwise became a party to before the date this subpart first becomes effective, if the covered FSI or any affiliate that is a covered entity, covered bank, or covered FSI also enters, executes, or otherwise becomes a party to a QFC with the same person or affiliate of the same person on or after the date this subpart first becomes effective.

(3) To the extent that the covered FSI is acting as agent with respect to a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered FSI or the default rights relate to the covered FSI or an affiliate of the covered FSI.

(b) *Provisions required.* A covered QFC must explicitly provide that

(1) The transfer of the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) from the covered FSI will be effective to the same extent as the transfer would be effective under the U.S. special resolution regimes if the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) were governed by the laws of the United States or a state of the United States and the covered FSI were under the U.S. special resolution regime; and

(2) Default rights with respect to the covered QFC that may be exercised against the covered FSI are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was

governed by the laws of the United States or a state of the United States and (A) the covered FSI were under the U.S. special resolution regime; or (B) an affiliate of the covered FSI is subject to a U.S. special resolution regime.

(c) *Relevance of creditor protection provisions.* The requirements of this section apply notwithstanding paragraphs §§ 382.4 and 382.5.

§ 382.4 Insolvency proceedings.

This section 382.4 does not apply to proceedings under Title II of the Dodd-Frank Act. For purposes of this section:

(a) *QFCs required to be conformed.* (1) A covered FSI must ensure that each covered QFC conforms to the requirements of this § 382.4.

(2) For purposes of this § 382.4, a covered QFC has the same definition as in paragraph (a)(2) of § 382.3.

(3) To the extent that the covered FSI is acting as agent with respect to a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered FSI or the default rights relate to an affiliate of the covered FSI.

(b) *General Prohibitions.*

(1) A covered QFC may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.

(2) A covered QFC may not prohibit the transfer of a covered affiliate credit enhancement, any interest or obligation in or under the covered affiliate credit enhancement, or any property securing the covered affiliate credit enhancement to a transferee upon or after an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding unless the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

(c) *Definitions relevant to the general prohibitions.*

(1) *Direct party.* Direct party means a covered entity, covered bank, or covered FSI referenced in paragraph (a) of § 382.2, that is a party to the direct QFC.

(2) *Direct QFC.* Direct QFC means a QFC that is not a credit enhancement, *provided that,* for a QFC that is a master agreement that includes an affiliate credit enhancement as a supplement to the master agreement, the direct QFC does not include the affiliate credit enhancement.

(3) *Affiliate credit enhancement.* Affiliate credit enhancement means a credit enhancement that is provided by an affiliate of a party to the direct QFC that the credit enhancement supports.

(d) *Treatment of agent transactions.* With respect to a QFC that is a covered QFC for a covered FSI solely because the covered FSI is acting as agent under the QFC, the covered FSI is the direct party.

(e) *General creditor protections.* Notwithstanding paragraph (b) of this section, a covered direct QFC and covered affiliate credit enhancement that supports the covered direct QFC may permit the exercise of a default right with respect to the covered QFC that arises as a result of

(1) The direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership, conservatorship, or resolution under the FDI Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (e)(1) in order to facilitate the orderly resolution of the direct party;

(2) The direct party not satisfying a payment or delivery obligation pursuant to the covered QFC or another contract between the same parties that gives rise to a default right in the covered QFC; or

(3) The covered affiliate support provider or transferee not satisfying a payment or delivery obligation pursuant to a covered affiliate credit enhancement that supports the covered direct QFC.

(f) *Definitions relevant to the general creditor protections.*

(1) *Covered direct QFC.* Covered direct QFC means a direct QFC to which a covered entity, covered bank, or covered FSI referenced in paragraph (a) of 382.2, is a party.

(2) *Covered affiliate credit enhancement.* Covered affiliate credit enhancement means an affiliate credit enhancement in which a covered entity, covered bank, or covered FSI referenced in paragraph (a) of § 382.2, is the obligor of the credit enhancement.

(3) *Covered affiliate support provider.* Covered affiliate support provider means, with respect to a covered affiliate credit enhancement, the affiliate of the direct party that is obligated under the covered affiliate credit enhancement and is not a transferee.

(4) *Supported party.* Supported party means, with respect to a covered affiliate credit enhancement and the direct QFC that the covered affiliate credit enhancement supports, a party that is a beneficiary of the covered affiliate support provider's obligation(s) under the covered affiliate credit enhancement.

(g) *Additional creditor protections for supported QFCs.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider after the stay period if:

(1) The covered affiliate support provider that remains obligated under the covered affiliate credit enhancement becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a Chapter 11 proceeding;

(2) Subject to paragraph (i) of this section, the transferee, if any, becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding;

(3) The covered affiliate support provider does not remain, and a transferee does not become, obligated to the same, or substantially similar, extent as the covered affiliate support provider was obligated immediately prior to entering the receivership, insolvency, liquidation, resolution, or similar proceeding with respect to:

(i) The covered affiliate credit enhancement;

(ii) All other covered affiliate credit enhancements provided by the covered affiliate support provider in support of other covered direct QFCs between the direct party and the supported party under the covered affiliate credit enhancement referenced in paragraph (g)(3)(i) of this section; and

(iii) All covered affiliate credit enhancements provided by the covered affiliate support provider in support of covered direct QFCs between the direct party and affiliates of the supported party referenced in paragraph (g)(3)(ii) of this section; or

(4) In the case of a transfer of the covered affiliate credit enhancement to a transferee,

(i) All of the ownership interests of the direct party directly or indirectly held by the covered affiliate support provider are not transferred to the transferee; or

(ii) Reasonable assurance has not been provided that all or substantially all of the assets of the covered affiliate support provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the receivership, insolvency, liquidation, resolution, or similar proceeding, will be transferred or sold to the transferee in a timely manner.

(h) *Definitions relevant to the additional creditor protections for supported QFCs.*

(1) *Stay period.* Stay period means, with respect to a receivership, insolvency, liquidation, resolution, or similar proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5:00 p.m. (eastern time) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.

(2) *Business day.* Business day means a day on which commercial banks in the jurisdiction the proceeding is commenced are open for general business (including dealings in foreign exchange and foreign currency deposits).

(3) *Transferee.* Transferee means a person to whom a covered affiliate credit enhancement is transferred upon or following the covered affiliate support provider entering a receivership, insolvency, liquidation, resolution, or similar proceeding or thereafter as part of the restructuring or reorganization involving the covered affiliate support provider.

(i) *Creditor protections related to FDI Act proceedings.* Notwithstanding paragraphs (e) and (g) of this section, which are inapplicable to FDI Act proceedings, and notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider becoming subject to FDI Act proceedings

(1) After the FDI Act stay period, if the covered affiliate credit enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(2) During the FDI Act stay period, if the default right may only be exercised so as to permit the supported party under the covered affiliate credit enhancement to suspend performance with respect to the supported party's obligations under the covered direct QFC to the same extent as the supported party would be entitled to do if the covered direct QFC were with the covered affiliate support provider and were treated in the same manner as the covered affiliate credit enhancement.

(j) *Prohibited terminations.* A covered QFC must require, after an affiliate of the direct party has become subject to a receivership, insolvency, liquidation, resolution, or similar proceeding,

(1) The party seeking to exercise a default right to bear the burden of proof that the exercise is permitted under the covered QFC; and

(2) Clear and convincing evidence or a similar or higher burden of proof to exercise a default right.

§ 382.5 Approval of enhanced creditor protection conditions.

(a) *Protocol compliance.* Notwithstanding paragraph (b) of section 382.4, a covered QFC may permit the exercise of a default right with respect to the covered QFC if the covered QFC has been amended by the ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex, published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor or technical amendments thereto.

(b) *Proposal of enhanced creditor protection conditions.* (1) A covered FSI may request that the FDIC approve as compliant with the requirements of § 382.4 proposed provisions of one or more forms of covered QFCs, or proposed amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions.

(2) Enhanced creditor protection conditions means a set of limited exemptions to the requirements of § 382.4(b) of this subpart that are different than that of paragraphs (e), (g), and (i) of § 382.4.

(3) A covered FSI making a request under paragraph (b)(1) of this section must provide

(i) An analysis of the proposal that addresses each consideration in paragraph (d) of this section;

(ii) A written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and

(iii) Any other relevant information that the FDIC requests.

(c) *FDIC approval.* The FDIC may approve, subject to any conditions or commitments the FDIC may set, a proposal by a covered FSI under paragraph (b) of this section if the proposal, as compared to a covered QFC that contains only the limited exemptions in paragraphs of (e), (g), and (i) of § 382.4 or that is amended as provided under paragraph (a) of this section, would promote the safety and soundness of covered FSIs by mitigating the potential destabilizing effects of the resolution of a global significantly important banking entity that is an affiliate of the covered FSI to at least the same extent.

(d) *Considerations.* In reviewing a proposal under this section, the FDIC may consider all facts and circumstances related to the proposal, including:

(1) Whether, and the extent to which, the proposal would reduce the resiliency of such covered FSIs during distress or increase the impact on U.S. financial stability were one or more of the covered FSIs to fail;

(2) Whether, and the extent to which, the proposal would materially decrease the ability of a covered FSI, or an affiliate of a covered FSI, to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan;

(3) Whether, and the extent to which, the set of conditions or the mechanism in which they are applied facilitates, on an industry-wide basis, contractual modifications to remove impediments to resolution and increase market certainty, transparency, and equitable treatment with respect to the default rights of non-defaulting parties to a covered QFC;

(4) Whether, and the extent to which, the proposal applies to existing and future transactions;

(5) Whether, and the extent to which, the proposal would apply to multiple forms of QFCs or multiple covered FSIs;

(6) Whether the proposal would permit a party to a covered QFC that is within the scope of the proposal to adhere to the proposal with respect to only one or a subset of covered FSIs;

(7) With respect to a supported party, the degree of assurance the proposal provides to the supported party that the material payment and delivery obligations of the covered affiliate credit enhancement and the covered direct QFC it supports will continue to be performed after the covered affiliate support provider enters a receivership, insolvency, liquidation, resolution, or similar proceeding;

(8) The presence, nature, and extent of any provisions that require a covered affiliate support provider or transferee to meet conditions other than material payment or delivery obligations to its creditors;

(9) The extent to which the supported party's overall credit risk to the direct party may increase if the enhanced creditor protection conditions are not met and the likelihood that the supported party's credit risk to the direct party would decrease or remain the same if the enhanced creditor protection conditions are met; and

(10) Whether the proposal provides the counterparty with additional default rights or other rights.

§ 382.6 [Reserved.]

§ 382.7 Exclusion of certain QFCs.

(a) *Exclusion of CCP-cleared QFCs.* A covered FSI is not required to conform a covered QFC to which a CCP is party to the requirements of §§ 382.3 or 382.4.

(b) *Exclusion of covered entity or covered bank QFCs.* A covered FSI is not required to conform a covered QFC to the requirements of §§ 382.3 or 382.4 to the extent that a covered entity or covered bank is required to conform the covered QFC to similar requirements of the Federal Reserve Board or Office of the Comptroller of the Currency if the QFC is either (A) a direct QFC to which a covered entity or a covered bank is a direct party or (B) an affiliate credit enhancement to which a covered entity or a covered bank is the obligor.

Dated at Washington, DC, this 20th day of September, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–25605 Filed 10–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–2393; Notice No. 25–16–07–SC]

Special Conditions: Bombardier Inc. Models BD–700–2A12 and BD–700–2A13 Airplanes; Fuselage Post-Crash Fire Survivability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Inc. (Bombardier) Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These features are associated with an aluminum-lithium fuselage construction that may provide different levels of protection from post-crash fire threats than similar aircraft constructed from traditional aluminum structure. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–2393 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2195; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On May 30, 2012, Bombardier applied for an amendment to type certificate no. T00003NY to include the new Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes are derivatives of the Model BD–700 series of airplanes and are marketed as the Bombardier Global 7000 (Model BD–700–2A12) and Global 8000 (Model BD–700–2A13). These airplanes are twin-engine, transport-category, executive-interior business jets. The maximum passenger capacity is 19 and the maximum takeoff weights are 106,250 lbs. (Model BD–700–2A12) and 104,800 lbs. (Model BD–700–2A13).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bombardier must show that the Model BD–700–2A12 and BD–700–2A13 airplanes meet the applicable provisions of the regulations listed in Type Certificate no. T00003NY, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type Certificate no. T00003NY will be updated to include a complete description of the certification basis for these airplane models.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model BD–700–2A12 and BD–700–2A13 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual

design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–700–2A12 and BD–700–2A13 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 airplanes will incorporate the following novel or unusual design feature: The fuselage will be fabricated using aluminum-lithium materials instead of conventional aluminum.

Discussion

The certification basis for the Bombardier Model BD–700–2A12 and BD–700–2A11 airplanes does not include the burn-through requirements defined in § 25.856(b) because both airplane models have a passenger capacity of fewer than 20. The Model BD–700–2A12 and BD–700–2A13 airplanes are introducing a new material other than what has traditionally been shown to be survivable from a ''toxic'' standpoint. The applicant must ensure that the material being installed on an airplane does not introduce a new hazard that would reduce the survivability of the passengers during a post-crash situation, or that would provide levels of toxic fumes that would be lethal or incapacitating, thus preventing evacuation of the airplane in a crash scenario.

In accordance with § 21.16, fuselage structure that includes aluminum-lithium construction is an unusual design feature for large, transport-category airplanes certificated under 14 CFR part 25.

Regulations applicable to burn requirements, including §§ 25.853 and 25.856(a), remain valid for these airplanes, but do not reflect the threat generated from potentially toxic levels of gases produced from aluminum-lithium materials.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes.

The Model BD–700–2A12 and BD–700–2A13 airplanes must show that toxic levels of gases produced from the aluminum-lithium material, when exposed to a post-crash fire threat, are in no way an additional threat to the passengers, including, but not limited to, their ability to evacuate, when compared to traditional aluminum airplane materials.

Issued in Renton, Washington, on October 14, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25808 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–4158; Notice No. 25–16–06–SC]

Special Conditions: Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 Airplanes; Fuselage In-Flight Fire Safety and Flammability Resistance of Aluminum-Lithium Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Inc. (Bombardier) Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a fuselage fabricated using aluminum-lithium materials instead of conventional aluminum. The applicable airworthiness regulations do not contain adequate or appropriate fire-safety standards for this design feature. These proposed special conditions contain the additional fire-safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–4158 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search

function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

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

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2195; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On May 30, 2012, Bombardier applied for an amendment to type certificate no. T00003NY to include the new Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes are derivatives of the Model BD–700 series of airplanes and are marketed as the Bombardier Global 7000 (Model BD–700–2A12) and Global 8000 (Model BD–700–2A13). These airplanes are twin-engine, transport-category, executive-interior business jets. The maximum passenger capacity is 19 and the maximum takeoff weights are 106,250 lb. (Model BD–700–2A12) and 104,800 lb. (Model BD–700–2A13).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bombardier must show that the Model BD–700–2A12 and BD–700–2A13 airplanes meet the applicable provisions of the regulations listed in Type Certificate no. T00003NY, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type Certificate no. T00003NY will be updated to include a complete description of the certification basis for these airplane models.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model BD–700–2A12 and BD–700–2A13 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–700–2A12 and BD–700–2A13 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 airplanes will incorporate the following novel or unusual design feature: The fuselage will be fabricated using aluminum-lithium materials instead of conventional aluminum.

Discussion

The Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes will be fabricated using aluminum-lithium materials. The performance of airplanes consisting of a conventional aluminum fuselage, in an in-flight, inaccessible-fire scenario, is understood based on service history, and extensive intermediate- and large-scale fire testing. Experience has shown that eliminating fire propagation of the interior and insulation materials tends to increase survivability because other aspects of in-flight fire safety (*e.g.,* toxic-gas emission and smoke obscuration) are typically byproducts of the propagating fire. The fuselage itself does not contribute to in-flight fire propagation. This may not be the case for a fuselage fabricated from aluminum-lithium materials. Therefore, a special condition is necessary so that the Model BD–700–2A12 and BD–700–2A13 airplanes provide protection against in-flight fires propagating along the surface of the fuselage.

In the past, fatal in-flight fires have originated in inaccessible areas of airplanes where thermal or acoustic insulation was located adjacent to the airplane's aluminum fuselage skin. Research revealed that this area has been the path for flame propagation and fire growth. The FAA determined, in five incidents in the 1990s, that unexpected flame spread along thermal and acoustic insulation-film covering material, raising concerns about the fire performance of this material. In all cases, the ignition source was relatively modest and, in most cases, was electrical in origin (*e.g.,* electrical short circuit, arcing caused by chafed wiring, ruptured ballast case, etc.).

In 1996, the FAA Technical Center began a program to develop new fire-test criteria for insulation films directly relating to in-flight fire resistance. This development program resulted in a new test method—the radiant-panel test—and also resulted in test criteria specifically established for improving the in-flight fire ignition and flame propagation of thermal and acoustic insulation materials based on actual, on-board fire scenarios.

The FAA determined that a test similar to the test for the measurement of insulation burnthrough resistance (14 CFR part 25, Appendix F, Part VII, ''Test Method to Determine the Burnthrough Resistance of Thermal/Acoustic Insulation Materials'') could be used to assess the flammability characteristics of the proposed fuselage aluminum-lithium material. The only change to the test is the size of the sample and the sample holder, to accommodate panels of the fuselage material.

Bombardier must use the test method contained in Part VII of Appendix F, Test Method, to determine the burnthrough resistance of thermal-acoustic insulation materials, with the slight changes to the sample size and sample holder, as described in these

special conditions, to show compliance with applicable requirements.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes.

1. Bombardier Inc. must demonstrate that the aluminum-lithium material has equal or better flammability-resistance characteristics than the aluminum-alloy sheet material typically used as skin material on similar airplanes.

2. The test set-up and methodology must be in accordance with the tests described in 14 CFR part 25, Appendix F, Part VII, except for the following.

a. Each test sample must consist of a flat test specimen. A set of three samples of aluminum-lithium sheet material must be tested. The size of each sample must be 16 inches wide by 24 inches long by 0.063 inch thick.

b. The test samples must be installed into a steel-sheet subframe with outside dimensions of 18 inches by 32 inches. The subframe must have a 14.5-inch by 22.5-inch opening cut into it. The tests samples must be mounted onto the subframe using 0.250–20 UNC threaded bolts.

c. Test specimens must be conditioned at 70 °F ± 5 °F, and 55% ± 5% humidity, for at least 24 hours before testing.

3. The aluminum-lithium material must not ignite during any of the tests.

Issued in Renton, Washington, on October 14, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25809 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–8247; Notice No. 25–16–08–SC]

Special Conditions: Aerocon Engineering Company, Boeing Model 777–200 Airplane; Access Hatch Installed Between the Cabin and the Class C Cargo Compartment To Allow In-Flight Access to the Cargo Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 777–200 airplane. This airplane, as modified by Aerocon Engineering Company (Aerocon), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an access hatch, installed between the cabin and the Class C cargo compartment, to allow in-flight access to the Class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8247 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On June 26, 2015, Aerocon applied for a supplemental type certificate to install an access hatch between the cabin and

Class C cargo compartment in the Boeing Model 777–200 airplane. This airplane is a twin-engine, transport-category airplane with a VIP interior configuration. The Model 777–200 has a maximum passenger capacity of 440, and a maximum takeoff weight of 535,000 pounds.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Aerocon must show that the Boeing Model 777–200 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–200 airplane, as modified by Aerocon, must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–200 airplane, as modified by Aerocon, will incorporate the following novel or unusual design feature: An access hatch installed between the cabin and the Class C cargo compartment, to allow in-flight access to the Class C cargo compartment.

Discussion

The VIP operator requests to have access to the aft lower-deck Class C cargo compartment on their Boeing Model 777–200 airplane to store trash during flight. The installation consists of an access hatch from the main passenger cabin, with an access ladder, and a trash container mounted on its own standard airliner pallet in the lower-deck Class C cargo compartment.

The FAA considers that the access hatch may impact the isolation of the passenger cabin from the cargo compartment. Isolation is necessary to protect the passengers, as required by § 25.857(c), from fire and smoke that may start within the cargo compartment. In addition, the in-flight access to the lower-deck Class C compartment creates unique hazards resulting from passengers having access to cargo and baggage in the compartment. These hazards include the safety of the persons entering the cargo compartment, possible hazards to the airplane as a result of the access, and security concerns with access to the checked baggage and cargo. The proposed special conditions defined herein provide additional requirements necessary to ensure sufficient cabin isolation from fire and smoke in this unusual design configuration, and for passenger safety while occupying the Class C compartment.

The current rules relating to Class C cargo compartments do not address provisions for in-flight accessibility. The intent of the Class C cargo compartment was that it be a self-contained and isolated compartment intended to carry baggage and cargo, but not intended for human habitation. The FAA gave no consideration to an in-flight-accessible Class C cargo compartment when the classification was first developed, as no manufacturer had ever incorporated such a feature into their design. Inherently, a ''cargo compartment'' was not intended for in-flight access, especially by the traveling public. An allowance has been made specifically for crew access into a Class B cargo compartment for the express purpose of firefighting. Access into a cargo compartment carries with it an increased level of risk to the occupant entering the compartment, and to the airplane, as baggage or cargo could shift, a decompression could occur in the compartment, or a fire could develop during flight.

The FAA has determined that the existing airworthiness standards do not contain adequate or appropriate safety standards relative to passenger access to cargo compartments. As a result, special conditions are the appropriate means to address this and all future in-flight-accessible Class C cargo compartments.

Based upon the above discussion, the cargo-compartment isolation criterion is the main concern related to the access-hatch design, which is intended to be installed between the cabin and the Class C cargo compartment.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the Boeing Model 777–200 airplane modified by Aerocon. Should Aerocon apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–200 airplanes modified by Aerocon.

1. The flight deck must contain an indicator to advise the flightcrew when the access hatch is opened.

2. One cabin crewmember must be present to monitor the hatch from the main cabin when another cabin crewmember is using the access hatch to access the aft lower-deck Class C cargo compartment. This access-hatch procedure must be included in the Cabin Crew Operating Manual.

3. Means must be provided to keep the access hatch open while the aft lower-deck Class C cargo compartment is occupied during flight.

4. Access to the aft lower-deck Class C cargo compartment or using the access hatch is not allowed during:

a. Taxi, takeoff, and landing,

b. when the fasten-seat-belt sign is illuminated,

c. in the event of emergency not limited to smoke and fire detected in the cargo compartment.

5. A placard stating, ''Do Not Enter During Taxi, Takeoff, Landing, or Emergency'' (or similar wording) must be located outside of, and on or near the access hatch of, the aft lower-deck Class C cargo compartment.

6. The airplane must be operated as private, not for hire, not for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable.

7. Use of the access hatch, and access to the aft Class C cargo compartment, is limited to the crew only. A placard stating, ''Crew Only Access'' must be located outside of, and on or near the access hatch of, the aft lower-deck Class C cargo compartment.

8. The Airplane Flight Manual must instruct the crew to close the access hatch when crew are not accessing the aft lower-deck Class C cargo compartment.

9. Special conditions 4, 6, and 7 must be documented in the Limitations section of the Airplane Flight Manual.

Note: The airplane owner or operator must contact the Transport Security Administration (TSA) prior to operating within United States airspace to ensure that this design, and related operational procedures, comply with TSA requirements.

Issued in Renton, Washington, on October 14, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25810 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9300; Directorate Identifier 2016–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model DC–6, DC–6A, C–118A, R6D–1, DC–6B, and R6D–1Z airplanes. This proposed AD was prompted by a report of a fuel leak in a Model C–118A airplane that resulted from a crack in the wing lower skin. This proposed AD would require repetitive radiographic, electromagnetic testing high frequency (ETHF), and electromagnetic testing low frequency (ETLF) inspections for cracking of the wing lower skin, and repairs if necessary. We are proposing this AD to detect and correct fatigue cracking in the wing lower skin, which could adversely affect the structural integrity of the wing.

DATES: We must receive comments on this proposed AD by December 12, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9300.

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–2016–9300; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9300; Directorate Identifier 2016–NM–124–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of a fuel leak in a Model C–118A airplane. The fuel leak, discovered during a post-flight inspection, resulted from a crack in the wing lower skin just inboard of the number 2 nacelle attach angle at wing station 175.

Related AD 80–12–02 R1, Amendment 39–5499, applies to Model DC–6, DC–6A, DC–6B, R6D, and C–118 series airplanes. AD 80–12–02 R1 requires repetitive inspections for cracking of the left and right wing lower skin at certain locations. Although wing station 175 is covered by the inspection mandated in AD 80–12–02 R1, the crack was missed during an AD-required inspection.

Boeing Alert Service Bulletin DC6–57A001, dated April 28, 2016 (''ASB DC6–57A001, Revision 0'') is an alternative method of compliance (AMOC) to the inspections required by paragraph (c)(1) of AD 80–12–02 R1. This AMOC only applies to the areas inspected in accordance with ASB DC6–57A001, Revision 0. The service information referenced in this NPRM contains revised inspection procedures for crack detection in the area around wing station 175. Such cracking in the

wing lower skin could adversely affect the structural integrity of the wing.

Related Service Information Under 1 CFR Part 51

We reviewed ASB DC6–57A001, Revision 0. The service information describes procedures for radiographic, ETHF, and ETLF inspections for cracking of the wing lower skin at station 175, and repairs. 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

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9300.

Differences Between This Proposed AD and the Service Information

ASB DC6–57A001, Revision 0, specifies to contact the manufacturer for certain instructions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 36 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
Inspections	17 work-hours × $85 per hour = $1,445 per inspection cycle.	$0	$1,445 per inspection cycle	$52,020 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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):

The Boeing Company: Docket No. FAA–2016–9300; Directorate Identifier 2016–NM–124–AD.

(a) Comments Due Date

We must receive comments by December 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model DC–6, DC–6A, DC–6B, C–118A, R6D–1, and R6D–1Z airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a fuel leak in a Model C–118A airplane that resulted from a crack in the wing lower skin just inboard of the number 2 nacelle attach angle at wing station 175. We are issuing this AD to detect and correct fatigue cracking in the wing lower skin, which could adversely affect the structural integrity of the wing.

(f) Compliance

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

(g) Repetitive Inspections

Except as specified in paragraph (i) of this AD: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin DC6–57A001, dated April 28, 2016 (''ASB DC6–57A001, Revision 0''), do radiographic, electromagnetic testing high frequency (ETHF), and electromagnetic testing low frequency (ETLF) inspections for cracking of the wing lower skin at station 175, in accordance with the Accomplishment Instructions of ASB DC6–57A001, Revision 0. Repeat the radiographic, ETHF, and ETLF inspections of any unrepaired areas thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of ASB DC6–57A001, Revision 0.

(h) Repairs

If any cracking is found during any inspection required by this AD: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Service information Exception

Where paragraph 1.E., ''Compliance,'' of ASB DC6–57A001, Revision 0, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 13, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25663 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9298; Directorate Identifier 2015–NM–161–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 all Airbus Model A300 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) that indicates a section of the wing and aft fuselage is subject to widespread fatigue damage (WFD). This proposed AD would require an inspection to determine if certain modifications have been done. For airplanes on which the specified modifications have not been done, this proposed AD would require accomplishing those modifications, including doing related investigative and corrective actions if necessary. We are proposing this AD to prevent reduced structural integrity of these airplanes due to the failure of certain structural components.

DATES: We must receive comments on this proposed AD by December 12, 2016.

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

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

For service information identified in this NRPM, contact Airbus SAS, Airworthiness Office–EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *continued.airworthiness-wb.external@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA.

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–2016–9298; 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; 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–2016–9298; Directorate Identifier 2015–NM–161–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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all transport category airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive AD 2015–0173, dated August 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 series airplanes. The MCAI states:

> A widespread fatigue damage (WFD) analysis conducted on A300 aeroplanes identified areas which are susceptible to crack development.
>
> This condition, if not corrected, could affect the structural integrity of the aeroplane.
>
> To address this issue, Airbus developed a modification (mod) to reinforce the structure of the aeroplane.
>
> Airbus issued Service Bulletin (SB) A300–53–0271 to provide instructions for a cold expansion of the foot attachment holes of certain fuselage frames, and DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2004–001 to require this mod [which corresponds with certain requirements in FAA AD 2004–23–20, Amendment 39–13875 (69 FR 68779, November 26, 2004)].
>
> Since that [DGAC] AD was issued, Airbus released twelve other mods with corresponding SBs, to complete the set of inspections and repairs in the frame of the A300 WFD campaign. EASA issued AD 2015–0115 to require ten of these mods through section 3 of ALS [Airworthiness Limitations Section] Part 2, and decision is made to delete section 3 from ALS Part 2.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD F–2004–001, which is superseded, and requires implementation of the additional inspection, modification and/or repair actions, as applicable to aeroplane model.

Required actions include an inspection to determine if certain modifications have been done. For airplanes on which the specified modifications have not been done, this proposed AD would require accomplishing those modifications, including doing related investigative and corrective actions if necessary. Depending on airplane configuration, the compliance times for modifying the airplane structure range between 13,300 flight cycles and 48,000 flight cycles since first flight of the airplane,. 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–2016–9298.

Related Service Information Under 1 CFR Part 51

Airbus issued the following service information:

- Airbus Service Bulletin A300–53–0239, Revision 02, dated March 6, 2000. This service information describes procedures to modify the longitudinal junction. The modification includes the addition of external doublers and installation of interference fit attachments and related investigative and corrective actions. The related investigative actions are rotary probe inspections for cracking of the fastener holes. The corrective action is repair.
- Airbus Service Bulletin A300–53–0247, Revision 02, dated July 20, 1990. This service information describes procedures to modify the fuselage upper door frame structure, which consists of eddy current inspections of certain structure for cracks, and structural modification or repair.
- Airbus Mandatory Service Bulletin A300–53–0271, Revision 05, dated June 21, 2013. This service information describes procedures to modify the fuselage frame (FR), which includes cold expansion of the fastener holes between FR 41 and FR 54, and related investigative and corrective actions. The related investigative actions including rotary probe inspections for cracking of the fastener holes. The corrective action is repair.
- Airbus Mandatory Service Bulletin A300–53–0366, dated April 7, 2005. This service information describes procedures to modify the fuselage

frame, which includes installing an additional external doubler on the fuselage lap joint at fuselage stringers (STGR) 22, left and right, between FR 26 and FR 40.

• Airbus Service Bulletin A300–53–0368, dated April 7, 2005. This service information describes procedures to modify the rear fuselage, which includes installing an additional external doubler on the fuselage lap joint at STGR 51, left and right, between FR 72 and FR 80.

• Airbus Mandatory Service Bulletin A300–53–0369, Revision 03, dated September 1, 2010. This service information describes procedures to modify the rear fuselage, which includes reinforcing the butt joint at FR 72 by installation of an additional external doubler at the butt joint of FR 72 at STGR 14, left and right.

• Airbus Mandatory Service Bulletin A300–53–0373, Revision 03, dated September 1, 2010. This service information describes procedures to modify the rear fuselage, which includes reinforcing the butt joint at FR 65 by installation of an additional external doubler at the butt joint of FR 65 between STGR 13 left and right.

• Airbus Mandatory Service Bulletin A300–53–0374, Revision 04, dated July 5, 2013. This service information describes procedures to modify the rear fuselage, which includes reinforcing the butt joints at FR 55 and FR 58 by installation of additional external doublers without cutout at certain butt joints.

• Airbus Mandatory Service Bulletin A300–53–0375, Revision 01, dated June 24, 2013. This service information describes procedures to modify the forward fuselage, which includes reinforcing the fuselage circumferential butt joint at FR 26 by installation of an additional external doubler at the butt joint of FR 26 between STGR 13 left and STGR 13 right.

• Airbus Mandatory Service Bulletin A300–53–0393, dated September 27, 2013. This service information describes procedures to modify the fuselage frame which includes reinforcing the longitudinal butt joints with additional butt straps at certain fuselage frames and stringers.

• Airbus Mandatory Service Bulletin A300–57–0203, Revision 04, dated February 18, 2015. This service information describes procedures to modify the outer wing, which includes removal of the wing stringer and run-out plate at STGR 19 on the bottom wing skin; replacement of the taper-lok bolts with interference fit parallel bolts; and related investigative and corrective actions. Related investigative actions include detailed visual and high frequency eddy current (HFEC) inspections for cracks and damage in the stringer run-outs; and eddy current inspections for cracks initiating from certain fastener holes. Corrective actions include repair.

• Airbus Mandatory Service Bulletin A300–57–0258, dated September 30, 2014. This service information describes procedures to modify the wing structure, which includes a first oversize of the critical holes on certain wing stringers, and related investigative and corrective actions. Related investigated actions include detailed visual inspections for damage of the top wing skin external surface and the stringer joint; and roto-probe inspections for damage of the fastener holes. Corrective actions include repair.

• Airbus Mandatory Service Bulletin A300–57–0259, dated September 30, 2014. This service information describes procedures to modify the wing structure, which includes a first oversize of the critical holes on certain wing stringers, and related investigative and corrective actions. Related investigated actions include detailed visual inspections for damage of the top wing skin external surface and the stringer joint; and roto-probe inspections for damage of the fastener holes. Corrective actions include repair.

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 the same type design.

Costs of Compliance

We estimate that this proposed AD affects 8 airplanes of U.S. registry.

We also estimate that it will take about 3,291 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $142,845 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $3,380,640, or $422,580 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $10,000, for a cost of $11,275 per product. We have no way of determining the number of aircraft that might need this action.

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–2016–9298; Directorate Identifier 2015–NM–161–AD.

(a) Comments Due Date

We must receive comments by December 12, 2016.

(b) Affected ADs

This AD affects AD 2004–23–20, Amendment 39–13875 (69 FR 68779, November 26, 2004) (''AD 2004–23–20'').

(c) Applicability

This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by an evaluation by the design approval holder (DAH) that indicates a section of the wing and aft fuselage is subject to widespread fatigue damage (WFD). We are issuing this AD to prevent reduced structural integrity of these airplanes due to the failure of certain structural components.

(f) Compliance

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

(g) Verification of Embodied Modifications

Within 4 months after the effective date of this AD, verify whether the Airbus modifications listed in table 1 to paragraphs (g), (h), and (i) of this AD, as applicable to airplane model, have been embodied on the airplane in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin listed in table 1 to paragraphs (g), (h), and (i) of this AD. A review of the airplane maintenance records is acceptable to accomplish the verification required by this paragraph, provided those records can conclusively determine whether the modifications have been embodied.

TABLE 1 TO PARAGRAPHS (g), (h), AND (i) OF THIS AD—AIRBUS MODIFICATION AND APPLICABLE SERVICE BULLETIN

Set	Airbus modification	Applicable airbus service bulletin
Set 1A	751	A300–53–0247, Revision 02, dated July 20, 1990.
	7301	A300–53–0239, Revision 02, dated March 6, 2000.
	10326	A300–57–0203, Revision 04, dated February 18, 2015.
	12735	A300–53–0366, dated April 7, 2005.
	12736	A300–53–0368, dated April 7, 2005.
	12737	A300–53–0369, Revision 03, dated September 1, 2010.
	12798	A300–53–0375, Revision 01, dated June 24, 2013.
	07757 and 12977	A300–53–0271, Revision 05, dated June 21, 2013.
	13611	A300–57–0258, dated September 30, 2014.
	13692	A300–53–0393, dated September 27, 2013.
	13716	A300–57–0259, dated September 30, 2014.
Set 1B	12794	A300–53–0374, Revision 04, dated July 5, 2013.
	12796	A300–53–0373, Revision 03, dated September 1, 2010.

(h) Corrective Actions for Modifications Which Have Not Been Embodied

If, during the verification required by paragraph (g) of this AD, it is determined that any modification has not been embodied, do the applicable actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) If it is determined that any Airbus modification, specified in the applicable Airbus Service Bulletin, identified in ''Set 1A'' of table 1 to paragraphs (g), (h), and (i) of this AD is not embodied: Within the applicable compliance time specified in the applicable Airbus Service Bulletin identified in ''Set 1A'' of table 1 to paragraphs (g), (h), and (i) of this AD, or within 4 months after the effective date of this AD, whichever occurs later, do the applicable actions specified in paragraphs (h)(1)(i) through (h)(1)(xi) of this AD, except as required by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight.

(i) For airplanes on which Airbus Service Bulletin A300–53–0239, Revision 02, dated March 6, 2000, has not been embodied: Modify the longitudinal junction and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0239, Revision 02, dated March 6, 2000.

(ii) For airplanes on which Airbus Service Bulletin A300–53–0247, Revision 02, dated July 20, 1990, has not been embodied: Modify the fuselage upper door frame structure by doing eddy current inspections for cracks of the structure specified in Airbus Service Bulletin A300–53–0247, Revision 02, dated July 20, 1990, and a structural modification or repair, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0247, Revision 02, dated July 20, 1990.

(iii) For airplanes on which Airbus Mandatory Service Bulletin A300–53–0271, Revision 05, dated June 21, 2013, has not been embodied: Modify the fuselage frame, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0271, Revision 05, dated June 21, 2013.

(iv) For airplanes on which Airbus Mandatory Service Bulletin A300–53–0366, dated April 7, 2005, has not been embodied: Modify the fuselage frame, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0366, dated April 7, 2005.

(v) For airplanes on which Airbus Service Bulletin A300–53–0368, dated April 7, 2005, has not been embodied: Modify the rear fuselage, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0366, dated April 7, 2005.

(vi) For airplanes on which Airbus Mandatory Service Bulletin A300–53–0369, Revision 03, dated September 1, 2010, has not been embodied: Modify the rear fuselage, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0369, Revision 03, dated September 1, 2010.

(vii) For airplanes on which Airbus Mandatory Service Bulletin A300–53–0375, Revision 01, dated June 24, 2013, has not been embodied: Modify the forward fuselage, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0375, Revision 01, dated June 24, 2013.

(viii) For airplanes on which Airbus Mandatory Service Bulletin A300–53–0393, dated September 27, 2013, has not been embodied: Modify the fuselage frame, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0393, dated September 27, 2013.

(ix) For airplanes on which Airbus Mandatory Service Bulletin A300–57–0203, Revision 04, dated February 18, 2015, has not

been embodied: Modify the outer wing, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0203, Revision 04, dated February 18, 2015.

(x) For airplanes on which Airbus Mandatory Service Bulletin A300–57–0258, dated September 30, 2014, has not been embodied: Modify the wing structure and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0258, dated September 30, 2014.

(xi) For airplanes on which Airbus Mandatory Service Bulletin A300–57–0259, dated September 30, 2014, has not been embodied: Modify the wing structure, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0259, dated September 30, 2014.

(2) If it is determined that Airbus Service Bulletin A300–53–0374, Revision 04, dated July 5, 2013 (mod 12794) has not been embodied: Within the compliance time specified in paragraphs (h)(2)(i), (h)(2)(ii), (h)(2)(iii), and (h)(2)(iv) of this AD, as applicable, modify the rear fuselage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0374, Revision 04, dated July 5, 2013, except as required by paragraph (i) of this AD.

(i) For Model A300 B2 and A300 B4–100 airplanes, fuselage frame (FR) 55: Within 31,300 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(ii) For Model A300 B2 and A300 B4–100 airplanes, FR 58: Within 49,700 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(iii) For Model A300 B4–200 airplanes, FR 55: Within 33,600 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(iv) For Model A300 B4–200 airplanes, FR 58: Within 55,800 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(3) If it is determined that Airbus Service Bulletin A300–53–0373, Revision 03, dated September 1, 2010 (mod 12796) has not been embodied: Within the compliance time specified in paragraphs (h)(3)(i), (h)(3)(ii), and (h)(3)(iii) of this AD, as applicable, modify the rear fuselage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0373, Revision 03, dated September 1, 2010, except as required by paragraph (i) of this AD.

(i) For Model A300 B2 airplanes: Within 42,700 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(ii) For Model A300 B4–100 airplanes: Within 41,700 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(iii) For Model A300 B4–200 airplanes: Within 47,900 flight cycles since first flight of the airplane, or within 4 months after the effective date of this AD, whichever occurs later.

(i) Service Information Exception

Where any service information identified in table 1 to paragraphs (g), (h), and (i) of this AD specifies to contact the manufacturer for instructions or solutions, before further flight, repair 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).

(j) Terminating Action for Certain Requirements in AD 2004–23–20

Accomplishing the modification required by paragraph (h)(1)(iii) of this AD terminates the modification required by paragraph (i) of AD 2004–23–20 for that airplane only.

(k) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–2125. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0173, dated August 24, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9298.

(2) For service information identified in this final rule, contact Airbus SAS, Airworthiness Office–EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *continued.airworthiness-wb.external@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 October 13, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25662 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8836; Directorate Identifier 2016–NE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, and PW4090–3 turbofan engines. This proposed AD was prompted by an uncontained failure of a high-pressure turbine (HPT) hub during takeoff. This proposed AD would require an inspection to measure the surface condition of the aft side web/rim fillet of HPT 1st stage hubs and removal from service of hubs that fail inspection. We are proposing this AD to prevent failure of the HPT 1st stage hub, uncontained hub release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 12, 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 Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2016–8836; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Theriault, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–8836; Directorate Identifier 2016–NE–07–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report of an uncontained failure of an HPT hub during takeoff. The root cause of the event is a machining anomaly (cutter mismatch) in the aft web/rim fillet area of the HPT 1st stage hub. The machining mismatch raises the stress and significantly reduces the life of the hub. The defect was introduced when the part was originally manufactured. This condition, if not corrected, could result in failure of the HPT 1st stage hub, uncontained hub release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed PW Service Bulletin (SB) PW4G–112–72–342, dated September 23, 2016. This PW SB provides guidance on performing the HPT 1st stage hub web/rim fillet replication inspection and measurement for the affected HPT hubs. 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

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require an inspection to measure the surface condition of the aft side web/rim fillet of HPT 1st stage hubs and removal from service of hubs that fail inspection.

Costs of Compliance

We estimate that this proposed AD affects 119 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour per engine to do the inspection. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $10,115.

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 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.

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):

Pratt & Whitney Division: Docket No. FAA–2016–8836; Directorate Identifier 2016–NE–17–AD.

(a) Comments Due Date

We must receive comments by December 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, and PW4090–3 turbofan engines.

(d) Unsafe Condition

This AD was prompted by an uncontained failure of a high-pressure turbine (HPT) hub during takeoff. We are issuing this AD to prevent failure of the HPT 1st stage hub, uncontained hub release, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) At the next engine shop visit after the effective date of this AD, perform the HPT 1st stage hub web/rim fillet replication inspection and measurement using the Accomplishment Instructions, Part A, paragraphs 2.A. and 2.B.(1) to 2.B.(4) or Part B, paragraphs 1.A. and 1.B.(1) to 1.B.(4), of PW Service Bulletin (SB) PW4G–112–72–342, dated September 23, 2016.

(2) If the hub fails inspection, remove the hub from service before further flight and replace with a part eligible for installation.

(f) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of any major mating flange, except that the separation of engine flanges solely for the purposes of transportation without subsequent maintenance does not constitute an engine shop visit.

(g) Installation Prohibition

After the effective date of this AD, do not install or re-install into any engine any HPT 1st stage hub that has not been inspected and passed the inspection required by paragraph (e) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(i) Related Information

(1) For more information about this AD, contact Jo-Ann Theriault, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

(2) PW SB PW4G–112–72–342, dated September 23, 2016, can be obtained from PW using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on October 19, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–25799 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9299; Directorate Identifier 2016–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. 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 Bombardier Inc. Model DHC–8–102, –103, and –106 airplanes; DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. This proposed AD was prompted by reports of incorrect installation of the auto-ignition system due to crossed wires at one of the splices in the auto-relight system. This proposed AD would require inspecting the auto-ignition system for correct wiring, and doing corrective actions if necessary. We are proposing this AD to detect and correct incorrect wiring of the auto-ignition system, which could result in inability to restart the engine in flight and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 12, 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 Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9299; 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: Morton Lee, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7355; fax 516–794–5531.

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–2016–9299; Directorate Identifier 2016–NM–119–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–36, dated November 19, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier Inc. Model DHC–8–102, –103, and –106 airplanes; DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. The MCAI states:

> There have been reports of incorrect installation of the auto-ignition system introduced by MS [ModSum] 8Q100813 of SB 8–74–02, where wires crossed at one of the splices in the auto-relight system. The incorrect wire installation may result in the inability to achieve an in-flight engine relight when the ignition switch is selected in the AUTO position.
>
> Bombardier has issued SB 8–74–05 to introduce an inspection to check for correct wiring connection and rectification as required. This [Canadian] AD mandates incorporation of Bombardier SB 8–74–05.

Corrective actions include reconnecting any incorrect wiring of the auto-ignition system and performing a functional test. 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–2016–9299.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 8–74–05, Revision B, dated April 14, 2014. This service information describes procedures for inspecting the auto-ignition system for correct wiring, and doing corrective actions that include rewiring if needed, followed by a functional test of the auto-ignition system. 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 the same type design.

Costs of Compliance

We estimate that this proposed AD affects 88 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	$0	$85	$7,480

In addition, we estimate that any necessary corrective actions would take about 2 work-hours, for a cost of $170 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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):

Bombardier, Inc.: Docket No. FAA–2016–9299; Directorate Identifier 2016–NM–119–AD.

(a) Comments Due Date

We must receive comments by December 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in

any category, serial numbers 003 through 672 inclusive, on which Bombardier ModSum 8Q100813 or Bombardier Service Bulletin 8–74–02 is incorporated.

(1) Model DHC–8–102, –103, and –106 airplanes.

(2) Model DHC–8–201 and –202 airplanes.

(3) Model DHC–8–301, –311, and –315 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 74, Ignition.

(e) Reason

This AD was prompted by reports of incorrect installation of the auto-ignition system due to crossed wires at one of the splices in the auto-relight system. We are issuing this AD to detect and correct incorrect wiring of the auto-ignition system, which could result in inability to restart the engine in flight and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first: Inspect the auto-ignition system for correct wiring and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–74–05, Revision B, dated April 14, 2014. All applicable corrective actions must be done before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–74–05, dated July 12, 2013; or Revision A, dated January 27, 2014.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(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, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–36, dated November 19, 2013, 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–2016–9299.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* 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 October 14, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25664 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3343; Directorate Identifier 2015–SW–078–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–12–12 for Airbus Helicopters (previously Eurocopter France) Model EC130B4 and Model EC120B helicopters. AD 2014–12–12 currently requires inspecting and, if necessary, replacing parts of the sliding door star support attachment assembly. This proposed AD would expand the applicability and provide revised instructions for reinforcing the sliding door. These proposed actions are intended to prevent failure of the sliding door star support attachment, which could inhibit the operation of the sliding door from the inside, delaying the evacuation of passengers during an emergency.

DATES: We must receive comments on this proposed AD by December 27, 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–2016–3343; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed 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 service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5116; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this

document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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

Discussion

On June 13, 2014, we issued AD 2014–12–12, Amendment 39–17873 (79 FR 36638, June 30, 2014) for Airbus Helicopters Model EC120B helicopters with serial numbers up to and including 1367 and with a sliding door part number (P/N) C526A2370101 installed and Model EC130B4 helicopters with sliding door P/N C526S1101051 installed. AD 2014–12–12 does not apply to helicopters with modification (MOD) 07 3796 or 07 2921 installed. AD 2014–12–12 requires inspecting the upper and lower locking pin control rod fittings and the star support pin for a crack and reinforcing the sliding door star support stringer by installing three carbon fabric plies.

AD 2014–12–12 was prompted by AD No. 2013–0093, dated April 15, 2013, and corrected on April 17, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD No. 2013–0093 was issued to correct an unsafe condition for Model EC120B and EC130B4 helicopters after a case was reported where passengers could not open a helicopter's sliding door after landing. EASA advises that an investigation revealed a failure of the sliding door star axle support.

Actions Since AD 2014–12–12 Was Issued

Since we issued AD 2014–12–12, EASA has issued EASA AD No. 2015–0020, dated February 11, 2015, to correct an unsafe condition for Model EC120B helicopters with sliding door P/N C526A2370101 and Model EC130B4 helicopters sliding door P/N C526S1101051. EASA AD No. 2015–0020 does not apply to helicopters with MOD A00565, 07 3796, or 07 2921. EASA AD No. 2015–0020 supersedes EASA AD No. 2013–0093. EASA advises that after it issued AD No. 2013–0093, it discovered that the doors could be installed on all serial-numbered EC120B helicopters. Also, Eurocopter (now Airbus Helicopters) learned of difficulties with installing the angle bracket and plate used to reinforce the sliding door star support. Because of the distance between the star support pin and the bottom of the stringer on composite sliding doors, installation of the angle bracket and plate is not possible in a small number of sliding doors. Eurocopter subsequently revised its repair procedures to provide an alternate method for reinforcing the sliding door star support.

EASA advises that it consequently issued AD No. 2015–0020 to extend the applicability to all serial-numbered EC120B helicopters with the affected sliding doors. EASA AD No. 2015–0020 also requires compliance with the revised service information.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Eurocopter (now Airbus Helicopters) Alert Service Bulletin (ASB) No. EC120–52A014, Revision 2, dated October 28, 2013, for Model EC120B helicopters and ASB No. 130–52A009, Revision 1, dated January 25, 2013, for Model EC130B4 helicopters. This service information specifies visual and dye penetrant inspections of sections of the sliding door attachment assembly and reinforcement of the sliding door star support. ASB EC120–52A014 was changed at Revision 2 to expand the applicability for all serial-numbered Model 120B helicopters and provides an alternative procedure for reinforcing the sliding door star support.

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.

Proposed AD Requirements

This proposed AD would require, within 165 hours time-in-service (TIS):

- Visually inspecting each upper and lower locking pin control rod end fitting (control end fitting) and replacing it before further flight if it is bent, twisted, or broken.
- Cleaning and dye-penetrant inspecting the star support pin for a crack and replacing it before further flight if it is cracked.
- Reinforcing the sliding door star support stringer by installing three carbon fabric plies.

This proposed AD would also prohibit installing a sliding door P/N C526A2370101 on a Model EC120B helicopter, or a sliding door P/N C526S1101051 on a Model EC130B4 helicopter, unless the sliding door star support stringer is reinforced as required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 261 helicopters of U.S. Registry and that labor costs average $85 a work hour. Based on these estimates, we expect the following costs:

- Visually inspecting the control rod end fittings would require 1 work-hour and a minimal amount for consumable materials for an estimated cost of $85 per helicopter, or $22,185 for the U.S. fleet.
- Replacing the control rod end fittings with airworthy fittings would require 5 work-hours for a labor cost of $425. Parts would cost about $242 for an estimated total cost of $667 per helicopter.
- Dye-penetrant inspecting the star support pin for a crack would require 2 work-hours and no parts for an estimated cost of $170 per helicopter and $44,370 for the U.S. fleet.
- Replacing the star support pin would require 5 work-hours. Parts would cost about $200 for an estimated total cost of $625 per helicopter.
- Installing three carbon fabric plies to reinforce the sliding door star support would require 5 work-hours. Parts would cost $200 for an estimated total cost of $625 per helicopter and $163,125 for the U.S. fleet.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII,

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–12–12, Amendment 39–17873 (79 FR 36638, June 30, 2014), and adding the following new AD:

Airbus Helicopters (Previously Eurocopter France): Docket No. FAA–2016–3343; Directorate Identifier 2015–SW–078–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category, except those with modification A00565, 07 3796, or 07 2921 installed:

(1) Model EC120B helicopters with a sliding door part number (P/N) C526A2370101 installed; and

(2) Model EC130B4 helicopters with a sliding door P/N C526S1101051 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a failure of the sliding door star axle support. This condition could prevent operation of a sliding door from inside, which could delay evacuation of passengers during an emergency.

(c) Affected ADs

This AD supersedes AD 2014–12–12, Amendment 39–17873 (79 FR 36638, June 30, 2014).

(d) Comments Due Date

We must receive comments by December 27, 2016.

(e) Compliance

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

(f) Required Actions

(1) Within 165 hours time-in-service:

(i) Visually inspect each upper and lower locking pin control rod end fitting (control end fitting) for a bend, twist, or breakage. If a control end fitting is bent, twisted, or broken, before further flight, replace the control end fitting with an airworthy control end fitting.

(ii) Clean and dye penetrant inspect the star support pin for a crack in the areas identified as Zone X and Zone Y in Figure 3 of Eurocopter Alert Service Bulletin No. EC120–52A014, Revision 2, dated October 28, 2013 (ASB No. EC120–52A014) or Eurocopter Alert Service Bulletin No. EC130–52A009, Revision 1, dated January 25, 2013 (ASB No. EC130–52A009), as applicable to your model helicopter. If there is a crack in the star support pin, before further flight, replace the star support pin with an airworthy star support pin.

(iii) Reinforce the sliding door star support stringer by installing three carbon fiber plies and re-identify the sliding door by following the Accomplishment Instructions, paragraphs 3.B.2.d. and 3.B.2.e of ASB No. EC120–52A014, or paragraph 3.B.2.d. and the table under paragraph 3.C of ASB No. EC130–52A009, whichever is applicable to your model helicopter.

(2) After the effective date of this AD, do not install a sliding door P/N C526A2370101 on an EC120B helicopter, or a sliding door P/N C526S1101051 on an EC130B4 helicopter, unless the sliding door has been reinforced as required by paragraph (f)(1)(iii) of this AD.

(g) Credit for Actions Previously Completed

Compliance with AD 2014–12–12 (79 FR 366838, June 30, 2014) before the effective date of this AD is considered acceptable for compliance with the corresponding actions specified in paragraph (f)(1) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5116; 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.

(i) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0020, dated February 11, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2016–3343.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 5220, Emergency Exits.

Issued in Fort Worth, Texas, on October 18, 2016.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–25748 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. FDA–2015–N–1355]

RIN 0910–AH36

Use of Ozone-Depleting Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend its regulation on uses of ozone-depleting substances (ODSs), including chlorofluorocarbons (CFCs), to remove the designation for certain products as ''essential uses'' under the Clean Air Act. Essential-use products are exempt from the ban by

FDA on the use of CFCs and other ODS propellants in FDA-regulated products and from the ban by the Environmental Protection Agency (EPA) on the use of ODSs in pressurized dispensers. This action, if finalized, will remove the essential-use exemptions for sterile aerosol talc administered intrapleurally by thoracoscopy for human use and for metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. FDA is proposing this action because alternative products that do not use ODSs are now available and because these products are no longer being marketed in versions that contain ODSs.

DATES: Submit either electronic or written comments on the proposed rule by December 27, 2016. If FDA receives any significant adverse comments, the Agency will publish a document withdrawing the direct final rule before its effective date. FDA will then proceed to respond to comments under this proposed rule using the usual notice-and-comment procedures.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–1355 for ''Use of Ozone-Depleting Substances.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6246, Silver Spring, MD 20993, 240–402–0979, *daniel.orr@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Production of ODSs has been phased out worldwide under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I.L.M. 1541 (1987)). In accordance with the provisions of the Montreal Protocol, under authority of Title VI of the Clean Air Act (section 601 *et seq.*), the manufacture of ODSs, including CFCs, in the United States was generally banned as of January 1, 1996. To receive permission to manufacture CFCs in the United States after the phase-out date, manufacturers must obtain an exemption from the phase-out requirements from the parties to the Montreal Protocol. Procedures for securing an essential-use exemption under the Montreal Protocol are described in a request by EPA for applications for exemptions (60 FR 54349, October 23, 1995).

A drug, device, cosmetic, or food contained in an aerosol product or other pressurized dispenser that releases a CFC or other ODS propellant is generally not considered an essential use of the ODS under the Clean Air Act except as provided in § 2.125(c) and (e) (21 CFR 2.125(c) and (e)). This prohibition is based on scientific research indicating that CFCs and other ODSs reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the Earth. An increase in ultraviolet radiation will increase the incidence of skin cancer, and produce other adverse effects of unknown magnitude on humans, animals, and plants (80 FR 36937, June 29, 2015). Section 2.125(c) and (e) provide exemptions for essential uses of ODSs for certain products containing ODS propellants that FDA determines provide unique health benefits that would not be available without the use of an ODS.

Firms that wish to use ODSs manufactured after the phase-out date in medical devices (as defined in section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) covered under section 610 of the Clean Air Act (42 U.S.C. 7671i) must receive exemptions for essential uses under the Montreal Protocol. EPA regulations implementing the provisions

of section 610 of the Clean Air Act contain a general ban on the use of ODSs in pressurized dispensers, such as metered-dose inhalers (MDIs) (40 CFR 82.64(c) and 82.66(d)). These EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act defines ''medical device'' as any device (as defined in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321), diagnostic product, drug (as defined in the FD&C Act), and drug delivery system, if such device, diagnostic product, drug, or drug delivery system uses a class I or class II ODS for which no safe and effective alternative has been developed (and, where necessary, has been approved by the Commissioner of Food and Drugs), and if such device, diagnostic product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA. Class I substances include CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (see 40 CFR part 82, appendix B to subpart A).

Faced with the statutorily mandated phase-out of the production of ODSs, drug manufacturers have developed alternatives to MDIs and other self-pressurized drug dosage forms that do not contain ODSs. Examples of these alternative dosage forms are MDIs that use non-ODSs as propellants and dry-powder inhalers. The availability of alternatives to the ODSs means that certain drug products listed in § 2.125(e) are no longer essential uses of ODSs. Therefore, due to the lack of marketing of approved products containing ODSs, and the availability of alternative products that do not contain ODSs, FDA is proposing to amend its regulations to remove essential-use designations for sterile aerosol talc administered intrapleurally by thoracoscopy for human use (§ 2.125(e)(4)(ix)) and for metered-dose atropine sulfate aerosol human drugs administered by oral inhalation (§ 2.125(e)(4)(vi)).

There is currently one sterile aerosol talc product containing ODSs that is approved for administration intrapleurally by thoracoscopy for human use for the treatment of recurrent malignant pleural effusion in symptomatic patients. Section 2.125(g) sets forth standards for determining whether the use of an ODS in a medical product is no longer essential. Under § 2.125(g)(3), an essential-use designation for individual active moieties marketed as ODS products and represented by one new drug application may no longer be essential if:

- At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;
- Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;
- Adequate U.S. postmarketing-use data are available for the non-ODS product(s); and
- Patients who medically require the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products (§ 2.125(g)(3)).

On June 29, 2015, FDA published a notice and request for comment concerning its tentative conclusion that sterile aerosol talc administered intrapleurally by thoracoscopy for human use no longer constitutes an essential use under the Clean Air Act under the criteria in (§ 2.125(g)(3). FDA requested comment on its findings that sterile aerosol talc is currently marketed for intrapleural administration in two non-ODS formulations and on its finding that the route of administration, indications, and level of convenience appear to be the same for the ODS and non-ODS formulations of sterile aerosol talc. FDA also requested comment on its finding that the non-ODS products are available in sufficient quantities to serve the current patient population. FDA received no comments on these findings or on its tentative conclusion that sterile aerosol talc administered intrapleurally by thoracoscopy for human use no longer constitutes an essential use of ODSs under the Clean Air Act.

In the same document published on June 29, 2015, FDA requested comments concerning its tentative conclusion that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation no longer constitute an essential use under the Clean Air Act under the criteria in (§ 2.125(g)(1). FDA requested comment concerning its finding that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer marketed in an approved ODS formulation. Under § 2.125(g)(1), an active moiety may no longer constitute an essential use (§ 2.125(e)) if it is no longer marketed in an approved ODS formulation. The failure to market indicates nonessentiality because the absence of a demand sufficient for even one company to market the product is highly indicative that the use is not essential. FDA received no comments concerning its finding that metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer marketed in an ODS formulation or concerning its tentative conclusion that these drugs no longer constitute an essential use of ODSs under the Clean Air Act.

Accordingly, FDA is proposing to amend its regulation to remove sterile aerosol talc administered intrapleurally by thoracoscopy for human use (§ 2.125(e)(4)(ix)) and to remove metered-dose atropine sulfate aerosol human drugs administered by oral inhalation (§ 2.125(e)(4)(vi)) as essential uses under the Clean Air Act.

II. Companion Rule to Direct Final Rulemaking

This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is proposing to amend § 2.125 to remove essential-use designations for sterile aerosol talc administered intrapleurally by thoracoscopy for human use and for metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. This proposed rule is intended to make noncontroversial changes to existing regulations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion direct final rule. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework within which the proposed rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this proposed rule runs concurrently with the comment period of the companion direct final rule. Any comments received in response to the companion direct final rule will also be considered as comments regarding this proposed rule.

FDA is providing a comment period for the proposed rule of 60 days after the date of publication in the **Federal Register**. If we receive a significant adverse comment, we intend to withdraw the direct final rule before its effective date by publishing a notice in the **Federal Register** within 30 days

after the comment period ends. A significant adverse comment explains why the rule either would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, the Agency will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the proposed rule will not be considered significant or adverse under this procedure. For example, a comment recommending a regulation change in addition to the changes in the proposed rule would not be considered a significant adverse comment unless the comment states why the proposed rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this proposed rule and that provision can be severed from the remainder of the rule, FDA may adopt as final the provisions of the proposed rule that are not the subject of a significant adverse comment.

If FDA does not receive any significant adverse comment in response to the proposed rule, the Agency will publish a document in the **Federal Register** confirming the effective date of the direct final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**.

A full description of FDA's policy on direct final rule procedures may be found in a guidance for FDA and industry entitled ''Direct Final Rule Procedures'' (available at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm*) that was announced in the **Federal Register** on November 21, 1997 (62 FR 62466).

III. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. We propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Need for the Regulation

This rule is necessary to comply with the Montreal Protocol under authority of Title VI of the Clean Air Act (section 601 *et seq.*), which banned the manufacture of ODSs, including CFCs, to reduce the depletion of the ozone layer in the United States as of January 1, 1996. EPA regulations exempted from the ban medical devices, diagnostic products, drugs, and drug delivery systems that FDA considered essential and that are listed in § 2.125(e) when they use a class I or class II ODS for which no safe and effective alternative has been developed. The proposed rule would remove the exemptions for sterile aerosol talc products and for metered-dose atropine sulfate aerosol human drugs containing ODSs.

There is currently at least one sterile aerosol talc product not containing ODSs approved for administration intrapleurally by thoracoscopy for human use that is a safe and effective alternative, and which meets the criteria outlined in § 2.125(g)(3). Accordingly, the sterile aerosol talc product containing ODSs no longer meets the requirements for essential use and should no longer be exempted from the ban.

Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation are no longer available in the product market in an approved ODS formulation. The current absence of the product in the market indicates both a lack of demand for the product and that the product is nonessential, under § 2.125(g)(1). With the adoption of this rule, the manufacturer of the sterile aerosol talc with ODSs and any potential future manufacturers of metered-dose atropine sulfate aerosols will have notice of the requirement to comply with the ban of products from containing ODSs.

C. Costs and Benefits

1. Number of Affected Entities

The affected entities covered by this rule are the manufacturing facilities of the products that would have exemptions from the ban removed. Only one manufacturer, the Bryan Corporation that manufactures the sterile aerosol talc product containing ODSs at a single facility, would be affected. Currently, there are no manufacturers of metered-dose atropine sulfate aerosols.

2. Costs

The potential social costs from removing the exemptions are (1) the costs to patient consumers or to their insurers for paying a higher price for alternative non-ODS formulations of sterile aerosol talc products and (2) the costs for disposing of and destroying any remaining product inventory that remains after the effective date of the final rule. We lack data about the stocks of product inventory that are likely to remain after the effective date of the final rule and the relative price that consumers or their insurers would pay. Because significant notice has been given to the manufacturer about the impending removal of the exemptions, we do not believe a significant stock of inventory will remain for the sterile aerosol talc product. The most recent publicly available information shows that the annual revenues for Bryan Corporation are about $10 million (Ref. 1). Public information about this company shows that it manufactures three different surgical and medical instruments including the talc. If total profits for the exempt talc product are 10 percent of the total annual revenues, and if total revenues are exclusively from the exempt talc, then $1 million represents an upper bound for the total social cost of removing the sterile aerosol talc product from the market.

Because it is unlikely that the company's total profits are exclusively from the sterile aerosol talc, it is more likely that the foregone profits are at most one-third of the $1 million; in fact, the true social cost could be significantly less than the total foregone profit of this product.

Metered-dose atropine sulfate aerosol human drugs that would be affected by this rule are no longer marketed; consequently, removal of the exemption for these products would not present the public, consumers, insurers, or producers with any costs.

3. Health Benefits

The proposed rule would implement the requirements of the Clean Air Act that ban the use of products containing ODSs that no longer meet the requirements for essential use. The social benefits of the proposed rule derive from greater compliance with the Clean Air Act. The ODSs that either would have been emitted by sterile aerosol talcs that contain them, or from potential market entrants that would have manufactured metered-dose atropine sulfate aerosols that contain ODSs will no longer be emitting them, which will help reduce the depletion of the ozone layer and the ultraviolet radiation reaching the Earth. We lack the ability to quantify the health benefits from the reduced exposure to and from the reduced risk associated with ultraviolet light that result from removing the exemptions to the ban. Because the change in exposure and resulting risk from the proposed rule is likely to be small, the incremental health impact is likely to be too small to measure.

D. Economic Summary

The proposed rule, if finalized, will remove the exemptions for sterile aerosol talc products and for metered-dose atropine sulfate aerosol human drugs containing ODSs. The primary public health benefit from adoption of the proposed rule is to reduce the depletion of the ozone layer to decrease human exposure to ultraviolet radiation. The reduction in exposure to ultraviolet radiation because of the rule is likely to be too small to measure. The potential social costs of the proposed rule would occur if patient consumers or their health care insurers would have to pay more for otherwise comparable products and if the product manufacturers would have to safely destroy any remaining product inventories after the effective date of the rule. We estimate that the social cost of the proposed rule is likely to be significantly less than $1 million but no more than the upper-bound estimate of the foregone annual profit of the company that manufactures the sterile aerosol talc or $1 million. Because the metered-dose atropine sulfate aerosol is not currently in the market, there would be no social cost for removing its exemption from the ban.

Imposing no new federal requirement is the baseline for a regulatory analysis. With no new regulation, there are no compliance costs or benefits to the proposed rule. However, because sterile aerosol talc is no longer an essential use of ODSs, under the Clean Air Act, there is no longer a pathway for sterile aerosol talc products containing ODSs to remain on the market.

IV. Regulatory Flexibility Analysis

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We certify that the final rule will not have a significant economic impact on a substantial number of small entities. This analysis, together with other relevant sections of this document, serves as the proposed regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Bryan Corporation (*http://listings.findthecompany.com/l/12165972/Bryan-Corporation-in-Woburn-MA,* accessed on February 24, 2016).

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

§ 2.125 [Amended]

■ 2. In § 2.125, remove and reserve paragraphs (e)(4)(vi) and (ix).

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25850 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. FDA–2015–N–1355]

RIN 0910–AH36

Use of Ozone-Depleting Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend its regulation on uses of ozone-depleting substances (ODSs), including chlorofluorocarbons (CFCs), to remove the designation for certain products as ''essential uses'' under the Clean Air Act. Essential-use products are exempt from the ban by FDA on the use of CFCs and other ODS propellants in FDA-regulated products and from the ban by the Environmental Protection Agency (EPA) on the use of ODSs in pressurized dispensers. This action, if finalized, will remove the essential-use exemption for anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application. FDA is proposing this action because these products are no longer being marketed in approved versions that contain ODSs and because alternative products that do not use ODSs are now available.

DATES: Submit either electronic or written comments on the proposed rule by December 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–1355 for ''Use of Ozone-Depleting Substances.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6246, Silver Spring, MD 20993, 240–402–0979, *daniel.orr@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Production of ODSs has been phased out worldwide under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I.L.M. 1541 (1987)). In accordance with the provisions of the Montreal Protocol, under authority of Title VI of the Clean Air Act (section 601 *et seq.*), the manufacture of ODSs, including CFCs, in the United States was generally banned as of January 1, 1996. To receive permission to manufacture CFCs in the United States after the phase-out date, manufacturers must obtain an exemption from the phase-out requirements from the parties to the Montreal Protocol. Procedures for securing an essential-use exemption under the Montreal Protocol are described in a request by EPA for applications for exemptions (60 FR 54349, October 23, 1995).

Firms that wished to use ODSs manufactured after the phase-out date in medical devices (as defined in section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) covered under section 610 of the Clean Air Act (42 U.S.C. 7671i) must receive exemptions for essential uses under the Montreal Protocol. EPA regulations implementing the provisions of section 610 of the Clean Air Act contain a general ban on the use of ODSs in pressurized dispensers, such as metered-dose inhalers (MDIs) (40 CFR 82.64(c) and 82.66(d)). These EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e) (21 CFR 2.125(e)). Section 601(8) of the Clean Air Act defines ''medical device'' as any device (as defined in the Federal Food, Drug & Cosmetic Act (the FD&C Act) (21 U.S.C. 321)), diagnostic product, drug (as defined in the FD&C Act), and drug delivery system, if such device, diagnostic product, drug, or drug delivery system uses a class I or class II ODS for which no safe and effective alternative has been developed (and, where necessary, has been approved by the Commissioner of Food and Drugs), and if such device, diagnostic product, drug, or drug delivery system has, after notice and opportunity for public comment, been

approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA. Class I substances include CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (see 40 CFR part 82, appendix B to subpart A).

A drug, device, cosmetic, or food contained in an aerosol product or other pressurized dispenser that releases a CFC or other ODS propellant generally is not considered an essential use of the ODS under the Clean Air Act except as provided in § 2.125(c) and (e). This prohibition is based on scientific research indicating that CFCs and other ODSs reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the Earth. An increase in ultraviolet radiation will increase the incidence of skin cancer, and produce other adverse effects of unknown magnitude on humans, animals, and plants (80 FR 36937, June 29, 2015). Sections 2.125(c) and (e) provide exemptions for essential uses of ODSs for certain products containing ODS propellants that FDA determines provide unique health benefits that would not be available without the use of an ODS.

Faced with the statutorily mandated phase-out of the production of ODSs, drug manufacturers have developed alternatives to MDIs and other self-pressurized drug dosage forms that do not contain ODSs. Examples of these alternative dosage forms are MDIs that use non-ODSs as propellants and dry-powder inhalers. The availability of alternatives to ODSs means that certain drug products listed in § 2.125(e) are no longer essential uses of ODSs. Therefore, due to lack of marketing of an approved product containing an ODS, and the availability of alternative products that do not contain an ODS, FDA is proposing to amend its regulations to remove the essential-use designation for anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application (§ 2.125(e)(4)(iii)).

On June 29, 2015, FDA published a notice and request for comment concerning its tentative conclusion that anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application no longer constitute an essential use under the Clean Air Act (June 2015 notice). FDA requested comment concerning its tentative finding that anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application are no longer being sold in an approved ODS formulation. Under § 2.125(g)(1), an active moiety may no longer constitute an essential use (§ 2.125(e)) if it is no longer marketed in an approved ODS formulation. The failure to market indicates nonessentiality because the absence of a demand sufficient for even one company to market the product is highly indicative that the use is not essential.

II. Comment on the June 2015 Notice and FDA Response

FDA received one comment concerning its tentative finding that anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application are no longer marketed in an approved ODS formulation and, therefore, no longer constitute an essential use (see June 2015 notice). On August 21, 2015, Cetylite Industries, Inc. (Cetylite) submitted a comment stating that ''FDA's belief that no products are marketed under this exemption is incorrect'' (Comment 1). According to the comment, Cetylite manufactures Cetacaine Spray (CETACAINE), a topical anesthetic spray with an active ingredient combination of benzocaine, tetracaine HCl, and butamben that uses a blend of CFCs as the propellant under the essential-use exemption found in § 2.125(e)(4)(iii). However, CETACAINE is not an approved drug product and does not qualify as an essential use under § 2.125(e)(4)(iii). As described in § 2.125(c), an aerosol drug product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act only if it is listed in § 2.125(e) and if an investigational application or an approved marketing application is in effect.

Cetylite states that CETACAINE has been marketed continuously since the mid-1950s under a request for a Drug Efficacy Study Implementation (DESI) review that was submitted in 1976. FDA published a DESI notice (DESI 8076 (Docket No. 75N–0203) in the **Federal Register** of December 9, 1975 (40 FR 57379)) in which the Agency offered an opportunity for a hearing on a proposal to withdraw approval of a combination drug product containing two of the three ingredients contained in CETACAINE. In response to this DESI notice, Cetylite requested a hearing regarding the effectiveness of CETACAINE. While FDA's review of the product's effectiveness has been pending, Cetylite has been marketing CETACAINE without an approved new drug application.

In 1979, based on a citizen petition submitted by Cetylite regarding its CETACAINE product, FDA proposed that anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application were essential uses of ODSs (44 FR 33114, June 8, 1979) (1979 Proposed Rule). In the preamble to the 1979 Proposed Rule, FDA noted that its tentative finding as to CETACAINE's essentiality under § 2.125 was ''conditional'' on the product being found effective. Similarly, in the preamble to the Final Rule amending § 2.125, FDA stated that ''the determination in this document that CETACAINE Aerosol is an essential use of a chlorofluorocarbon is also conditional'' on a finding that CETACAINE is effective for the use described in § 2.125(e)(4)(iii) (45 FR 22902, April 4, 1980).

To date, FDA has not made a finding that CETACAINE is effective for the use described in § 2.125(e)(4)(iii). There is no investigational new drug application or approved marketing application in effect for the ODS formulation of CETACAINE, as required for a finding of essentiality under § 2.125(c). Accordingly, CETACAINE does not meet the conditions to qualify as an essential use of ODSs under § 2.125(e)(4)(iii), and FDA believes that its proposed finding that anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application are no longer marketed in an approved ODS formulation remains correct. Moreover, alternative products for the same use that do not use ODSs, such as lidocaine, are now available, further suggesting that anesthetic drugs for topical use are no longer an essential use of ODSs. In addition, a recently completed laboratory study demonstrated that lidocaine may be a safer alternative to benzocaine (Ref. 1). The study found that benzocaine was substantially more likely than lidocaine to form methemoglobin, the cause of the serious blood disorder called methemoglobinemia.

III. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563

direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. We propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Need for the Regulation

This rule is necessary to comply with the Montreal Protocol under authority of Title VI of the Clean Air Act (section 601 *et seq.*), which banned the manufacture of ODSs, including CFCs, to reduce the depletion of the ozone layer in the United States as of January 1, 1996. EPA regulations exempted from the ban medical devices, diagnostic products, drugs, and drug delivery systems that FDA considered essential and that are listed in § 2.125(e) when they use a class I or class II ODS for which no safe and effective alternative has been developed.

Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application are not available in the product market in an approved ODS formulation. Because the product is not marketed under an investigational new drug (IND), new drug application (NDA), or abbreviated new drug application (ANDA) and alternative products for the same use that do not use ODSs, such as lidocaine, are now available, the product is nonessential under § 2.125(g)(1). With the adoption of this rule, any potential manufacturers of these anesthetic drugs will have notice about their requirements to comply with the ban of products from containing ODSs.

C. Costs and Benefits

1. Number of Affected Entities

There are no affected entities covered by this rule because there are no current manufacturers of approved products that would qualify as ''essential'' products under the current regulation.

2. Costs

ODS-containing anesthetic products for topical use on accessible mucous membranes of humans where a cannula is used for application are not marketed under an IND, NDA, or ANDA and would not qualify as ''essential'' products under the current regulation; consequently, removal of the exemption for such drugs would not present the public, consumers, insurers, or producers with any costs.

3. Health Benefits

The proposed rule would implement the requirements of the Clean Air Act that ban the use of products containing ODSs that no longer meet the requirements for essential use. The benefits stem from preventing the ODSs that would have been emitted by potential market entrants. The social benefits of the proposed rule derive from greater compliance with the Clean Air Act. Because there will not be any change in exposure and any resulting risk from the proposed rule, there will not be any direct public health benefits.

D. Economic Summary

The proposed rule, if finalized, will remove the essential-use exemption for anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application. The primary public health benefit from adoption of the proposed rule is to reduce the depletion of the ozone layer to decrease human exposure to ultraviolet radiation. Because anesthetic drugs for topical use are not currently sold in the market in an approved form, there would be no health benefit or social cost for removing the exemption for such products from the ban.

IV. Regulatory Flexibility Analysis

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We propose to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This analysis, together with other relevant sections of this document, serves as the proposed regulatory flexibility analysis.

V. Analysis of Environmental Impacts

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VIII. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it are also available electronically at *http://www.regulations.gov.*

1. Hartman, N. R., J. J. Mao, H. Zhou, et al., ''More Methemoglobin is Produced by Benzocaine Treatment Than Lidocaine Treatment in Human In Vitro Systems.'' *Regulatory Toxicology and Pharmacology,* 70:182–188, 2014.

List of Subjects

In 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

§ 2.125 [Amended]

■ 2. In § 2.125, remove and reserve paragraph (e)(4)(iii).

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25852 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–5585–P–01]

RIN 2577–AD00

Tenant-Based Assistance: Enhanced Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to codify HUD's policy regarding enhanced vouchers, a type of tenant-based voucher provided for under section 8 of the U.S. Housing Act of 1937 in the following four scenarios, which are prescribed and limited by statute: The prepayment of certain mortgages, the voluntary termination of the insurance contract for the mortgage, the termination or the expiration of a project-based section 8 rental assistance contract, and the transaction under which a project that receives or has received assistance under the Flexible Subsidy Program is preserved as affordable housing. Specifically, this rule would codify existing policy concerning the eligibility criteria for enhanced vouchers, as well as provide rental payment standards and subsidy standards applicable to enhanced vouchers, the right of enhanced voucher holders to remain in their units, procedures for addressing over-housed families, and the calculation of the enhanced voucher housing assistance payment.

DATES: *Comment Due Date:* December 27, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing and Voucher programs, contact Rebecca Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, Room 4226, Washington, DC 20140, telephone number 202–708–0477. The listed telephone number 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:

I. Background

General. Section 8(t) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f(t)) provides unified authority for families to be offered enhanced vouchers upon the occurrence of an ''eligibility event,'' which is defined in section 8(t)(2) as one of four categories of events that results in families in the project being eligible for enhanced voucher assistance under one of three statutes: (1) The Low-Income Housing Preservation and Resident Homeownership Act of 1990, 12 U.S.C. 4101 *et seq.* (LIHPRHA), (2) the Multifamily Assisted Housing Reform and Affordability Act of 1997, 42 U.S.C. 1437f note (MAHRA), or (3) of the Housing and Community Development Amendments of 1978, 42 U.S.C. 5301 note (HCDA). The four categories of events are: (1) The prepayment of a mortgage that results in families residing in the project being eligible under section 223(f) of LIHPRHA for an enhanced voucher; (2) the voluntary termination of the insurance contract that results in families residing in the project being eligible under section 223(f) of LIHPRHA for an enhanced voucher; (3) the termination or expiration of a project-based section 8 rental assistance contract that results in assisted families residing in the project being eligible under section 515(c)(3) or section 524(d) of MAHRA for an enhanced voucher; [1] and (4) a

[1] Section 515(c)(3) pertains to a determination by the Department to renew an expiring project-based section 8 contract with tenant-based assistance, whereas section 524(d) applies when a rental assistance contract to which a covered project is subject expires and is not renewed, whether the owner opts out by giving the notice required under 42 U.S.C. 1437f(c)(8)(A) or the HAP contract simply expires. If the HAP contract expires without the

transaction under which a project that receives or has received assistance under the Flexible Subsidy program is preserved as affordable housing, which results in families residing in the project being eligible under section 201(p) of the HCDA for an enhanced voucher.

Section 8(t) states that enhanced vouchers provided under previous authorities are, regardless of date that the funds were made available, treated and subject to the same requirements as enhanced vouchers under 8(t). Section 8(t) was enacted as section 538, title V, Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74) (FY 2000 Appropriation), and the heading of section 538 of the FY 2000 Appropriation was ''Unified Enhanced Voucher Authority'' (see 113 Stat. 1122). This section heading emphasizes the fact that 8(t) brings current and prior enhanced voucher authority under a single statute and unifies their legal requirements.[2]

Under the statute, eligibility events are: Owner decisions to opt out of or not renew certain Section 8 project-based contracts; owner prepayment of certain mortgages on the project; voluntary termination of mortgage insurance; the termination or expiration of the contract for rental assistance under section 8 of the 1937 Act (Section 8) for such housing project; or a transaction for preservation of a project that, under certain sections of the MAHRA, results in the tenants of the project being eligible for enhanced vouchers.

Enhanced voucher assistance. Enhanced voucher assistance differs from regular housing choice voucher assistance under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)) in two major respects. First, a family eligible to receive an enhanced voucher may elect to remain in the project, and, if the family does so, a higher ''enhanced'' payment standard is used to determine the amount of subsidy when the gross rent exceeds the normally applicable public housing agency (PHA) payment standard. Second, the family must continue to contribute towards rent at an amount that is at least the amount the family was paying for rent at the time of the eligibility event.

Section 8(t)(1)(B) of the 1937 Act (42 U.S.C. 1437f(t)(1)(B)) provides that for enhanced vouchers, if the gross rent for the dwelling unit exceeds the Section 8 payment standard under the regular voucher program, the amount of rental assistance provided on behalf of the family using the enhanced voucher shall be determined using a payment standard that is equal to the gross rent for the dwelling unit (as such rent may be increased from time-to-time). The gross rent for a unit leased by an enhanced voucher holder is subject to the limitation in section 8(o)(10)(A) of the 1937 Act (42 U.S.C. 1437f(o)(10)(A)) that rents shall be reasonable in comparison to rents charged for comparable, unassisted units in the private market, and any other reasonable limits prescribed by the Secretary, such as a use agreement that restricts the rent to an amount below the PHA-determined rent reasonableness cap, State rent controls, or any other similar legally binding, reasonable limitation.

Preservation prepayments. A preservation prepayment occurs when an owner prepays a qualifying mortgage or voluntarily terminates the mortgage insurance on a project that meets the definition of eligible low-income housing under LIHPRHA, 12 U.S.C. 4119 and in such cases, tenant-based assistance is offered to eligible residents of projects. The term ''eligible low-income housing'' means any housing financed by a loan or mortgage—

(A) That is—

(i) Insured or held by the Secretary under section 221(d)(3) of the National Housing Act and receiving loan management assistance under section 8 of the United States Housing Act of 1937 due to a conversion from section 101 of the Housing and Urban Development Act of 1965;

(ii) Insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act;

(iii) Insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act; or

(iv) Held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary. (12 U.S.C. 4119(1)).

Flexible subsidy project. This is any project that receives or has received assistance under Section 201 of the HCDA (the flexible subsidy program) and which project, in accordance with section 201(p), is the subject of a transaction under which the project is preserved as affordable Housing (as determined by HUD). Such a project shall be considered eligible low income housing under section 229 of LIHPRHA for purposes of eligibility of residents for enhanced tenant-based assistance. HUD will determine on a case-by-case basis if a flexible subsidy project meets the requirements of section 201(p) concerning the applicability of enhanced vouchers.

Eligible low-income housing and flexible subsidy projects qualifying under section 201(p) are commonly referred to in PIH guidance as ''preservation eligible projects.'' A family is eligible for enhanced voucher assistance in preservation eligible projects only if the resident family is residing in the preservation eligible project on the effective date of prepayment or voluntary termination of mortgage insurance (or the effective date of the transaction in the case of a covered flexible subsidy project), and must be income-eligible on that effective date. Both unassisted and assisted residents may be eligible for enhanced voucher assistance as the result of a preservation prepayment.

Eligibility requirements. In preservation-eligible projects, in order to be eligible for enhanced voucher assistance, the resident family must be either:

A low-income family (including a very low-income family);

A moderate-income elderly or disabled family; or

A moderate-income family residing in a low-vacancy area.

HUD determines whether the project where the owner is prepaying or voluntarily terminating the mortgage insurance is located in a low-vacancy area. A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD. A moderate-income family is a family whose annual income is above 80 percent but does not exceed 95 percent

required notice, the owner may not evict tenants or increase their rent payment until notice has been given and one year elapses per 42 U.S.C. 1437f(c)(8)(B). Families remaining during this period would not get enhanced vouchers because these families are already protected from eviction or rent increase under section 1437f(c)(8)(B). Once the notice has been given and the required year has elapsed, HUD issues enhanced vouchers to any eligible family.

[2] The previous voucher authorities included in 8(t) as currently codified are: The 10th, 11th, and 12th provisos under the ''Preserving Existing Housing Investment'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204; 110 Stat. 2884); the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65; 111 Stat. 1351), or the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276; 112 Stat. 2469); and section 515(c)(3) and (4) of MAHRA, as in effect before October 20, 1999.

of the area median income as determined by HUD. A resident family who does not fall into one of those categories on the effective date of the prepayment or voluntary termination is not eligible for enhanced voucher assistance. (See notice PIH 2001–41 at p. 22).

By agreeing to administer enhanced vouchers for families affected by conversion actions, the PHA does not relinquish its responsibility for screening potentially eligible families or its ability to deny assistance for any grounds allowed or provided by 24 CFR 982.552 [3] and 982.553.[4] The screening of families and decisions to deny admission to the program must be consistent with the PHA policy for screening regular admissions of families from the PHA waiting list. The PHA must provide a family with an opportunity for an informal review if it denies the family admission to the voucher program in accordance with the housing choice voucher regulations.

Voluntary termination of mortgage insurance or prepayment of mortgage on Section 236 projects where Section 236 rent rules remain applicable (decoupling actions). Where an owner voluntarily terminates the mortgage insurance or prepays the Section 236 mortgage in a preservation eligible Section 236 project *and* the rent setting requirements of the Section 236 program are still applicable to the project by the terms of a use agreement, the enhanced voucher rent would be no greater than the Section 236 Basic Rent established in accordance with HUD guidance. (See notice PIH 2001–41 at pp. 23–24.)

Project Based Opt-Outs. An ''opt-out'' refers to the case of a contract for project-based assistance where the owner opts out of, or elects not to renew, an expiring contract. In such a case, enhanced voucher assistance, subject to appropriations, will be offered to income eligible families covered by the expiring contract. The project must consist of 4 or more dwelling units and be covered in whole or part by a contract for project-based assistance. For the family to be eligible in the event of an owner opt-out, the family must be low-income and must be residing in a unit covered by the expiring Section 8 project-based contract on the date the contract expires. The project-based assistance contract must be for one of the following programs:

The new construction or substantial rehabilitation program under section 8(b)(2) of the 1937 Act (as in effect before October 1, 1983);

The property disposition program under Section 8(b) of the 1937 Act;

The loan management assistance program under Section 8(b) of the 1937 Act;

The rent supplement program under section 101 of the Housing and Urban Development Act of 1965, provided that at the same time there is also a Section 8 project-based contract at the same project that is expiring or terminating on the same day and will not be renewed;

Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; or

The moderate rehabilitation program under section 8(e)(2) of the 1937 Act (as in effect before October 1, 1991).

Sections 515 and 524 of MAHRA. Section 515 of MAHRA addresses section 8 renewals and long-term affordability commitments by owners. Sections 515(c)(3) and (4) of MAHRA address expiring project-based section 8 contracts that are renewed with tenant-based assistance. Covered project-based contracts are those listed above. Families living in units covered by the expiring project-based assistance contract where the project is being renewed with tenant-based assistance are eligible for enhanced voucher assistance. In the case of the expiration of a covered Section 8 project-based contract under 515(c) of MAHRA only, all families assisted under the expiring contract are considered income eligible for enhanced voucher assistance.

Section 524(d) of MAHRA, which applies in the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under section 524(a) or (b) of MAHRA (or any other authority), thereby resulting in the expiration of assistance, provides that enhanced vouchers are to be provided to families residing in the project on the date of the expiration of assistance.

Other situations. If the opt-out of the Section 8 project-based contract by an owner occurs after the owner has prepaid the mortgage or voluntarily terminated the mortgage insurance of a preservation-eligible property, families who do not meet the definition of a low-income family may still be eligible to receive an enhanced voucher. In addition to meeting the usual requirement of residing in a project covered by the expiring contract on the date of expiration, the family must have also resided there on the effective date of prepayment and meet the income requirements for enhanced voucher eligibility for residents affected by a preservation prepayment (see the discussion under the heading ''Preservation prepayments'' in this preamble). (See notice PIH 2001–41 at p. 20.)

In a case where the owner has materially violated HUD's program regulations or the condition of the project is not decent, safe, and sanitary, resulting in termination of the assistance to the project, the tenants would not remain in the project and would receive regular Section 8 tenant-based assistance. (See notice PIH 2001–41 at p. 4.)

Questions for public comment. In addition to other relevant issues, HUD is interested in receiving public comments on three specific issues. Responses should reference *specific data to be utilized in the determination and explain the reasoning to support recommendations.*

1. *Low-income area.* How should the vacancy rate for a ''low-vacancy area'' be defined? The low-vacancy area designation, because it can result in assistance being provided to families and individuals that are at the moderate income level, which is higher than the program generally is intended to serve, should be a narrow exception. In addition, the following should be considered:

- Whether the low-vacancy area should be based on a constant vacancy percentage applied universally, or whether it should vary with differing factors, such as area population growth, demand for rental, or any other relevant factors;
- Whether the low-vacancy area definition should be unique to this enhanced voucher program, or should be constant across all HUD programs that use the concept of a low-vacancy area.

2. *Separate enhanced voucher tenant screening.* As proposed, this rule would not revise the regulations concerning discretionary or required tenant screening at §§ 982.307, 982.552 and 982.553. As noted in this preamble, ''The screening of families and decisions to deny admission to the program must be consistent with the PHA policy for screening regular admissions of families from the PHA waiting list.'' HUD requests comment on whether this result is appropriate, or whether, to the contrary, this constitutes an unnecessary ''rescreening'' of tenants.

3. *Right to remain.* Proposed § 982.309(d)(2) states, ''[t]he owner may

[3] Title III, section 327 of the Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, Public Law 109–115; 42 U.S.C. 1437f(d)(1)(B)(iii); 42 U.S.C. 1437f(o)(7)(D)); 42 U.S.C. 13662; and 42 U.S.C. 3535(o).

[4] 42 U.S.C. 13661–13664; 42 U.S.C. 3535(o).

not terminate the tenancy of a family that exercises its right to remain except as provided in § 982.310.'' Section 982.310 includes a variety of provisions under which the owner may terminate tenancy. HUD seeks public comment on whether, in consideration of the right to remain under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)), the exception to the right to remain under § 982.310 (including any specific paragraphs under that section), should be removed, qualified or modified in some way, or made final as stated in this proposed rule.

II. This Proposed Rule

This proposed rule would amend HUD's regulations in 24 CFR part 982 that govern Section 8 Tenant-Based Assistance: Housing Choice Vouchers to codify HUD's policy on enhanced vouchers. Currently, HUD's policy is based on the statutory requirements, and summarized in guidance provided in PIH notices.[5]

Definitions. The proposed rule would add definitions for ''enhanced voucher assistance,'' ''enhanced voucher housing assistance payment'' and ''Eligibility event'' to the definitions in § 982.4. The definitions for ''enhanced voucher assistance'' and ''eligibility event'' essentially reflect the statutory requirements under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)), including the basic characteristics of an enhanced voucher, along with some explanation of what constitutes an eligibility event. The definition of ''enhanced voucher housing assistance payment'' refers to the term as used in § 982.505. Because the rule proposes to revise and reorganize § 982.515, the proposed rule would make technical amendments to the definitions of ''Family rent to owner'' and ''Family share'' to remove the references to specific paragraphs of currently codified § 982.515.

Section 982.4 of this rule cross-references the definition of ''extremely low-income family'' in 24 CFR part 5, subpart F. A general provision of the Consolidated Appropriations Act, 2014, Public Law 113–76, added a statutory definition of ''extremely low-income families'' at 42 U.S.C. 1437a(b)(2), and required that this new definition, which would amend HUD's current regulatory definition, be implemented by HUD via **Federal Register** notice followed by rulemaking with public comment (see Pub. L. 113–76, Division L, Title IV, sections 238 and 243). The implementing notice was published at 79 FR 35940 (June 25, 2014). A rule for public comment including this revision, entitled ''Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,'' was published at 80 FR 423 (January 6, 2015).

Determining adjusted per-unit cost. Section 982.102 governs HUD's determination of costs in allocating budget authority for renewals of expiring funding increments. Under § 982.102(e), as currently codified, HUD determines the adjusted per-unit cost based on data from the PHA's most recent HUD-approved year-end statement. This proposed rule would update § 982.102(e)(1)(i) and (e)(3)(iii) to provide that HUD will use data from the PHA's most recent validated Voucher Management System submission.

Eligibility and Targeting Requirements. The proposed rule would revise § 982.201, which addresses eligibility and targeting requirements, to include additional eligibility criteria (but not targeting requirements, which do not apply to enhanced voucher holders) in § 982.201(b)(1) for enhanced vouchers. As proposed to be amended, § 982.201(b)(1) would provide that eligible families include: Families, regardless of income, residing in projects with a project-based Section 8 contract that has expired and is renewed under section 515(c) of MAHRA and its implementing regulations, which may include families residing in projects under section 515(c)(3) of MAHRA (tenant-based assistance based on a rental assistance assessment plan as provided in section 515(c)(2) of MAHRA) and section 515(c)(4) of MAHRA (enhanced voucher assistance) (See notice PIH 2001–41 at pp. 19–20); low-income families residing in a project where the project-based assistance contract has expired and is not renewed (see section 524(d) of MAHRA, 42 U.S.C. 1437f note); certain low and moderate income families, as well as moderate income elderly or disabled families, where the mortgage insurance is voluntarily terminated or prepaid under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)), or where the project is preserved as affordable housing under 12 U.S.C. 1715z–1a(p), which addresses assistance for troubled multifamily housing projects and provides that ''any project that receives or has received assistance under this section and which is the subject of a transaction under which the project is preserved as affordable housing, as determined by the Secretary, shall be considered eligible low-income housing under section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119) for purposes of eligibility of residents of such project for enhanced voucher assistance provided under section 8(t) of the United States Housing Act of 1937 . . .''.

PHA Approval of Assisted Tenancy. The proposed rule would revise § 982.305(a)(5) to provide for an exception to the 40 percent of monthly adjusted income limit at the time the family initially receives HCV assistance, in the case of enhanced voucher assistance. (See notice PIH 2001–41 at p. 8.)

Term of Assisted Tenancy. The proposed rule would amend § 982.309 to add a new paragraph (d) that would provide that, absent repeated lease violation or other good cause, a family that receives an enhanced voucher has a right to remain in the project in which the family qualified for the voucher at the time of the eligibility event. This new paragraph (d) would implement the statutory requirement at section 8(t)(1)(B) of the 1937 Act (42 U.S.C. 1437f(t)(1)(B)), which provides that the assisted family may elect to remain in the same project in which the family was residing at the time of the eligibility event, which has been HUD's policy to date. HUD plans to issue a tenancy addendum to be incorporated into the owner's lease to reflect this right to remain under this new paragraph.

Subsidy Standards. The proposed rule would revise §§ 982.402(c) and (d) to incorporate cross-references to the proposed new enhanced voucher rules, particularly references to oversized units and the payment standard.

Voucher Tenancy: Payment Standard in Restructured Multifamily Housing or in Housing Converted Under Certain Conversion Actions. The proposed rule would revise § 982.504, concerning the payment standard for a family in a restructured subsidized multifamily project where tenant-based assistance is provided to the family pursuant to 24 CFR 402.421 when HUD has approved a restructuring plan and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such family. This section would also apply to conversion actions under other circumstances. Specifically, these would be owner opt-outs or non-

[5] PIH 2001–41 on Enhanced and Regular Housing Choice Vouchers for Housing Conversion Actions; PIH 2010–18 on PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program—Comparable Unassisted Units; PIH 2011–46 on Determination of Rent Reasonableness in the Housing Choice Voucher Program; and PIH 2016–02 on Enhanced Voucher Requirements for Over-housed Families, all at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices.*

renewals of Section 8 project-based contracts; owner prepayments of mortgages or voluntary termination of mortgage insurance on preservation-eligible properties; or where HUD takes an enforcement action against the owner, which in some cases may result in the family being eligible for the enhanced voucher payment standard. (See notice PIH 2001–41 at p. 1.) The payment standard as proposed in § 982.504(b)(2) is the gross rent for the family's unit, that is, the rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities. The rent must be reasonable as determined by the PHA under § 982.507.

The proposed changes would comply with MAHRA regarding projects that have a project-based assistance contract where the project is eligible for restructuring, the assistance is terminated, the contract is renewed as tenant based assistance, and the tenants who remain are eligible for enhanced vouchers (see section 515(c) of MAHRA) and, through reorganization of § 982.504, address housing converted under certain conversion actions, which result in families receiving enhanced vouchers. The proposed rule would revise paragraphs (a) and (b) of this section to comply with MAHRA. The payment standard for a family living in housing that has undergone certain other conversion actions would largely be addressed in a new paragraph (c). The heading of this section is also revised to clarify that it also addresses housing converted under certain conversion actions.

Section 982.504(a) would establish the events as a result of which families are eligible for enhanced voucher assistance.

New paragraph (b)(2) would establish the enhanced voucher payment standard, which would be the gross rent which must be reasonable, as determined by the PHA, based on comparable rents of private, unassisted units in the local area (comparability would be further defined in § 982.507(b) as proposed to be revised by this rule).

New paragraph (b)(3) would provide that if the rent is increased for an enhanced voucher family, the new gross rent shall be the payment standard for the unit provided such rent is determined reasonable.

New paragraph (b)(4) would codify HUD's policy regarding enhanced voucher families in oversized units (that is, a family living in a unit of a bedroom size greater than what the family qualifies for, as determined by the PHA under current § 982.402, which addresses subsidy standards). Essentially, if the family is over-housed and wishes to remain at the project with enhanced voucher assistance, and an appropriate-sized unit becomes available, the family must move to the appropriate sized unit within 30 days. If the family wishes to stay in the larger unit, their assistance payment will be based on a regular voucher for the appropriate-sized unit and the family will have to pay the remainder of the gross rent. If there is no appropriate-sized unit, the family may remain in the larger unit at the enhanced voucher payment standard for the larger unit size until an appropriate-sized unit or smaller unit that is not smaller than the size unit for which the family qualifies under the PHA's subsidy standards becomes available, in which case the family must move to such unit. Similarly, if a family becomes over-housed due to a change in family size during the enhanced voucher tenancy, the family may remain in the unit at the enhanced voucher payment standard for the larger unit size until an appropriate-sized or smaller sized unit, as stated in the previous sentence becomes available, in which case the family must move within 30 days.

This proposed rule would add § 982.504(b)(4)(vi), which requires the owner of an assisted project to immediately inform the PHA and the over-housed family when an appropriate size unit or smaller size unit as stated in the previous paragraph becomes available in the project. If the owner does not do so, the owner can be subject to an enforcement action (see notice PIH 2016–02) . The rent to owner can be reduced to the reasonable rent for the appropriate or smaller size unit.

Rent to Owner: Reasonable Rent. The proposed rule would amend paragraph (b) of § 982.507 to clarify what is meant by assisted units for comparability purposes. The proposed rule would provide that assisted units are units that are assisted under a Federal, State, or local government program, including Low-Income Housing Tax Credit assistance, and rent-controlled or restricted units except where the restricting law or court order applies to voucher participants. In these cases, the units are not used in the comparability analysis, because they are ''assisted'' units (§ 982.507(b)(1)).

Proposed § 982.507(b)(2) would also clarify what is meant by assisted units for comparability purposes for projects that undergo a housing conversion action. The proposed rule provides that assisted units include units in a property undergoing a housing conversion action occupied by tenants who, on the date of the eligibility event, do not receive vouchers and where the owner chooses to continue charging below market rents to those families by offering lower rents, rent concessions, or other assistance to those families. (See notice PIH 2010–18 at pp. 2–3, 2011–46 at pp. 1–2.) The comparability analysis performed by the PHA must include the location, quality, size, type, and age of the unit and any amenities.

Proposed § 982.507(b)(3) would apply to unassisted units, that is, those not receiving any form of Federal, State, or local government assistance, but not to projects where the owner simply decides to charge below market rents. Rents for unassisted units must be considered when determining comparability under (b)(4).

Proposed § 982.507(b)(4) provides for comparability analysis, and is similar to currently codified § 982.507(b). The PHA must consider the location, quality, size, unit type, and age of the contract unit; and any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

Decoupling transactions. Section 982.511 of this proposed rule would add specificity regarding decoupling transactions. Section 236 of the National Housing Act, 12 U.S.C 1715z–1, authorizes decoupling transactions, where, although the mortgage under section 236 (mortgage insurance for rental or cooperative housing for low income families) is prepaid or refinanced, interest reduction payments (which reduce debt service) are retained and continued ''if the project owner enters into such binding commitments as the Secretary may require'' to continue to operate the project as low-income housing. In these decoupling transactions the 236 rent rules remain in effect by the terms of a use agreement. As such, where an owner voluntarily terminates the mortgage insurance on a Section 236 project or prepays the Section 236 mortgage in a preservation eligible Section 236 project, and the rent setting requirements of the Section 236 program are still applicable to the project, the enhanced voucher rent would be no greater than the HUD-approved basic rent for the 236 program.

Family Share: Family Responsibility. The proposed rule would amend § 982.515 to add a new paragraph specifying that the current prohibition in § 982.515 against the PHA using housing assistance payments or other program funds, including any administrative fee reserve, to pay the family share applies. The enhanced voucher housing assistance payment would be discussed in new § 982.505(e). As provided in section 8(t) of the 1937

Act (42 U.S.C. 1437f(t)), a family that was previously assisted under a project-based Section 8 contract on the date of the eligibility event, shall, under the enhanced voucher, pay no less than the dollar amount of the total tenant payment on that date. Similarly, a family living in the project that was assisted under the regular voucher program, and not living in a unit assisted under the project based contract, shall, with an enhanced voucher, pay no less than the dollar amount of the family share of rent and utilities on the date of the eligibility event.

A family residing in the project, but living in an unassisted unit (*i.e.,* not receiving assistance under either the Section 8 project based contract nor receiving assistance under the regular voucher program), if eligible for enhanced voucher assistance, shall pay no less than the dollar amount of the gross rent on the date of the eligibility event (minimum rent). A family assisted under the enhanced voucher program shall pay the enhanced voucher minimum rent, notwithstanding any other requirement of the voucher program, even if it means the family pays more than 40 percent of their adjusted income for rent, an amount which is prohibited for initial tenancy under the housing choice voucher program (see §§ 982.305(a)(5); 982.508, which would be revised to clarify this point in this proposed rule). This can occur, for example, if a family was paying for rent more than 40 percent of their adjusted income on the date of the eligibility event.

The proposed rule would provide under § 982.518(d) that if the gross income of the family declines significantly, the enhanced voucher minimum rent shall be revised to an amount calculated based on a percentage of current monthly adjusted income, which is the greater of 30 percent or the percentage of monthly adjusted income the family was paying on the date of the eligibility event. Once the minimum rent is changed to a percentage of income, it remains that way unless and until the family's income increases to an amount that the family's enhanced voucher minimum rent established using a percentage of income calculation would require the assisted family to pay an amount that is more than the greater of the family's original enhanced voucher minimum rent payment (established as of the date of the eligibility event) or 30 percent of the family's adjusted income. At such time, the family's enhanced voucher minimum rent shall be determined by the PHA in accordance with § 982.515(b)(1) using the dollar amount of the family's original enhanced voucher minimum rent. In no circumstance shall the family's enhanced voucher minimum rent be less than the amount established as of the date of the eligibility event.

Section 982.518 is revised to include provisions regarding the enhanced voucher minimum rent. The minimum rent under the enhanced voucher would be the amount of rent the family was paying on the date of the eligibility event even if it is more than the 40 percent statutory limitation on the amount of adjusted income a family can initially pay under the voucher program. A family that was residing in a project that has undergone a preservation prepayment on the date of the eligibility event, shall, under the enhanced voucher, pay no less than the dollar amount of the gross rent on the date of the eligibility event (minimum rent). Similarly, a family living in the preservation eligible project on the date of the eligibility event with assistance under the regular voucher program may receive enhanced voucher assistance and shall pay no less than the enhanced voucher minimum rent

Regular Tenancy: How to Calculate Housing Assistance Payment. The proposed rule would address the calculation of the enhanced voucher housing assistance payment in proposed new § 982.505(e), and would add a new § 982.518 to address the enhanced voucher minimum rent. By codifying existing policy and procedures concerning enhanced vouchers, HUD provides PHAs, eligible families, and interested members of the public with a more convenient location to find these requirements.

Through this proposed rule, HUD is not making significant changes to the treatment of enhanced vouchers as has been carried out to date. Much of what is discussed in this preamble is based on statutory requirements and current HUD policy, but HUD welcomes comment on where such requirements may need further clarification or elaboration.

III. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule codifies HUD's existing policy on eligibility for and requirements pertaining to enhanced vouchers, which are largely based on statutory requirements, and with which public housing agencies area already familiar. As noted in the preamble, this proposed rule is not significantly revising treatment to date of enhanced vouchers. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing (other than tenant-based assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law

within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 982 is 14.871.

List of Subjects in 24 CFR 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 1. The authority statement for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 2. Revise § 982.1 to read as follows:

§ 982.1 Programs: purpose and structure.

(a) *General description.* In the HUD Housing Choice Voucher Program (HCV Program), HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. The HCV Program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

(b) *Tenant-based and project-based assistance.* HCV Program assistance may be ''tenant-based'' or ''project-based.'' In the project-based program, rental assistance is paid for families who live in specific housing developments or units (see 24 CFR part 983). With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs an HCV Program.

(c) *Tenant-based assistance.* (1) To receive tenant-based assistance, the family selects a suitable unit. A PHA may not approve a tenancy unless the unit meets program housing quality standards, and the rent is reasonable.

(2) After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

(3) The rental subsidy is determined by a formula. The subsidy is based on a local ''payment standard'' that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

■ 3. Revise § 982.2 to read as follows:

§ 982.2 Applicability.

Part 982 is a unified statement of program requirements for the tenant-based HCV Program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

■ 4. Amend § 982.4 to:

■ (a) Revise paragraph (a)(2);

■ (b) In paragraph (b), to add the definitions of ''Eligibility event,'' ''Enhanced voucher assistance,'' and ''Enhanced voucher housing assistance payment'' in alphabetical order; to remove the definition of ''Merger date,'' and to revise the definitions of ''Family rent to owner'' and ''Family share,'' to read as follows:

§ 982.4 Definitions.

(a) * * *

(2) *Definitions concerning family income and rent.* The terms ''adjusted income,'' ''annual income,'' ''extremely low income family,'' ''total tenant payment,'' ''utility allowance,'' and ''welfare assistance'' are defined in part 5, subpart F of this title.

(b) * * *

* * * * *

Eligibility event. A housing conversion action as to which Federal law requires the provision of enhanced voucher assistance to affected tenants who are eligible for such assistance, subject to the availability of appropriations. Eligibility events include the prepayment of the mortgage or the voluntary termination of the mortgage insurance contract by the owner (such as a preservation pre-payment under the Low-Income Housing Preservation and Resident Homeownership Act, 12 U.S.C. 4101 *et seq.* (LIHPRA)); the termination or expiration of the Section 8 project-based HAP contract (owner opt-out) (other than Project Based Vouchers, and Section 8 Moderate Rehabilitation SRO HAP contracts as authorized by title IV of the McKinney-Vento Homeless Assistance Act)); or a transaction that preserves the project as affordable housing under sections 515(c)(3) and (4) and 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) (MAHRA), and section 201(p) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(p)(Flexible Subsidy Program)). In some cases, enforcement actions by HUD may be eligibility events.

Enhanced voucher assistance. Rental assistance that is authorized under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)) and provided to families residing in certain projects on the date of an eligibility event who elect to remain in the project. The characteristics of enhanced voucher assistance are:

(1) The family pays as their family share no less than the amount the family was paying for rent on the date of the eligibility event; and

(2) If, while the family continues to reside in the project, the rent for the project exceeds the regular Section 8 tenant-based payment standard, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the gross rent for the dwelling unit, subject to the limitation of reasonableness in relation to rents of comparable unassisted units in the local private market (section 8(o)(10)(A) of the 1937 Act (42 U.S.C. 1437f(o)(10)(A)) and other limits imposed by HUD. Families who receive enhanced vouchers are entitled to this potentially higher payment standard only as long as they remain in the unit.

Enhanced voucher housing assistance payment. The gross rent for a unit occupied by a family receiving enhanced voucher assistance minus the higher of the enhanced voucher minimum rent or the total tenant payment.

* * * * *

Family rent to owner. In the HCV Program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515.

* * * * *

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515.

* * * * *

■ 5. Amend § 982.102 to:

■ (a) Revise paragraph (e)(1)(i) to read as follows;

■ (b) Revise paragraph (e)(3)(iii) to read as follows:

§ 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

* * * * *

(e) * * *

(1) *Step 1: Determining monthly program expenditure—(i) Use of most*

recent validated data submitted to the Voucher Management System. HUD will determine the PHA's monthly per unit program expenditure for the HCV Program (including project-based assistance) under the consolidated ACC with HUD using data from the PHA's most recent validated Voucher Management System submission.

* * *

(3) * * *

(iii) *Use of annual adjustment factors in effect subsequent to most recent validated data submitted to the Voucher Management System.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent validated data submitted to the Voucher Management System and the time of the processing of the contract funding increment to be renewed.

* * * * *

* * *

■ 6. Amend § 982.152 to remove paragraph (c) and redesignate paragraph (d) as (c).

■ 7. Amend § 982.201 to:

■ (a) Revise paragraph (b)(1)(ii) to read as follows; and

■ (b) Add paragraphs (b)(1)(vii) and (viii).

The revision and addition read as follows:

§ 982.201 Eligibility and Targeting.

* * * * *

(b) * * *

(1) * * *

(ii) A low-income family that is ''continuously assisted'' under the 1937 Housing Act (which includes a low-income family residing in an assisted unit that qualifies for enhanced voucher assistance due to the expiration of a section 8 project-based HAP contract pursuant to section 524(d) of MAHRA);

* * * * *

(vii) A family (regardless of income) residing in an assisted unit who qualifies for enhanced voucher assistance due to the expiration of the Section 8 project-based HAP contract and its renewal pursuant to section 515(c) of MAHRA and the implementing regulation; and

(viii) A low-income family, or a moderate-income family residing in a low-vacancy area, or a moderate-income elderly or disabled family who qualifies for enhanced voucher assistance due to the prepayment of the mortgage or the voluntary termination of the mortgage insurance contract pursuant to sections 223(f) and 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) ((12 U.S.C. 4113(f)) and 12 U.S.C. 4119, respectively, or a transaction under which the project is preserved as affordable housing pursuant to section 201(p) of the Housing and Community Development Amendments of 1978, (12 U.S.C. 1715z–1a(p)).

* * * * *

■ 8. Amend § 982.305 to revise paragraph (a)(5) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

(a) * * *

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income, except in the case where the family is eligible for, and is receiving, enhanced voucher assistance.

* * * * *

■ 9. Amend § 982.309 to add paragraph (d) to read as follows:

§ 982.309 Term of assisted tenancy.

* * * * *

(d) *Right to remain for enhanced voucher tenancy.* (1) A family that receives an enhanced voucher has the right to remain in the project in which the family qualified for enhanced voucher assistance at the time of the eligibility event for as long as the units are used for rental housing and are otherwise eligible for voucher assistance.

(2) The owner may not terminate the tenancy of a family that exercises its right to remain except as provided in § 982.310.

■ 10. Amend § 982.402 to revise paragraphs (c) and (d) to read as follows:

§ 982.402 Subsidy standards.

* * * * *

(c) *Effect of family unit size on maximum subsidy in HCV Program.* The family unit size as determined for a family under the PHA subsidy standard is used to determine the maximum subsidy for a family assisted in the HCV Program. The PHA establishes payment standards by number of bedrooms. Except for an enhanced voucher family (see § 982.504(b)), the payment standard amount for a family shall be the lower of:

(1) The payment standard amount for the family unit size; or

(2) The payment standard amount for the unit size of the unit leased by the family.

(3) HCV Program. For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standard for the family must be the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size leased by the family.

(d) *Size of unit occupied by family.* (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit shall meet the applicable HQS space requirements.

(2) Except for an enhanced voucher family (see § 982.504), the family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size, provided the family would not be required to initially pay more than 40 percent of adjusted monthly income as the family share. However, utility allowances must follow § 982.517(d).

■ 11. Revise § 982.504 to read as follows:

§ 982.504 Payment standard for family in restructured subsidized multifamily project, or in housing converted under certain conversion actions.

(a) *Restructured projects.* This section applies to restructured subsidized multifamily projects where HCV assistance is provided to a family pursuant to 24 CFR 401.421 when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such family. This section also applies to conversion actions involving:

(1) Owner opt-outs or owner non-renewal of a section 8 project-based contract;

(2) Prepayments of the owner's mortgage;

(3) Voluntary terminations of mortgage insurance for a preservation-eligible property; and

(4) Certain HUD actions against the owner, in cases where such actions result in a family being eligible for the enhanced voucher payment standard.

(b) *Payment standard for family in restructured subsidized multifamily project and in housing converted under certain housing conversion actions.* (1) *Enhanced voucher assistance.* This paragraph (b) of this section applies to families receiving enhanced voucher assistance under the HCV Program.

(i) Enhanced voucher assistance is provided to an eligible family as a result of an eligibility event.

(ii) In order to receive enhanced voucher assistance, an eligible family must remain in the project in which the family qualified for enhanced voucher assistance and lease a unit for which the family qualifies in accordance with HUD guidance;

(iii) If the family chooses to move from the project in which the family qualified for enhanced voucher assistance, the payment standard is determined in accordance with § 982.503. If the family moves from the project at any time, this § 982.504 does not apply.

(2) *Enhanced voucher payment standard.* The payment standard for a family that remains in the project in which they qualified for enhanced voucher assistance at the time of the eligibility event is the gross rent (rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities) for the family's unit. The rent must be reasonable as determined by the PHA in accordance with § 982.507.

(3) *Subsequent rent increases.* If an owner subsequently raises the rent for an enhanced voucher family in accordance with the lease, State and local law, and HCV Program regulations (including rent reasonableness requirements under § 982.507), the new gross rent shall be the payment standard for the unit.

(4) *Enhanced voucher family residing in an oversized unit.* (i) If the bedroom size of the family's unit exceeds the number of bedrooms for which the family qualifies in accordance with § 982.402, the family is residing in an oversized unit, and the family is an over-housed family.

(ii) If the family wishes to remain at the project with enhanced voucher assistance, the over-housed family must move to an appropriate size unit in the project (the unit size is the same size as the number of bedrooms for which the family qualifies under the PHA subsidy standards) if one is available and the unit must meet all HCV Program requirements. If the family moves to the appropriate size unit, the payment standard for that unit is determined in accordance with paragraph (b)(2) of this section.

(iii) If there are no appropriate size units available at the project at the time of the housing conversion action, the family may continue to reside in the oversized unit and the payment standard shall be determined based on the gross rent for the oversized unit in accordance with paragraph (b)(2) of this section except that if an appropriate size unit is not available or does not physically exist at the project, but a unit is available that is smaller than the family's current unit but not smaller than the appropriate size unit for which the family qualifies under the PHA subsidy standards, the family must move to the smaller bedroom size unit within 30 days, and the payment standard shall be determined based on the gross rent for the smaller bedroom size unit in accordance with paragraph (b)(2) of this section.

(iv) If an appropriate size unit or smaller bedroom size unit as described in paragraph (b)(4)(iii) subsequently becomes available, the family residing in the oversized unit must move to the appropriate size unit or the smaller bedroom size unit as described in paragraph (b)(4)(iii), within 30 days, and the payment standard shall be determined based on the gross rent for the appropriate bedroom size or the smaller bedroom size unit in accordance with paragraph (b)(2) of this section.

(v) If the family refuses to move to an appropriate size unit or a smaller bedroom size unit as described in paragraph (b)(4)(iii) of this section and one becomes available at the project, the payment standard is determined in accordance with § 982.402(c)(1), that is, the payment standard amount for the family unit size for a regular voucher holder under § 982.503.

(vi) When an appropriate size unit or a smaller size unit as described in paragraph (b)(4)(iii) of this section becomes available in the project, the owner must immediately inform the PHA and the family. If the owner leases an appropriate size unit or a smaller bedroom size unit as described in paragraph (b)(4)(iii) without notifying the PHA and the over-housed family, an enforcement action may be taken against the owner and the PHA shall calculate the housing assistance payment on behalf of the over-housed family in accordance with 982.505(b) and the rent to owner shall not exceed the reasonable rent for the appropriate unit size or the smaller bedroom size unit as described in paragraph (b)(4)(iii). The family share is determined in accordance with § 982.515.

(vii) If a decrease in family size subsequently occurs during an enhanced voucher tenancy, causing the family to occupy an oversized unit, the payment standard for the unit is calculated based on the gross rent for the oversized unit and in accordance with paragraph (b)(2) of this section until such time an appropriate size unit, or a smaller size unit as described in paragraph (b)(4)(iii) of this section, becomes available.

■ 12. Amend § 982.505 to:

■ (a) Revise paragraph (b);

■ (b) Revise paragraphs (c)(1) introductory text and (c)(2) to read as follows; and

■ (c) Add paragraph (e).

The revisions and addition read as follows:

§ 982.505 How to calculate housing assistance payment.

* * * * *

(b) *Amount of monthly housing assistance payment.* (1) *Regular voucher tenancy.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(i) The payment standard for the family minus the total tenant payment; or

(ii) The gross rent minus the total tenant payment.

(2) *Enhanced voucher tenancy.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the enhanced voucher payment standard (see § 982.504(b)(2)) minus the higher of:

(i) The total tenant payment; or

(ii) The enhanced voucher minimum rent as determined in accordance with § 982.518.

(c) *Payment standard for family.* (1) Except as provided in § 982.504(b), the payment standard for the family is the lower of:

* * * * *

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. Where § 982.504(b) does not apply, the payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

* * * * *

(e) *Enhanced voucher housing assistance payment.* Regardless of whether the owner's gross rent after the eligibility event exceeds the normally applicable PHA voucher payment standard amount, the housing assistance payment for a family receiving enhanced voucher assistance is equal to the gross rent for the unit (provided such rent is reasonable) minus the higher of total tenant payment or the enhanced voucher minimum rent (see § 982.518).

■ 13. Amend § 982.507 to revise paragraph (b), to read as follows:

§ 982.507 Rent to owner: Reasonable rent.

* * * * *

(b) *Comparability*—(1) *Assisted units.* Assisted units include units that are assisted under a Federal, State, or local government program, including Low-

Income Housing Tax Credit assistance. Units where rents and/or rent increases are controlled or restricted by law or a court order are assisted units for purposes of determining rent comparability except in the case where such law or court order applies to HCV Program participants. With the exception of units described in paragraph (b)(2) of this section, assisted units do not include units for which the owner has simply decided to charge rents that are below what other tenants are charged and below what the market could actually bear. Rents for assisted units must not be considered when determining comparability.

(2) *Assisted units in projects that undergo a housing conversion action.* Units in a property undergoing a housing conversion action occupied by tenants who, on the date of the eligibility event, do not receive vouchers are considered assisted if the owner of the project continues to offer and accept below market rent or offers other rent concessions to the impacted families. Owners, who choose to charge such lower rents to impacted families, must provide written notification to the PHA and other required documentation in accordance with HUD guidance.

(3) *Unassisted units.* Unassisted units do not receive any form of Federal, State, or local government assistance including units where rents and/or rent increases are controlled or restricted by law or a court order. Units for which the owner has simply decided to charge rents that are below what other tenants are charged and below what the market could actually bear are unassisted for purposes of determining comparability. Rents for unassisted units must be considered when determining comparability in accordance with paragraph (b)(4) of this section.

(4) *Comparability analysis.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider factors such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

* * * * *

■ 14. Revise § 982.508 to read as follows:

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, except in a case where the family is eligible for and receives enhanced voucher assistance, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the date that a PHA issues a voucher to the family.

■ 15. Add § 982.511 to read as follows:

§ 982.511 Rent to Owner: Decoupling Transactions.

(a) In decoupling transactions in the section 236 program, authorized under section 236 of the National Housing Act, 12 U.S.C. 1715z–1, the rent to owner shall be no greater than the HUD-approved basic rent for the section 236 program.

(b) The rent to owner shall be determined in accordance with section 236 program requirements. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see § 982.309).

■ 16. Revise § 982.515 to read as follows:

§ 982.515 Family share: Family responsibility.

(a) *Regular and enhanced voucher tenancy.* (1) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(2) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(3) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

(b) *Enhanced voucher tenancy and family responsibility.* The prohibition in § 982.515(a)(3) also applies to enhanced vouchers.

■ 17. Add § 982.518 to read as follows:

§ 982.518 Enhanced voucher minimum rent.

(a) A family receiving enhanced voucher assistance shall pay for rent no less than the rent the family was paying on the date of the eligibility event, as follows:

(1) A family previously assisted under a Section 8 project-based HAP contract shall pay no less than the dollar amount of the total tenant payment on the date of the eligibility event;

(2) A family previously assisted under the HCV Program shall pay no less than the dollar amount of the family share of rent and utilities on the date of the eligibility event. The voucher family may choose not to accept the enhanced voucher assistance, in which case all the regular voucher rules apply, regardless of whether the family chooses to remain at the property;

(3) A family not previously assisted under a Section 8 project-based or tenant-based HAP contract shall pay no less than the dollar amount of the gross rent the family was paying on the date of the eligibility event. The PHA utility allowance is used to calculate the gross rent on the date of the eligibility event if all utilities were not included in the rent.

(b) A family receiving enhanced voucher assistance shall pay the enhanced voucher minimum rent, notwithstanding any other requirement of the HCV Program. For example, if the enhanced voucher minimum rent exceeds 40 percent of the family's monthly adjusted income, a family shall still pay at least the enhanced voucher minimum rent, and the restriction on the initial family contribution under § 982.508 is not applicable.

(c) The enhanced voucher minimum rent requirement remains in effect for a family as long as the family remains at the property in which they qualified for enhanced voucher assistance, but may be revised in accordance with paragraph (d) of this section.

(d) If the gross income of the family receiving enhanced voucher assistance subsequently declines to a significant extent, in accordance with HUD guidance, the enhanced voucher minimum rent shall be revised to an amount calculated based on a percentage of current monthly adjusted income, provided that:

(1) The percentage used in this calculation is the greatest of: 30 percent of monthly adjusted income; or the percentage of monthly adjusted income paid by the family for rent (including the utility allowance for any tenant-paid utilities) on the date of the eligibility event;

(2) After the minimum rent is changed from a dollar amount to a percentage of income calculation, the enhanced voucher minimum rent for the family remains that specific percentage of income and will not revert to a dollar amount, unless and until the family's income increases to an amount whereby the family's enhanced voucher minimum rent established by a percentage of income calculation would require the assisted family to pay an amount equaling more than the greater

of the family's original enhanced voucher minimum rent payment (established as of the date of the eligibility event) or 30 percent of the family's adjusted income based on such increase. At such time, the family's enhanced voucher minimum rent shall be determined by the PHA using the dollar amount of the family's original enhanced voucher minimum rent. The enhanced voucher holder's family share shall be determined in accordance with § 982.515(a). In no circumstance shall the family's enhanced voucher minimum rent be less than the amount established as of the date of the eligibility event.

Dated: August 29, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary, Office of Public and Indian Housing.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AP32

Loan Guaranty Vendee Loan Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) regulations to establish reasonable fees that VA may charge in connection with the origination and servicing of vendee loans made by VA. Fees proposed in this rulemaking are consistent with those charged in the private mortgage industry, and such fees would help VA to ensure the sustainability of this vendee loan program. The loans that would be subject to the fees are not veterans' benefits. This rule would also ensure that all direct and vendee loans made by the Secretary are safe harbor qualified mortgages.

DATES: Comments must be received by VA on or before December 27, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP32—Loan Guaranty Vendee Loan Fees.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Andrew Trevayne, Assistant Director for Loan and Property Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–8795. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document proposes to amend VA regulations to establish reasonable fees in connection with loans made by VA, commonly referred to as vendee loans. The proposed fees associated with vendee loans are standard in the mortgage industry. The vendee loans that would be subject to the fees are not veterans' benefits and are available to any purchasers, including investors, who qualify for the loan.

Specifically, this rulemaking would permit VA to establish a fee to help cover costs associated with loan origination. The proposed rule would also permit certain reasonable fees to be charged following loan origination, during loan servicing. Fees permitted would be those charged for ad hoc services performed at the borrower's request or for the borrower's benefit, as well as standard fees specified in loan instruments. Lastly, third-party fees, those not charged by VA, would be included in this proposed rule solely to clarify for borrowers the various costs that a borrower may incur when obtaining a vendee loan.

Vendee Loans

When a holder forecloses a VA-guaranteed loan, the holder has the option, pursuant to 38 U.S.C. 3732 and 3720, of conveying the foreclosed property to the Secretary of Veterans Affairs (the Secretary). For properties VA acquires this way, VA sells them as a salvage operation and deposits the sales proceeds into the Veterans Housing Benefit Program Fund (VHBPF), as required by 38 U.S.C. 3722, to help offset the housing operation costs of the Home Loan Guaranty Program.

In addition to selling properties as part of the salvage operation, the Secretary has authority under 38 U.S.C. 3720 and 3733 to finance the sales upon such terms as the Secretary determines reasonable. VA refers to loans made pursuant to these provisions as vendee loans. The loans are not classified as veterans' benefits and are available to any purchaser VA determines creditworthy and whose bid is awarded a sales contract. Purchasers can be individuals or corporations, and the properties can be purchased as owner-occupied residences or as investments. Additionally, the Secretary may make vendee loans to certain entities pursuant to 38 U.S.C. 2041 for the purpose of assisting homeless veterans and their families acquire shelter.

Under 38 U.S.C. 3733(a)(4), vendee loans may generally be made for up to 95 percent of the purchase price of the property. A vendee loan may exceed 95 percent of the purchase price to the extent the Secretary determines necessary to competitively market the property. A vendee loan may also exceed 95 percent of the purchase price in instances where the Secretary includes, as part of the vendee loan, an amount to be used for the purpose of rehabilitating such property. Additionally, 38 U.S.C. 3733(a)(6) provides that the Secretary shall make a vendee loan at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent the Secretary determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and solvency of the VHBPF. These provisions demonstrate that this program is to be competitively marketed to borrowers so long as it is financially sustainable. In fiscal years (FYs) 2011 and 2012, the most recent period when VA made direct loans, VA sold, on average, 175 real-estate owned (REO) properties per month with vendee financing, with an average loan amount of $114,925.

Vendee financing is not a veterans' benefit; rather, it is a competitive lending program with the primary goal of providing financing to help VA dispose of its REO properties. Vendee loans enable VA to sell more of its properties and to sell them quicker. Nevertheless, this program helps veterans by contributing to the long-term viability of the VHBPF, as the principal and interest resulting from repayment of vendee loans are deposited into the VHBPF to help offset the housing operation costs of the Home Loan Guaranty Program.

Authority for Fees

Section 3720 of title 38 U.S.C. states that the Secretary may purchase property upon such terms and for such prices as the Secretary determines to be reasonable, and similarly sell, at public or private sale, any such property. It also authorizes the Secretary to otherwise deal with any property acquired or held pursuant to chapter 37 of title 38, U.S.C.

Section 3720 authorizes the Secretary to sell REO properties upon such terms and for such prices as the Secretary determines reasonable. See 38 U.S.C. 3720(a). Section 3720 further authorizes the Secretary to exercise this discretion notwithstanding any other provision of law. Given the common industry practice of including fees when negotiating the terms and prices of real estate transactions, and for other reasons explained below, the Secretary has determined that it is reasonable to negotiate fees in the terms and prices of any sale of the Secretary's REO properties. The specific types of allowable fees will be explained in-depth later in this preamble.

VA considered alternatives to charging fees. One option was to increase the sales prices of properties to account for the funds that fees would generate. VA decided, however, that increasing sales prices might extend the time that VA must hold properties before selling them. This would also increase costs for taxpayers, rather than the small population of borrowers enjoying the advantages of vendee loans. VA also considered adjusting interest rates, but as explained earlier, Congress has established a preference for lower-than-market interest rates in order to market properties competitively. See 38 U.S.C. 3733(a)(6). Consequently, VA believes that having the flexibility to negotiate fees is the most fiscally sound way to protect the integrity of the VHBPF and ensure that taxpayers who do not participate in the vendee program do not unfairly bear the burden of its costs.

All origination-related fees and post-origination fees proposed under this rule will be deposited into the VHBPF. Under 38 U.S.C. 3722, amounts paid into the VHBPF under section 3729 or any other provision of law or regulation established by the Secretary imposing fees on persons or other entities constitute assets of the VHBPF. See 38 U.S.C. 3722(c)(2). These fees would be designated to the proper account as required under the Federal Credit Reform Act of 1990. See 2 U.S.C. 661, *et seq.*

The Proposed Rule

To help ensure that VA's REO portfolio is administered in a cost-effective manner, VA is proposing to authorize certain reasonable fees in connection with the origination and post-origination servicing of vendee loans. The proposed fees would prevent against windfalls to the small population of vendee borrowers by ensuring that they, rather than the taxpayers at-large, pay for the unique advantages of vendee financing. The types of fees proposed are standard in the lending industry, and as such, would not significantly affect the program's competitiveness.

In addition to the reasonable fees proposed herein, borrowers obtaining vendee financing may be required to pay certain third-party fees. Third-party fees are collected on behalf of, or payable to, persons other than the Secretary. These include, for instance, recording fees, force-placed insurance premiums, and inspection fees. VA does not control these third-party fees, as they are not collected on behalf of the Secretary. VA is identifying them in this proposed rule to help participants more fully understand the types of expenses that typically could affect borrowers.

Section 36.4500 Applicability and Qualified Mortgage Status

VA proposes to add § 36.4500(e) to clarify the applicability of the sections proposed under this rulemaking. It would state that proposed §§ 36.4528, 36.4529, and 36.4530 would be applicable to all vendee loans.

VA also proposes to amend paragraph (c)(2), regarding which vendee loans are qualified mortgages. The purpose and effects of this proposed change are explained later in this preamble in the section on safe harbor qualified mortgages.

Section 36.4501 Definitions

VA proposes to update the authority citation for the definition of vendee loan, as provided in § 36.4501. The authority citation currently includes 38 U.S.C. 3720 and 3733. VA proposes to add 38 U.S.C. 2041 to this citation. This change would have no substantive effect on vendee loans but would merely ensure that the authority citation for the definition of vendee loans fully reflects the authorities under which the Secretary may make these loans.

VA also proposes to clarify existing policy with regard to vendee loan terms. The rule would state specifically that the terms of a vendee loan (*e.g.,* amount of down payment; amortization term; whether to escrow taxes, insurance premiums, or homeowners' association dues; fees etc.) are negotiated between the Secretary and the borrower on a case-by-case basis, subject to the requirements of 38 U.S.C. 2041 or 3733. The terms may vary depending on, among other factors, the creditworthiness of the buyer/borrower and the purpose of the realty purchase—investment versus residence. Except for the addition of the Secretary's discretion to negotiate fees, this is not a substantive change. VA would also state that the terms related to allowable fees are subject to proposed §§ 36.4528 through 36.4530 of this part.

In addition, the rule would add a new definition for safe harbor qualified mortgage. The definition is consistent with that in the guaranteed loan program. See 38 CFR 36.4300(b)(1). It is necessary to add the definition to clarify the applicability of safe harbor provisions to all of VA's direct loan programs, not just the guaranteed programs.

Section 36.4528 Vendee Loan Origination Fee

VA is proposing a new regulatory provision to be found in 38 CFR 36.4528. Proposed § 36.4528 would authorize an allowable fee that may be charged in connection with the origination of vendee loans. This proposed rule would permit VA to charge an origination fee not to exceed one-and-a-half percent of the loan amount. The proposed origination fee is distinct, and in addition to, the loan fee required to be paid by 38 U.S.C. 3729 for vendee loans made pursuant to 38 U.S.C. 3733. All or part of the proposed origination fee may be paid in cash at loan closing, or all or part of the fee may be included in the loan. In computing the fee, VA would disregard any amount included in the loan to enable the borrower to pay such fee. In other words, if a borrower opts to include the fee into the loan amount, VA would not increase the amount of origination fee due. Under no circumstance may the total fee agreed upon between the Secretary and the borrower result in an amount that would cause the loan to be designated as a high-cost mortgage, as defined by section 103(bb) of the Truth in Lending Act (TILA), codified in 15 U.S.C. 1602(bb), and implementing regulations in 12 CFR part 1026.

VA understands that it is common industry practice for lenders to charge an ''origination fee'' of approximately one percent of the loan value. Bankrate.com explains that for many loans a one percent origination fee is

common.[1] This fee is customarily charged by lenders to cover certain expenses involved with evaluating borrowers' creditworthiness and preparing a mortgage loan. VA currently permits a one percent fee to be charged in connection with originating loans in its Home Loan Guaranty Benefit Program (38 CFR 36.4313(d)(2)). Vendee financing is distinct from VA's benefit program. Nonetheless, VA believes that if private lenders are permitted to charge a one percent origination fee to eligible servicemembers and veterans utilizing their home loan benefit, then it is reasonable to establish up to a one-and-a-half percent fee in connection with the origination of non-benefit vendee loans, which may be made to any borrowers, including investors, who qualify.

To the extent the maximum one-and-a-half percent fee proposed herein may on occasion exceed the total amount charged at origination by certain private lenders, the unique characteristics of vendee financing would make the extra one-half percent reasonable and help the vendee program remain competitive. As explained above in the section on vendee loans, 38 U.S.C. 3733(a)(6) requires the Secretary to make vendee loans at an interest rate lower than the prevailing mortgage market interest rate in situations where, based on the local conditions in an area's real estate market, such lower interest rate is necessary to market the property competitively. In such situations, VA does not have the flexibility to charge above market interest rates to offset costs associated with loan origination, as a private lender might. Further, VA offers these lower interest rates without charging discount points collected in exchange for this lower interest rate at the time of loan origination. In private sector transactions, borrowers can pay up to three or four discount points, depending on how much they want to lower their interest rates. One discount point is an upfront payment of one percent of the loan amount, in addition to the other fees. The mortgage's interest rate is usually reduced by a quarter of a percentage point for every discount point paid.

In addition to offering below-market interest rates without discount points, VA offers vendee financing for up to 95 percent of the purchase price of the property and, in instances where the Secretary deems it necessary to market the property competitively, may offer vendee financing in an amount that exceeds 95 percent of the purchase price. The average loan amount to sale price ratio for vendee loans exceeded 85 percent in FY11 and 88 percent in FY12.

Generally, if a borrower's down payment on a home is less than 20 percent of the sale price, a private lender will require mortgage insurance to protect itself in case the borrower defaults on the payments. The borrower pays the premiums, and the lender is the beneficiary.[2] Private mortgage insurance typically costs about 0.25 to two percent of the loan balance per year, depending on the amount of the down payment, loan term, and borrower's credit score, and continues until the borrower reaches 20 percent equity.[3] In contrast, VA does not require a borrower to purchase private mortgage insurance on any vendee loan, regardless of the loan-to-purchase price ratio.

Furthermore, the rule would provide that under no circumstances may the total fees agreed upon between the Secretary and the borrower result in an amount that would cause the loan to be designated as a high-cost mortgage loan under TILA and its implementing regulations (15 U.S.C. 1602(bb); 12 CFR part 1026). High-cost mortgages are those where the annual percentage rate (APR) or points and fees charged exceed certain threshold amounts. Loans that meet such high-cost coverage tests are subject to special disclosure requirements and restrictions on loan terms.

Accordingly, this rulemaking would include authority for VA to charge an amount not to exceed a one-and-a-half percent origination fee in connection with the origination of vendee loans. Fees that may be charged by third parties at the time of loan origination (for example, courier fees or fees for termite inspection) are not included under 38 CFR 36.4528 and are discussed later in this preamble. In establishing this reasonable fee to cover costs associated with loan origination, VA is managing the non-benefit, vendee loan program in a business-like manner more consistent with private industry standards, and in so doing, ensuring that purchasers who utilize this financing, rather than taxpayers at-large, help bear the expenses associated with originating vendee loans.

Section 36.4529 Vendee Loan Post-Origination Fees

VA is also proposing a new regulatory provision, 38 CFR 36.4529, which would allow VA to charge reasonable service-related fees following loan origination. These fees would not constitute the general servicing fee paid by VA to its contractor to perform functions normally considered part of prudent loan servicing activities. Rather, these fees would be charged to the borrower to cover the costs of ad hoc, special services that are requested and performed on the borrower's behalf, and are beyond the regular services performed in connection with loan servicing.

It is common industry practice to charge specific fees in accord with the rendering of additional services on an account. Accordingly, VA is establishing, under proposed § 36.4529(a), maximum amounts to be charged per fee in exchange for the Secretary's performance of certain services that are above and beyond ordinary and customary loan servicing activities. VA surveyed some of the larger private entities that perform loan servicing. The frequency, applicability, and amount of these fees generally vary by state, loan status, and other loan characteristics. As such, VA notes that the amounts proposed in this rulemaking would represent maximums; the specific fees to be charged on each account may be negotiated between the Secretary and the borrower.

Under the proposed rule, VA could charge a borrower an assumption processing fee when a purchaser assumes a VA direct loan. This fee would be assessed when VA approves a request for the transfer of legal liability of repaying the mortgage. VA intends for the assumption fee to help offset the costs associated with processing the application, determining the creditworthiness of the assumptor, and revising the ownership records when the approved transfer is complete. VA would be permitted to charge an amount not to exceed $300, plus the actual cost of any credit report required. If the assumption were denied, VA would only charge the actual cost of the credit report. The disclosed maximum assumption fees in the fee schedules surveyed for this rulemaking ranged from $350 (including the cost of the credit report) to $1300 (however, the $1300 fee also included attorney fees).

The rule would also permit VA to charge the borrower a fee, not to exceed $350, for processing a subordination request to ensure that a modified vendee loan retains first lien position over

[1] *Loan Comparison Calculator,* Bankrate.com, *http://www.bankrate.com/calculators/home-equity/compare-loans-calculator.aspx#ixzz34FMEFGk5* (last visited May 8, 2015).

[2] *Private mortgage insurance—The Basics of PMI,* Bankrate.com, *http://www.bankrate.com/finance/mortgages/the-basics-of-private-mortgage-insurance-pmi.aspx* (last visited May 8, 2015).

[3] *Definition Of 'Private Mortgage Insurance-PMI',* Investopedia.com, *http://www.investopedia.com/terms/p/privatemortgageinsurance.asp* (last visited May 8, 2015).

another debt on the same property. VA will only modify a loan if it will retain its priority lien position on that property. State laws differ as to whether a basic loan modification will affect priority status of a senior loan holder, and in which situations such a modification would affect priority status. Accordingly, if VA consents to the modification of a loan, VA must ensure that its modified mortgage loan retains first-lien position. The maximum subordination fee disclosed by the private servicers surveyed for this rulemaking was $350.

The proposed rule would permit a reasonable partial release fee, not to exceed $350, to be charged when a borrower seeks to exclude some of the collateral from the mortgage contract once a certain amount of the mortgage loan has been paid. A borrower might request a partial release of real property from the security for a number of reasons; for example, to release acreage from the original secured lot so that it can be used for other purposes or to release some portion of the property to adjust the lot line or resolve a lot line dispute. Of the private servicers surveyed, two disclosed a maximum fee of $350 and the third disclosed a maximum fee for this service of $500.

If VA agrees to release an obligor from a mortgage loan in connection with a division of real property, this rule would permit VA to charge a release of lien fee not to exceed $15 for executing and providing documentation of this release. Occasionally, joint owners of real property may be subject to a judicial decree (such as a divorce judgment) that divides the property into separately owned parcels according to each owner's proportionate share in the property. Generally, neither owner receives any cash consideration in connection with the partition. In these circumstances, following this division, the fee may be incurred if the borrower who has possession of the land that is to be released from the security requests a release from liability under the mortgage loan. Consistent with VA's proposed maximum, the maximum fee disclosed in VA's survey of private industry is $15.

VA could charge a fee not to exceed $30 for processing payoff statements. Consistent with VA's proposed maximum, the private industry servicers VA surveyed disclosed a maximum payoff statement fee of $30.

VA could charge a reasonable fee to the borrower to offset the costs of processing payments a borrower may elect to submit by phone. To cover the expenses associated with providing this service, which borrowers may prefer to traditional payment by check, the fee would not exceed $12 when a representative handles the payment, and would not exceed $10 when an interactive voice response system (an automated phone system) handles the payment. The industry fee schedules that VA surveyed for this rulemaking disclosed maximum payment by phone fees that ranged from $9 to $20. The schedules also showed that, when a borrower makes a payment by phone, it usually costs the borrower $3 to $10 more to speak with a representative than it does for the borrower to use an interactive voice response system.

In addition to the proposed fees being standard in private industry, there is precedent for the collection of fees in exchange for the performance of special ad hoc services in another Federal Government direct home loan program. Specifically, the Rural Housing Service (RHS) at the Department of Agriculture (USDA) regulates the collection of fees in exchange for the performance of certain special services. RHS provides financing to help very low and low income individuals, who cannot obtain credit from other sources, obtain housing in rural areas. VA notes that RHS permits these fees even though its loan program is targeted to very low and low income families, whereas sales of REO properties with vendee financing are intended to help VA dispose of its REO inventory helping fund the VHBPF.

For example, 7 CFR 3550.161(c) states that RHS may charge a fee for payoff statements if more than two statements are requested for the same account in any 30-day period. Under § 3550.161(d), RHS explains that borrowers who make cash payments, rather than submitting payment through check, money order, or bank draft, will be assessed a fee to cover the conversion to money order. RHS stated in its Interim Final Rule, Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing Programs, published on November 22, 2006 (61 FR 59762, 59772), that two commentators strongly opposed RHS's requirement that a cash payment must be accompanied by an amount sufficient to cover the cost of a money order, stating that such proposal was unfair to very low and low income families. It explained, however, that RHS provides supervised credit. RHS encourages, like all lenders, customers to send payments by check, money order or bank draft. Cash payments in local offices are discouraged. Since RHS must obtain a money order in order to transmit the payment, the customer should pay that fee. *Id.*

In addition, RHS regulations at 7 CFR 3550.159 provide that certain borrower actions require RHS approval. Specifically, § 3550.159(c) explains that RHS may consent to a transaction affecting the security, such as a sale or exchange of security property, and grant a partial release of the security, so long as certain conditions are met. Among those conditions is the requirement that the proceeds from the sale of any portion of the security property or other similar transaction requiring RHS consent must first be used to pay customary and reasonable costs related to the transaction that must be paid by the borrower. Additionally, if an appraisal must be conducted, the regulation states that the appraisal fee will be charged to the borrower.

As authority for its rule permitting such fees, RHS cites 42 U.S.C. 1480, which provides that the Secretary of Agriculture shall have the power to sell RHS-acquired properties based on terms and conditions the Secretary of Agriculture determines reasonable and to make loans to the purchasers of such properties. The statutory authority cited by RHS to permit fees to cover the costs of performing additional post-origination services is analogous to 38 U.S.C. 3720, which provides the Secretary the power to dispose of VA-owned properties on terms the Secretary determines reasonable. Thus, the proposed rule would be consistent with the rule of at least one other Federal Government direct home loan program that authorizes reasonable fees to cover unanticipated, additional expenses incurred after loan origination.

The rule would state expressly, at proposed § 36.4529(b), that the Secretary may negotiate fees on a case-by-case basis. It would also require the Secretary to review, bi-annually, the maximum fees proposed under § 36.4529(a) to ensure that the fees continue to reflect the reasonable costs for the services performed. If VA determines that the maximum fees listed in § 36.4529(a) no longer reflect the reasonable amounts necessary to perform the associated services, VA would propose amendment of the regulation. This would allow VA to timely address any imbalance in the maximum fee schedule and keep the vendee loan program both cost-effective and competitively priced for its participants.

In addition to the ad hoc post-origination fees proposed under § 36.4529(a), proposed § 36.4529(c) would identify, for informational purposes, standard fees as established in loan instruments. Fees established in loan instruments are generally considered deterrents to default, and a means by which the lender can

minimize losses if a loan does default. These expenses often relate to termination of the loan, regardless of whether the loan is ultimately foreclosed, and are capitalized into the indebtedness.

VA, like many lenders, uses the standard loan documents developed and adopted by the Federal National Mortgage Association (Fannie Mae). Fannie Mae's security instruments usually provide that the lender may charge reasonable fees for services performed in connection with default and loan termination to protect the lender's interest in the property and rights under the deed of trust. Various Fannie Mae security instruments can be viewed at *https://www.fanniemae.com/singlefamily/security-instruments.*

Fannie Mae's standard security instruments also generally provide that if the borrower fails to perform the covenants and agreements contained in the security instrument, the lender may do and pay for whatever is reasonable or appropriate to protect the lender's interest in the property and rights under the security instrument. A lender may not charge any fees prohibited by the instrument or by applicable federal, state, or local laws or regulations. State laws control whether any fees charged by the lender, or amounts expended by the lender to protect its interest in the property and rights under the loan instrument, are to be added to the borrower's indebtedness.

Pursuant to proposed § 36.4529(d), any fee included in the loan instrument and permitted under proposed § 36.4529(c) would be based on the amount customarily charged in the industry for the performance of the service in the particular area, the status of the loan, and the characteristics of the affected property. VA is not prescribing specific maximum amounts for these fees. Rather, as these fees are governed by the loan instrument and may be capitalized into the principal balance of the loan, state law sets the maximum amounts for these fees. Nevertheless, VA seeks to clarify through this rulemaking that any borrower obtaining vendee financing may incur reasonable fees as provided for in standard loan instruments.

An example of a fee permitted by the standard loan instrument would be a property inspection fee that VA could collect. For instance, when a foreclosure seems necessary, VA must perform a limited inspection to determine the physical condition or occupancy status of a property purchased with vendee financing. In situations where VA must perform work to maintain a vacant property, the loan instrument permits a reasonable property preservation fee to be charged to the borrower. As a result, this fee would cover services to protect a vacant property from further damage or to maintain a property to prevent city code violations. Such services could range from mowing the yard to constructing a fence around the property to winterizing the property. The fees charged would need to reflect the reasonable cost of performing the particular type of property preservation service.

Additionally, standard loan instruments used by VA permit VA to collect reasonable appraisal or attorneys' fees. Appraisal fees would include, for example, the cost of obtaining a liquidation appraisal in the event of default to determine the value of a property prior to a liquidation sale or short sale. Appraisal fees could also include the cost of an appraisal of property to determine its value prior to a partial release. Attorneys' fees may be incurred in cases where the property goes into serious delinquency and servicers must hire attorneys to assure VA's interests are protected. Examples of legal work incurring attorneys' fees include providing proper and timely notice to borrowers in the event of foreclosure, determining lien position if there are multiple liens on the property, and, in judicial foreclosure states, assuring correct paperwork is submitted to the court. In addition, attorneys' fees may be incurred in cases where a loan is referred to foreclosure, but the foreclosure is not completed, the default is cured, and the loan is reinstated.

Along with the fees for default-related services, there are other reasonable fees that are specified in the loan instrument that, if incurred, can be capitalized as part of the borrower's total indebtedness. These fees offset the additional expense of collection activities and usually serve as incentives for repaying a loan obligation in a timely manner or, more aptly, as deterrents to delinquency that might otherwise interrupt the Government's scheduled flow of income. These fees include, but are not limited to, late fees incurred to cover the added expense involved in handling delinquent payments, and a returned-check (non-sufficient funds) fee incurred when a mortgage payment is made from an account that does not have sufficient funds to cover the payment. Other fees that are reasonably necessary for the protection of the lender's investment are also permitted under the loan instrument.

VA notes that RHS, in addition to including standard fees in its loan instrument, also addresses some of these fees in regulation. For example, RHS servicing regulations state that RHS may assess reasonable fees including a tax service fee, fees for late payments, and fees returned for insufficient funds (7 CFR 3550.153). In justifying the potential to charge late fees to its very low and low income borrowers, RHS explains that it recognizes its mission to provide supervised credit, but that it also believes a late fee encourages its clients to make payments on a timelier basis. See 61 FR 59763. Further, § 3550.156(a) explains that RHS borrowers are expected to meet a variety of obligations outlined in the loan documents, including maintaining the security property and paying hazard and flood insurance and other related costs when due. Paragraph (b) of the rule states that if a borrower fails to fulfill these obligations, RHS may obtain the needed service and charge the cost to the borrower's account. Accordingly, VA is similarly including reasonable fees established in loan instruments under this proposed rulemaking.

Section 36.4530 Vendee Loan Other Fees

The loan fee required by 38 U.S.C. 3729 and the fees included in proposed 38 CFR 36.4528 and 36.4529 are not the only types of fees associated with vendee loans. There are other types of fees necessary for the origination and servicing of vendee loans that may be permitted under this rulemaking. As such, VA is proposing to add § 36.4530 to clarify for borrowers of vendee loans that they may incur fees associated with their financing, in addition to, and unaffected by, those fees specified in 38 U.S.C. 3729 and proposed §§ 36.4528 and 36.4529.

Other types of fees that that may be charged in connection with vendee loans are fees charged by third parties. These fees, which are also permitted in connection with the guaranteed loan benefit program, are not collected on behalf of the Secretary. These types of fees are collected to pay for goods or services such as termite inspections, hazard and force-placed insurance premiums, courier fees, tax certificates, and recorder's fees. They are standard in closing transactions, and borrowers of vendee loans would be expected to pay these fees for the goods and services provided by the third parties. VA is identifying these fees in this proposed rule to help clarify the types of expenses that may be incurred in connection with vendee financing and ensure that borrowers of vendee loans clearly understand the financial obligations that may be expected of them. The list of third-party fees in proposed 38 CFR

36.4530 is not exhaustive. Rather, it is meant to provide examples.

Safe Harbor Qualified Mortgages

VA proposes a change to § 36.4500(c)(2) to clarify that all direct loans would be safe harbor qualified mortgages. VA's qualified mortgage rule was first published on May 9, 2014. See 79 FR 26620. Although VA intended to designate as qualified mortgages all VA direct loans, VA did not expressly include all authorities under which VA makes loans. Consequently, it might appear as if VA intentionally excluded some of VA's direct loans from qualified mortgage status.

To eliminate ambiguity, the proposed change would state expressly that any VA direct loan made by the Secretary pursuant to chapter 20 or 37 of title 38, U.S.C., is to be considered a safe harbor qualified mortgage. VA would also revise the authority citation for paragraph (c)(2) to include citations to 38 U.S.C. 2041, 3711, 3720, 3733, and 3761 in addition to the current citation to 38 U.S.C. 3710 and 15 U.S.C. 1639C(b)(3)(B)(ii). Again, this change is not intended to be substantive, but rather, would ensure the paragraph's authority reflects all of the different statutory authorities under which VA may make direct loans.

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for VA Regulations Published from FY2004 to FYTD.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

This proposed rule would affect individuals and small businesses who choose to obtain a vendee loan from VA to finance the purchase of a VA-owned property rather than alternate financing. A party who wants to purchase a VA-owned property may choose whatever source of financing he wishes. Presumably the purchaser would select the least expensive financing option available, which may or may not be a VA vendee loan. VA does not believe that this proposed rule would impose any significant economic impact for the following reasons. Should the purchaser decide that the VA vendee program was not the most economically advantageous to the purchaser then he would obtain alternate financing. Parties would have to choose to be subject to the impact, if any, imposed by this rule.

Accordingly, the Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 18, 2016, for publication.

Dated: October 18, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 36, subpart D as set forth below:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

Subpart D—Direct Loans

■ 2. Amend § 36.4500 by:

■ a. Revising paragraph (c)(2).

■ b. Revising the authority citation for paragraph (c)(2).

■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 36.4500 Applicability and qualified mortgage status.

* * * * *

(c) * * *

(2) *Applicability of safe harbor qualified mortgage.* Any VA direct loan made by the Secretary pursuant to chapter 20 or 37 of title 38, U.S.C., is a safe harbor qualified mortgage.

(Authority: 15 U.S.C. 1639C(b)(3)(B)(ii), 38 U.S.C. 2041, 3710, 3711, 3720, 3733, and 3761)

* * * * *

(e) Sections 36.4528, 36.4529, and 36.4530, which concern vendee loans, shall be applicable to all vendee loans.

■ 3. Amend § 36.4501 by adding in alphabetical order a definition for ''Safe harbor qualified mortgage'' and revising the definition ''Vendee Loan'' to read as follows:

§ 36.4501 Definitions.

* * * * *

Safe harbor qualified mortgage means a mortgage that meets the Ability-to-Repay requirements of sections 129B and 129C of the Truth-in-Lending Act (TILA) regardless of whether the loan might be considered a high cost mortgage transaction as defined by section 103bb of TILA (15 U.S.C. 1602bb).

* * * * *

Vendee loan means a loan made by the Secretary for the purpose of financing the purchase of a property acquired pursuant to chapter 37 of title 38, United States Code. The terms of a vendee loan (*e.g.,* amount of down payment; amortization term; whether to escrow taxes, insurance premiums, or homeowners' association dues; fees, etc.) are negotiated between the Secretary and the borrower on a case-by-case basis, subject to the requirements of 38 U.S.C. 2041 or 3733. Terms related to allowable fees are also subject to §§ 36.4528 through 36.4530 of this part.

(Authority: 38 U.S.C. 2041, 3720, 3733)

* * * * *

■ 4. Add §§ 36.4528, 36.4529, and 36.4530 to read as follows:

§ 36.4528 Vendee loan origination fee.

(a) In addition to the loan fee required pursuant to 38 U.S.C. 3729, the Secretary may, in connection with the origination of a vendee loan, charge a borrower a loan origination fee not to exceed one-and-a-half percent of the loan amount.

(b) All or part of such fee may be paid in cash at loan closing or all or part may be included in the loan. The Secretary will not increase the loan origination fee because the borrower chooses to include such fee in the loan amount financed.

(c) In no event may the total fee agreed upon between the Secretary and the borrower result in an amount that will cause the loan to be designated as a high-cost mortgage as defined in 15 U.S.C. 1602(bb) and 12 CFR part 1026.

(Authority: 38 U.S.C. 2041, 3720, 3733)

§ 36.4529 Vendee loan post-origination fees.

(a) The Secretary may charge a borrower the following reasonable fees, per use, following origination, in connection with the servicing of any vendee loan:

(1) Processing assumption fee for the transfer of legal liability of repaying the mortgage when the individual assuming the loan is approved. Such fee will not exceed $300, plus the actual cost of the credit report. If the assumption is denied, the fee will not exceed the actual cost of the credit report.

(2) Processing subordination fee, not to exceed $350, to ensure that a modified vendee loan retains its first lien position;

(3) Processing partial release fee, not to exceed $350, to exclude collateral from the mortgage contract once a certain amount of the mortgage loan has been paid;

(4) Processing release of lien fee, not to exceed $15, for the release of an obligor from a mortgage loan in connection with a division of real property;

(5) Processing payoff statement fee, not to exceed $30, for a payoff statement showing the itemized amount due to satisfy a mortgage loan as of a specific date;

(6) Processing payment by phone fee, not to exceed $12, when a payment is made by phone and handled by a servicing representative;

(7) Processing payment by phone fee, not to exceed $10, when a payment is made by phone and handled through an interactive voice response system, without contacting a servicing representative.

(b) The specific fees to be charged on each account may be negotiated between the Secretary and the borrower. The Secretary will review the maximum fees under paragraph (a) of this section bi-annually to determine that they remain reasonable.

(c) The Secretary may charge a borrower reasonable fees established in the loan instrument, including but not limited to the following:

(1) Property inspection fees;

(2) Property preservation fees;

(3) Appraisal fees;

(4) Attorneys' fees;

(5) Returned-check fees;

(6) Late fees; and

(7) Any other fee the Secretary determines reasonably necessary for the protection of the Secretary's investment.

(d) Any fee included in the loan instrument and permitted under paragraph (c) of this section would be based on the amount customarily charged in the industry for the performance of the service in the particular area, the status of the loan, and the characteristics of the affected property.

(Authority: 38 U.S.C. 2041, 3720, 3733)

§ 36.4530 Vendee loan other fees.

(a) In addition to the fees that may be charged pursuant to 38 CFR 36.4528 and 36.4529 and the statutory loan fee charged pursuant to 38 U.S.C. 3729, the borrower may be required to pay third-party fees for services performed in connection with a vendee loan.

(b) Examples of the third party fees that may be charged in connection with a vendee loan include, but are not limited to:

(1) Termite inspections;

(2) Hazard insurance premiums;

(3) Force-placed insurance premiums;

(4) Courier fees;

(5) Tax certificates; and

(6) Recorder's fees.

(Authority: 38 U.S.C. 2041, 3720, 3733)

[FR Doc. 2016–25738 Filed 10–25–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–4183–N]

Medicare Program; Listening Session Regarding the Implementation of Certain Medicare Part D Provisions in the Comprehensive Addiction and Recovery Act of 2016 (CARA)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This document announces a listening session to solicit input from stakeholders regarding our implementation of section 704 of the Comprehensive Addiction and Recovery Act of 2016 (CARA), which includes provisions to permit Part D sponsors to establish drug management programs for at-risk beneficiaries under which Part D sponsors may limit such beneficiaries' access to frequently abused drugs to certain prescribers and pharmacies.

Medicare beneficiaries with Part A or Part B, advocacy groups representing Medicare beneficiaries, physicians, pharmacists, and other clinicians (particularly other lawful prescribers of controlled substances), retail pharmacies, plan sponsors, entities delegated by plan sponsors (such as pharmacy benefit managers), biopharmaceutical manufacturers, and other interested parties are invited to participate. The Listening Session will be held via teleconference and is open to the public.

DATES:

Meeting Date: The Listening Session announced in this document will be held via teleconference on Monday, November 14, 2016 from 1 p.m. to 4 p.m., Eastern Standard Time (e.s.t.).

Deadline for Submitting a Request for Special Accommodations: Individuals planning to participate in the teleconference who have a condition that requires special assistance or accommodations are asked to submit their requests as specified in the **ADDRESSES** section of this document no later than 5:00 p.m., e.s.t Tuesday, November 1, 2016.

Deadline for Meeting Registration: Individuals may register online at *https://www.cms.gov/Outreach-and-Education/training/CTEO/Upcoming_Current_events.html.* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document by 1 p.m. e.s.t., Monday, November 14, 2016.

Deadline for Submission of Written Comments or Statements: Written comments or statements on the topics listed in section II.A. of this document may be sent via mail or electronically to the address specified in the **ADDRESSES** section of this document and must be received by 5 p.m. e.s.t., Friday, December 2, 2016.

ADDRESSES:

Meeting Location: The Listening Session will be held via teleconference only.

Meeting Registration: Persons interested in participating in the teleconference must register by completing the online registration. Online registration is available via the CMS Compliance Training, Education & Outreach—Upcoming/Current Events Web site: *https://www.cms.gov/Outreach-and-Education/training/CTEO/Upcoming_Current_events.html.*

Requests for Special Accommodations: Individuals who require special accommodations should send a request via email to *CTEO@cms.hhs.gov.*

Written Comments or Statements: Any interested party may send written comments or statements by mail to Attn: Chad Buskirk, Centers for Medicare & Medicaid Services, Mail Stop C1–24–23, 7500 Security Boulevard, Baltimore, MD 21244–1850 or by email to *PARTDPOLICY@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Chad Buskirk, 410–786–1630. News Media Representatives must contact our Public Affairs Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 704 of the Comprehensive Addiction and Recovery Act of 2016 (CARA) (Pub. L. 114–198) includes provisions to permit Part D sponsors to establish drug management programs for at-risk beneficiaries under which Part D sponsors may limit such beneficiaries' access to frequently abused drugs to certain prescribers and pharmacies. Section 704(g)(2)(A) of CARA requires the Secretary of Health and Human Services to convene stakeholders for input regarding specific topics in sufficient time for the Secretary to take such input into account in promulgating regulations to implement the relevant provisions. Stakeholders include Medicare beneficiaries with Part A or Part B, advocacy groups representing Medicare beneficiaries, physicians, pharmacists, and other clinicians (particularly other lawful prescribers of controlled substances), retail pharmacies, plan sponsors, entities delegated by plan sponsors (such as pharmacy benefit managers), and biopharmaceutical manufacturers.

II. Listening Session Topics and Format

A. Listening Session Topics

Section 704 of CARA is the basis for the listening session and provides the information for which we are soliciting stakeholder input. The first topic is found in section 704(a) of CARA and the nine other topics are from the listing in section 704(g)(2)(B) of CARA. Therefore, we are soliciting feedback from stakeholders and other interested parties on the following 10 topics:

- The clinical guidelines that indicate misuse or abuse of frequently abused drugs. Section 704(a) of CARA refers to such clinical guidelines and requires the Secretary to develop such guidelines in consultation with Part D sponsors and other stakeholders.
- The anticipated impact of drug management programs for at-risk beneficiaries under section 1860D–4(c)(5) of the Social Security Act (the Act) on cost-sharing and ensuring accessibility to prescription drugs for enrollees in prescription drug plans (PDPs), and MA–PD plans who are at-risk beneficiaries for prescription drug abuse (as defined in section 1860D–4(c)(5)(C) of the Act).
- The use of an expedited appeals process under which such an enrollee may appeal the enrollee's identification as an at-risk beneficiary for prescription drug abuse (similar to the processes established under the Medicare Advantage program that allow an automatic escalation to external review of claims submitted under Part C).
- The types of enrollees that should be treated as exempted individuals, as described in section 1860D–4(c)(5)(C)(ii) of the Act.
- The manner in which terms and definitions should be applied, such as the use of clinical appropriateness in determining whether an enrollee is an at-risk beneficiary for prescription drug abuse as defined in section 1860D–4(c)(5)(C) of Act.
- The information to be included in the notices described in section 1860D–4(c)(5)(B) of Act and the standardization of such notices.
- The responsibility for the implementation of the program of the PDP sponsor (or Medicare Advantage organization) that establishes a drug management program for at-risk beneficiaries under section 1860D–4(c)(5) of the Act.
- Notices for plan enrollees at the point of sale that would explain why an at-risk beneficiary has been prohibited from receiving a prescription at a location outside of the designated pharmacy.
- Evidence-based prescribing guidelines for opiates.
- The sharing of claims data under Parts A and B of title XVIII of the Act with Part D sponsors.

B. Listening Session Format

Stakeholders and other interested parties will be convened by teleconference for this listening session. The session will begin with teleconference logistics and an overview of objectives for the session. The remainder of the session will be devoted to receiving input on the 10 topics specified in section II.A. of this document. Time allotted for each topic will be limited.

III. Registration Instructions

Persons interested in participating the teleconference must register by completing the on-line registration via the CMS Compliance Training, Education & Outreach—Upcoming/Current Events Web site: *https://www.cms.gov/Outreach-and-Education/training/CTEO/Upcoming_Current_events.html* by the deadline specified in

the **DATES** section of this document. You will receive a registration confirmation with the dial-in information to participate in the listening session.

Individuals requiring special accommodations should refer to the **DATES** and **ADDRESSES** section of this document.

Dated: October 7, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–25806 Filed 10–21–16; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 81, No. 207
Wednesday, October 26, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings; Architectural and Transportation Barriers Compliance Board

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, November 7–9, 2016 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, November 7, 2016

2:00 p.m.–3:00 p.m. Technical Programs Committee
3:00–4:00 Ad Hoc Committee on Design Guidance

Tuesday, November 8, 2016

9:30 a.m.–10:00 a.m. Budget Committee
10:00–11:00 Planning and Evaluation
11:00–Noon Access Board Rulemaking Update (Closed)
1:30 p.m.–3:00 p.m. Ad Hoc Committee on Frontier Issues
3:00–4:00 Department of Transportation Federal Advisory Committee on Accessible Air Transportation, Update

Wednesday, November 9, 2016

1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, November 9, 2016, the Access Board will consider the following agenda items:

- Approval of the draft September 14, 2016 meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues
- Technical Programs Committee
- Budget Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, November 9, 2016. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, November 2, 2016. Registered commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, November 9, 2016 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2016–25843 Filed 10–25–16; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Meeting of Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, November 18, the meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Westin, Washington DC City Center, 1400 M Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dondi Staunton, Senior Advisor, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20233; telephone number: (301) 278–9798.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-ninth meeting.

Public Participation: This meeting is open to the public. Because of security

procedures, anyone planning to attend the meeting must contact Dondi Staunton of BEA at (301) 278–9798 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Dondi Staunton at (301) 278–9798.

Dated: August 30, 2016.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–25795 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/15/2016 through 10/21/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Advance Corporation	8200 97th Street, South Cottage Grove, MN 55016.	10/18/2016	The firm manufactures award plaques.
Fisher Cast Steel Products, Inc.	6 West Town Street, West Jefferson, OH 43162.	10/19/2016	The firm manufactures parts of cast steel for machinery for the manufacture of food or drink, as well as parts for hydroelectric machinery, water distribution systems, and similar items.
Hatch & Kirk, Inc.	5111 Leary Avenue Northwest, Seattle, WA 98107.	10/19/2016	The firm manufactures and supplies heavy duty diesel engine parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–25911 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Junaid Peerani, 1331 NW. 115th Ave., Plantation, FL 33323

Order Denying Export Privileges

On August 14, 2013, in the U.S. District Court for the Southern District of Florida, Junaid Peerani (''Peerani'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Peerani knowingly and willfully attempted to export and caused to be exported from the United States to Turkey, two Inertial Navigation Unit LTN–72's, without first having obtained the required authorization from the United States Department of Commerce.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Peerani's conviction for violating IEEPA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Peerani to make a written submission to BIS. BIS has received a submission from Peerani.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Peerani's export privileges under the Regulations for a period of five years from the date of Peerani's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Peerani had an interest at the time of his conviction.

[1] 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 FR 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

Accordingly, it is hereby *ordered*:

First, from the date of this Order until August 14, 2018, Junaid Peerani, with a last known address of 1331 NW. 115th Ave., Plantation, FL 33323, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Peerani by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Peerani may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Peerani. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 14, 2018.

Dated: October 19, 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–25858 Filed 10–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) finds that the sale made by Dongtai Zhangshi Wood Industry Co., Ltd. (Zhangshi) and the sale made by Huzhou Muyun Wood Co., Ltd. (Muyun) are non-*bona fide.* Therefore, we are rescinding these new shipper reviews (NSRs).

DATES: Effective October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci (202–482–2923) or Aleksandras Nakutis (202–482–3147), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Rescission* of the NSRs of the antidumping duty order on multilayered wood flooring from the People's Republic of China (PRC) on May 31, 2016.[1] We preliminarily found that the sale made by Zhangshi and the sale made by Muyun were not *bona fide,* and announced our preliminary intent to rescind the NSRs.

For a complete description of the events that followed the publication of the *Preliminary Rescission,* see the *Issues and Decision Memorandum*.[2] The *Issues and Decision Memorandum* is a public document and is on file electronically via Enforcement and Compliance's Antidumping Duty (AD) and Countervailing Duty (CVD) Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed *Issues and Decision Memorandum* and the electronic version of the *Issues and Decision Memorandum* are identical in content.

Scope of the Order

The merchandise covered by the order is multilayered wood flooring, which is

[1] *See Multilayered Wood Flooring From the People's Republic of China: Preliminary Rescission of 2014–2015 Antidumping Duty New Shipper Reviews,* 81 FR 34310 (May 31, 2016) (*Preliminary Rescission*); *see also* Memorandum from Robert Galantucci to Abdelali Elouaradia, ''Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Dongtai Zhangshi Wood Industry Co., Ltd.,'' dated May 20, 2016 (*Zhangshi Prelim Bona Fide Memo*); Memorandum from Aleksandras Nakutis to Abdelali Elouaradia, ''Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Huzhou Muyun Wood Co., Ltd.,'' dated May 20, 2016 (*Muyun Prelim Bona Fide Memo*).

[2] *See* Memorandum from Christian Marsh to Ronald K. Lorentzen, ''Multilayered Wood Flooring from the People's Republic of China: Issues and Decision Memorandum for the Final Rescission of the 2014–2015 New Shipper Reviews'' issued concurrently with and hereby adopted by this notice (*Issues and Decision Memorandum*).

composed of an assembly of two or more layers or plies of wood veneers [3] in combination with a core.[4] Merchandise covered by this review is classifiable under subheadings 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties are addressed in the *Issues and Decision Memorandum*.[5] A list of the issues which parties raised is attached to this notice as an Appendix.

Bona Fide Analysis

For the *Preliminary Rescission,* the Department analyzed the *bona fides* of Zhangshi's single sale and Muyun's single sale and preliminarily found that they were not *bona fide* sales.[6] Based on the Department's complete analysis of all of the information and comments on the record of this review, the Department continues to find Zhangshi's and Muyun's sales not *bona fide,* and thus not reviewable pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act). The Department reached this conclusion with respect to Zhangshi based on its consideration of the totality of circumstances, including: The sale price, the timing of the payment, a comparison between the payment and the invoiced amount, the parties' implementation of the terms of sale, statements regarding the customer/importer's affiliations, and the single sale. The Department reached this conclusion with respect to Muyun based on its consideration of the totality of circumstances, including: The sale price, the timing of the payment, and the single sale. For a complete discussion, *see* the *Issues and Decision Memorandum* as well as the *BPI Discussion of Zhangshi's Comments* and the *BPI Discussion of Muyun's Comments.*

Rescission of New Shipper Reviews

For the foregoing reasons, the Department continues to find that Zhangshi's sale and Muyun's sale are not *bona fide,* and that the sales do not provide a reasonable or reliable basis for calculating a dumping margin. Accordingly, the Department is rescinding these NSRs.

Assessment

As the Department is rescinding these NSRs, we are not making a determination as to whether or not Zhangshi or Muyun qualify for a separate rate. Therefore, these companies remain part of the PRC-entity. The PRC-entity is not under review in the ongoing review covering the 2014–2015 period. Accordingly, these companies' entries will be assessed at rates equal to the cash deposit of, or bond for, estimated antidumping duties required on their merchandise at the time of entry, or withdrawal from warehouse, for consumption. The Department intends to issue liquidation instructions for any entries during the relevant period made by Zhangshi and Muyun 15 days after publication of this rescission notice.

Cash Deposit Requirements

Effective upon publication of this notice of final rescission of the NSRs of Zhangshi and Muyun, the Department will instruct U.S. Customs and Border Protection to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise from Zhangshi and Muyun.[7] Because we did not review Zhangshi or Muyun, we will instruct CBP to continue to collect the cash deposit previously ordered which was the cash deposit rate for the PRC-wide entity of 25.62 percent. These cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in these segments of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: October 17, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Issues and Decision Memorandum

Summary
Background
Scope of the Order

[3] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[4] For a complete description of the scope of the order, *see* the *Issues and Decision Memorandum.*

[5] *See Issues and Decision Memorandum.* The Department has also issued business proprietary discussions of the comments raised, as many of the comments relied heavily on business proprietary information (BPI). *See* Memorandum to Abdelali Elouaradia, ''Final Results of the Antidumping Duty New Shipper Review—Multilayered Wood Flooring from the People's Republic of China: Business Proprietary Information Discussion of the Comments Regarding Dongtai Zhangshi Wood Industry Co., Ltd.,'' dated October 17, 2016 (*BPI Discussion of Zhangshi's Comments*); Memorandum to Abdelali Elouaradia, ''Final Results of the Antidumping Duty New Shipper Review—Multilayered Wood Flooring from the People's Republic of China: Business Proprietary Information Discussion of the Comments Regarding Huzhou Muyun Wood Co., Ltd.,'' dated October 17, 2016 (*BPI Discussion of Muyun's Comments*).

[6] *See Zhangshi Prelim Bona Fide Memo; Muyun Prelim Bona Fide Memo.*

[7] *See* 19 CFR 351.214(e).

Discussion of the Issues
Comment 1: Whether the Department should revise its analysis with respect to Zhangshi's sales price and quantity.
Comment 2: Whether the Department should revise its analysis regarding Zhangshi's customer's resale of the subject merchandise.
Comment 3: Whether the Department should revise its analysis regarding Zhangshi's implementation of the terms of sale.
Comment 4: Whether the Department should revise its analysis regarding the circumstances surrounding Zhangshi's receipt of payment.
Comment 5: Whether the Department made procedural errors in conducting this review.
Comment 6: Whether Muyun's sale was resold at a profit.
Comment 7: Whether the timing of Muyun's sale was consistent with normal commercial practices.
Comment 8: Whether Muyun's sale price was based on normal commercial considerations.
Comment 9: Whether the totality of the circumstances indicates that Muyun's sale was *bona fide.*
Recommendation

[FR Doc. 2016–25901 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–818]

Lemon Juice From Argentina: Continuation of Suspension of Antidumping Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: *Effective Date:* October 20, 2016.

SUMMARY: The Department of Commerce (''the Department'') is continuing to suspend the antidumping duty investigation on lemon juice from Argentina. The basis for this action is an agreement between the Department and signatory producers/exporters accounting for substantially all imports of lemon juice from Argentina, wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of the subject merchandise to the United States.

FOR FURTHER INFORMATION CONTACT: Sally Craig Gannon or Julie Santoboni at (202) 482–0162 or (202) 482–3063, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2007, the Department entered into an agreement with S.A. San Miguel A.G.I.C.I. y F., (''San Miguel'') and Citrusvil, S.A., Argentine producers/exporters accounting for substantially all imports of lemon juice from Argentina. *See* Suspension of Antidumping Duty Investigation: Lemon Juice From Argentina, 72 FR 53991 (September 21, 2007) (''2007 Agreement''). On September 17, 2009, Citromax S.A.C.I. acceded to the 2007 Agreement. On July 11, 2014, La Moraleja, S.A. and Cooperativa de Productores Citricolas de Tafi Viejo (''COTA'') acceded to the 2007 Agreement.

On April 28, 2016, the Department notified the interested parties and the International Trade Commission (''ITC'') of the intent to suspend the investigation on Lemon Juice from Argentina pursuant to section 734(c) of the Tariff Act of 1930 (''the Act''). *See* April 28, 2016, letters from Sally C. Gannon to Interested Parties and Catherine DeFillipo, re ''Lemon Juice from Argentina—Intent to Suspend Investigation Pursuant to Section 734(c) of the Act''. On September 23, 2016, the Department and Argentine lemon juice growers/exporters accounting for substantially all lemon juice imported into the United States from Argentina initialed a proposed agreement pursuant to section 734(c) of the Act to suspend the antidumping investigation on lemon juice from Argentina. The Department released the proposed agreement and accompanying memorandum detailing the fulfillment of the statutory requirements to interested parties on September 23, 2016, and afforded them an opportunity to comment on the initialed agreement and the memorandum by September 30, 2016. *See* September 23, 2016, Memorandum from Sally C. Gannon to Interested Parties, re ''Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina''. On September 26, 2016, in accordance with section 734(e)(2)of the Act, the Department consulted with the successor-in-interest to the petitioner, Ventura Coastal, LLC (''Ventura''),[1] and explained how the agreement will be carried out and enforced and how the agreement will meet the requirements of sections 734(c) and (d) of the Act. *See* September 29, 2016, Memorandum from Julie H. Santoboni to The File re ''Telephone Call with Counsel for Ventura Coastal''.

On September 30, 2016, Ventura requested, and the Department granted, an extension of the deadline for submitting comments to October 3, 2016. *See* September 30, 2016, letter from Matthew T. McGrath, re: ''Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina: Extension Request'' and September 30, 2016, letter from Sally C. Gannon to Matthew T. McGrath, re ''Agreement Suspending the Antidumping Investigation on Lemon Juice from Argentina: Extension for Comments on Draft Agreement''. We received comments from COTA, San Miguel and Ventura. *See* October 3, 2016, letter from Gregory S. Menegaz re: ''Lemon Juice from Argentina COTA Comment Draft Suspension Agreement: Correction of Formal Name'' (''COTA comments''); October 3, 2016, letter from Gregory J. Spak re: ''Lemon Juice from Argentina Comments on Draft Suspension Agreement'' (''San Miguel comments''); and, September 30, 2016 (filed October 3, 2016), letter from Matthew T. McGrath re: ''Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina: Comments on Proposed New Suspension Agreement''. On October 11, 2016, we received additional comments from Ventura. *See* October 10, 2016, letter from Matthew T. McGrath re: ''Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina: Additional Comments on Proposed New Suspension Agreement'' (''Ventura additional comments'').

The Department examined the comments and incorporated changes in the agreement text and statutory memorandum, where appropriate, to address those comments. Specifically, in its comments, in response to COTA's comments we revised the company's name to reflect the full legal name of the company, Cooperativa de Productores Citricolas de Tafi Viejo, Agricola, de Transformacion y Comercializacion Limitada, however we note that COTA also uses the name Cooperativa de Productores Citricolas de Tafi Viejo in the ordinary course of business. *See* COTA comments. In response to Ventura's comments, the definition of 'reference price' was revised to clarify that the price applies to the price of exports to the United States. Section VII.A.3 of the 2016 Suspension Agreement was revised to reflect that the quarterly Argentine customs data will reflect shipments, rather than sales data. In San Miguel's comments it requested that the Department expedite

[1] *See* Lemon Juice From Argentina: Final Results of the Expedited First Sunset Review of the Suspended Antidumping Duty Investigation, 77 FR 73021 (Dec. 7, 2012).

the signature and entry into force of the new suspension agreement. In Ventura's additional comments it waived the remainder of the 30 day consultation period allotted under Section 734(e)(1) of the Act.

On October 20, 2016, the Department signed a new suspension agreement (''2016 Suspension Agreement'') with substantially all growers/exporters of lemon juice from Argentina. The 2016 Suspension Agreement is attached to this notice of Continuation of Suspension of Antidumping Investigation. By agreement of the Department and each signatory producer/exporter, the 2007 Agreement shall cease to have force or effect as of the Effective Date of this Agreement.

Scope of Agreement

See Section I, Product Coverage, of the 2016 Suspension Agreement.

Continuation of Suspension of Investigation

The Department consulted with the Argentine lemon juice producers/exporters and Ventura, the successor in interest to the petitioner, and has considered the comments submitted by interested parties with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) and (d) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. *See* the memorandum titled ''Agreement Suspending the Antidumping Duty Investigation on Argentine Lemon Juice from Argentina: Statutory Requirements'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated October 20, 2016 (''Statutory Requirements Memorandum'').

The 2016 Suspension Agreement provides, in accordance with 734(c)(1) of the Act, that the subject merchandise will be sold for export to the United States at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that the 2016 Suspension Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic lemon juice by imports of that merchandise from Argentina, as required by section 734(c)(1) of the Act. *See* Statutory Requirements Memorandum.

We have also determined that the 2016 Suspension Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act. *See* Statutory Requirements Memorandum.

For the reasons outlined above, we find that the 2016 Suspension Agreement meets the criteria of sections 734(c) and (d) of the Act.

The terms and conditions of this 2016 Suspension Agreement, signed on October 20, 2016, are set forth in the 2016 Suspension Agreement, which is attached to this notice.

Suspension of Liquidation

Pursuant to section 734(f)(2)(A) of the Act, upon acceptance of the 2007 Agreement the Department terminated the suspension of liquidation of all entries of lemon juice from Argentina. However, because the 2016 Suspension Agreement is made pursuant to section 734(c) of the Act, the suspension of liquidation of all entries of lemon juice from Argentina is hereby resumed. *See* section 734(f)(2)(B) of the Act.

Within 20 days after the publication of this notice in the **Federal Register**, certain interested parties may, by a petition filed with the ITC and with notice given to the Department, ask for a review of the 2016 Suspension Agreement. *See* section 734(h)(1) of the Act. If no review is requested, the suspension of liquidation will be terminated at the close of the 20-day period. If a review is requested and the ITC determines that the injurious effects of imports of lemon juice from Argentina have been eliminated completely by the agreement, the suspension of liquidation will be terminated on the date that determination is published. If a review is requested and the ITC instead determines that the injurious effects of imports of lemon juice from Argentina have not been eliminated completely by the agreement, pursuant to section 734(h)(2) of the Act, then the investigation shall resume. If the investigation resumes, the suspension of liquidation shall continue as though the publication date of ITC's determination pursuant to section 734(h)(2) of the Act were the publication date of an affirmative preliminary determination pursuant to section 733(b) of the Act.

The suspension of liquidation was ordered in the preliminary affirmative determination in this case published on April 26, 2007. *See* Lemon Juice from Argentina: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances, 72 FR 20820 (April 26, 2007) (''Preliminary Determination''). Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the 2016 Suspension Agreement. The Department has found that the 2016 Suspension Agreement eliminates completely the injurious effects of the subject imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatories remain as published in the Preliminary Determination.

International Trade Commission

In accordance with section 734(f) of the Act, the Department has notified the ITC of the 2016 Suspension Agreement.

Administrative Protective Order Access

The Administrative Protective Order (''APO'') the Department granted in the investigation segment of this proceeding remains in place. While the investigation is suspended, parties subject to the APO may retain, but may not use, information received under that APO. All parties wishing access to business proprietary information submitted during the administration of the 2016 Suspension Agreement must submit new APO applications in accordance with the Department's regulations currently in effect. *See* section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306. An APO for the administration of the 2016 Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**. This notice also serves as a reminder to parties subject to the APO for the 2007 Agreement of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: October 20, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Attachment

AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON LEMON JUICE FROM ARGENTINA

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (the Act) and 19 C.F.R. § 351.208 (the Regulations), and in satisfaction of the requirements of those provisions, the U.S. Department of Commerce (the Department) and the signatory producers and exporters of Lemon Juice from Argentina (the Signatories) have entered into this agreement suspending the antidumping duty investigation of Lemon Juice (defined below) from Argentina (Agreement). As of the Effective Date (defined below), this Agreement supersedes the suspension agreement entered into by the Department and Argentine producers and exporters on September 10, 2007.

I. PRODUCT COVERAGE

The product covered by this Agreement is lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this Agreement is dispositive.

II. DEFINITIONS

For purposes of this Agreement, the following definitions apply:

A. ''Anniversary Month'' means the month in which the Agreement becomes effective.

B. ''Argentina'' means the customs territory of the Republic of Argentina and foreign trade zones located within the territory of Argentina.

C. ''Date of Export'' means the date on which the product is exported from Argentina to the United States.

D. ''Effective Date'' means the date on which the Department and the signatory producers/exporters sign the Agreement.

E. ''Interested Party'' means any person or entity that meets the definitions provided in section 771(9) of the Act.

F. ''Lemon Juice'' means the product described in Section I, ''Product Coverage,'' of the Agreement.

G. ''Reference Price'' means the minimum price at which merchandise subject to this Agreement can be sold to the United States.

H. ''Substantially all'' of the subject merchandise means producers and exporters that have accounted for not less than 85 percent by value or volume of the subject merchandise.

I. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

J. ''Violation'' means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not substantially frustrate the purposes of this Agreement. Examples of a Violation include: 1) sales that are at net prices (after rebates, back-billing, discounts, and other claims) that are below the Reference Prices; 2) any act, practice or omission which would have the effect of hiding the real price of the Lemon Juice being sold; and 3) any other Violation or breach, as determined by the Department.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

III. SUSPENSION OF INVESTIGATION

On September 10, 2007, the Department entered into an agreement with S.A. San Miguel A.G.I.C. y F. and Citrusvil, S.A., which suspended the antidumping duty investigation on Lemon Juice from Argentina. *See Suspension of Antidumping Duty Investigation: Lemon Juice From Argentina,* 72 FR 53991 (September 21, 2007) (2007 Agreement). On September 17, 2009, Citromax S.A.C.I. acceded to the 2007 Agreement. *See* Accession to the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice From Argentina (September 17, 2009). On July 11, 2014, La Moraleja S.A. and Cooperativa de Productores Citricolas de Tafi Viejo acceded to the 2007 Agreement. *See* Accessions to the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice From Argentina (July 11, 2014). In 2015, the Argentine signatories to the 2007 Agreement indicated a preference to enter into a suspension agreement pursuant to section 734(c) of the Act. Effective October 20, 2016, in accordance with section 734(c) of the Act and 19 C.F.R. § 351.208, this Agreement supersedes the 2007 Agreement. By agreement of the Department and the Signatories, the 2007 Agreement shall cease to have force or effect as of the Effective Date of this Agreement. On the basis of this Agreement, the Department shall continue to suspend its antidumping investigation with respect to Lemon Juice from Argentina, subject to the terms and provisions set forth herein.

IV. U.S. IMPORT COVERAGE

In accordance with section 734(c)(1) of the Act, the Signatories are the producers and exporters in Argentina which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers and exporters in Argentina to sign the Agreement to ensure that not less than substantially all imports into the United States are subject to this Agreement.

V. STATUTORY CONDITIONS FOR THE AGREEMENT

The Department has determined that the statutory conditions for suspension of the investigation have been met. In accordance with section 734(c) of the Act, the Department determines that extraordinary circumstances are present because suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation and the investigation is complex within the meaning of section 734(c)(2)(B); that the Agreement constitutes an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of subject merchandise into the United States; that the Agreement will eliminate completely the injurious effect of exports to the United States of subject merchandise; that the suppression or undercutting of price levels of domestic products by imports of subject merchandise will be prevented; and that

for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation. In accordance with section 734(d) of the Act, the Department also determines that it is satisfied that suspension of the investigation is in the public interest and effective monitoring of the Agreement is practicable.

VI. PRICE UNDERTAKING

Each Signatory individually agrees that, to prevent price suppression or undercutting, it will not sell for export to the United States, on or after the Effective Date, Lemon Juice at prices that are less than the Reference Prices established in Appendix 1.

Each Signatory individually agrees that for each entry of Lemon Juice subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the investigation, in accordance with the Act and the Department's regulations and procedures, including but not limited to the calculation methodologies described in Appendix II of this Agreement.

VII. MONITORING OF THE AGREEMENT

A. Import Monitoring

1. The Department will monitor entries of Lemon Juice from Argentina to ensure compliance with section VI of this Agreement.

2. The Department will review publicly-available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection (CBP), to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

3. Not later than thirty days after the end of each quarter, the Signatories, collectively, will submit Argentine customs data for the most recently completed quarter. These data will include the quantity and value of shipments for all exporters of Lemon Juice during the most recently completed quarter.

B. Compliance Monitoring

1. The Department may require, and each Signatory agrees to provide confirmation through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established Reference Prices. The Department may require that such documentation be provided and be subject to verification.

2. The Department may require, and each Signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of Lemon Juice, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department. The information to be reported may include, for example, F.O.B. sales value, unit price, date of sale, sales order number(s), importer of record, trading company, customer, customer relationship, destination, as well as any other information deemed by the Department to be relevant. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request or upon its own initiative, to ensure that exports of Lemon Juice from Argentina satisfy the requirements of sections 734(c)(1)(A) and (B) of the Act. The Department may conduct administrative reviews under sections 751(b) and (c), and 781 of the Act, as appropriate. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time it deems appropriate, and without prior notice, the Department may conduct verifications of persons or entities handling Signatory merchandise to determine whether they are selling Signatory merchandise in accordance with the terms of this Agreement. The Department may also conduct verifications at locations and times it deems appropriate to ensure compliance with the terms of this Agreement.

C. Shipping and Other Arrangements

1. All reference prices will be expressed in U.S. $/Gallon in accordance with Appendix I of this Agreement. All reference prices are F.O.B. Buenos Aires, Argentina.

2. Signatories agree not to take any action that would circumvent or otherwise evade, or defeat the purpose of, this Agreement. Signatories agree to undertake any measures that will help to prevent circumvention.

3. Not later than thirty days after the end of each quarter, each Signatory will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices (after rebates, back billing, discounts for quality and other claims) at or above the Reference Prices in effect and were not part of, or related to, any act or practice which would have the effect of hiding the real price of the Lemon Juice being sold. Further, each Signatory will certify in this same statement that all sales made during the relevant quarter were not part of or related to any bundling arrangement, discounts/free goods/financing package, end-of-year rebates, swap, or other exchange where such arrangement is designed to circumvent the basis of the Agreement. Each Signatory will also include the quantity and value of sales, by product type, and, separately, of shipments, by product type, during the most recently completed quarter. Each Signatory that did not export Lemon Juice to the United States during any given quarter will submit a written statement to the Department certifying that it made no sales to the United States during the most recently completed quarter. Each Signatory agrees to permit full verification of its certification as the Department deems necessary. Failure to provide a quarterly certification may be considered a Violation of the Agreement.

D. Rejection of Submissions

The Department may reject: (1) any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 C.F.R. § 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 C.F.R. § 351.304; and (4) submissions that do not comply with any other applicable regulations, as appropriate. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

E. Consultations

1. Compliance Consultations

a. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section VI of this Agreement, or that the sales may be otherwise in circumvention of this Agreement, the Department will notify each Signatory which it believes is responsible or, if applicable, notify the Signatory's representative. The Department will consult with each such party for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with section VI of this Agreement.

b. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under any provision of this Agreement.

c. If the Department is not satisfied at the conclusion of the consultation period that sales by such Signatory are being made in compliance with section VI of this Agreement, or that the sales are not circumventing this Agreement, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether this Agreement is being violated, as defined in section VIII of this Agreement, by such Signatory.

d. These compliance consultation provisions do not limit the Department's ability to make an immediate determination under 351.209(b) of its regulations when it determines that a signatory has violated the suspension agreement.

If the Department concludes that sales by a Signatory have been made at prices inconsistent with section VI of this Agreement, or that sales are circumventing the Agreement, the Department shall take action, as warranted. *See, e.g.,* 351.209 of the Department's regulations. The provisions of this section do not supersede the provisions of paragraphs VIII.A–VIII.C if the Department determines that the sales were made at prices inconsistent with section VI of this Agreement.

2. Operations Consultations

a. The Department will consult with the Signatories regarding the operation of this Agreement. A party to the Agreement may request such consultations, as necessary.

b. Notwithstanding the previous paragraph, the parties may agree to revise the Reference Prices subject to consultations.

VIII. VIOLATIONS

A. If the Department determines that a Violation of the Agreement has occurred or that the Agreement no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

B. Pursuant to section 734(i) of the Act, the Department will refer to CBP any Violations of the Agreement that appear to be intentional. *See also* 19 C.F.R. § 351.209(b)(4). Any person who intentionally commits a Violation of the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be not less than the quantity multiplied by the Reference Price, as the Signatories agree to not sell the subject merchandise at prices that are less than the Reference Price and to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

C. In addition, the Department will examine the activities of Signatories and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's Violation of the Agreement. If any such parties are found to have aided or abetted another party's Violation of the Agreement, they shall be subject to the same civil penalties described in section VIII.B above. Signatories to this Agreement consent to release of all information presented to or obtained by the Department during the conduct of investigations involving CBP.

IX. DISCLOSURE AND COMMENT

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

A. The Department may make available to representatives of each Interested Party, pursuant to and consistent with 19 C.F.R.§§ 351.304–351.306, any business proprietary information submitted to and/or collected by the Department pursuant to section VII of this Agreement, as well as the results of the Department's analysis of that information.

B. If the Department proposes to revise the Reference Price(s) as a result of consultations under this Agreement, the Department will disclose the preliminary Reference Price(s), including any calculation methodology, not less than 30 days before the date on which the price(s) would become final and effective.

C. Interested Parties shall file all communications and other submissions made pursuant to section VII or other sections of the Agreement via the Department's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov* and to all parties at the following address:

U.S. Department of Commerce
Central Records Unit, Room B8024
1401 Constitution Ave., NW
Washington, DC 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 C.F.R. § 351.303.

X. OTHER PROVISIONS

A. Upon request, the Department will advise any Signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value in accordance with the Act and the Department's regulations and procedures, including but not limited to, the calculation methodologies described in Appendix II of this Agreement.

B. By entering into this Agreement, the Signatories do not admit that any sales of Lemon Juice have been made at less than fair value or that imports of Lemon Juice from Argentina have caused injury to the producers of Lemon Juice in the United States.

XI. DURATION

A. This Agreement has no scheduled termination date. Termination of the suspended investigation shall be considered in accordance with the five-year review provisions of section 751(c) of the Act, and section 351.218 of the Department's regulations.

B. An individual Signatory may withdraw from this Agreement at any time. The Signatory's withdrawal shall be effective no later than 60 days after the date written notice of withdrawal is provided to the Department.

C. The Signatories, collectively, or the Department may terminate this Agreement at any time. Termination of the Agreement shall be effective no later than 60 days after the date written notice of termination is provided to the

Department or the Signatories, respectively.

D. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act. *See also* 19 C.F.R. § 351.209.

For U.S. Department of Commerce:

Ronald K. Lorentzen

Acting Assistant Secretary Enforcement and Compliance

U.S. Department of Commerce

Date

For the Argentine Exporters:

Jessica Lynd

Counsel for Argenti Lemon S.A.; F.G.F. Trapani S.R.; Latin Lemon S.R.L.; Ledesma S.A.A.I.; and S.A. San Miguel A.G.I.C.I. y F.

Date

Judith Lynn Holdsworth

Counsel for Citrusvil S.A.; Cooperativa de Productores Citricolas de Tafi Viejo, Agricola, de Transformacion y Comercializacion Limitada; and La Moraleja S.A.

Date

Kierstan Carlson

Counsel for Citromax S.A.C.I.

Date

Appendix I—Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina: Reference Prices

Consistent with the requirements of section 734 (c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic lemon juice, the reference prices are as follows:

	Reference price U.S. dollars per gallon (FOB Buenos Aires, Argentina) [1]				
Lemon juice type	Characteristics of frozen concentrated juice	Frozen concentrated juice at 400 GPL	Frozen concentrated juice at 200 GPL	Frozen concentrated juice at 300 GPL	Frozen concentrated juice at 500 GPL
	Conversion Factors		*200/400*	*300/400*	*500/400*
Clear	Less than 0.5% pulp	13.27	6.64	9.95	16.58
Cloudy	0.5% pulp or greater	12.48	6.24	9.36	15.60

Appendix II—Agreement Suspending the Antidumping Duty Investigation on Lemon Juice From Argentina: Analysis of Prices at Less Than Fair Value

A. Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (*e.g.,* a system based on well-established standards and that can be tied either to the audited financial statements or to the tax return filed with the Argentinian government).

1. Based on Sales Prices in the Comparison Market

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP).

Calculation of NV:

Gross Unit Price
± Billing Adjustments
− Movement Expenses
− Discounts and Rebates
− Direct Selling Expenses
− Commissions
− Home Market Packing Expenses
= Normal Value (NV)

2. Constructed Value

When normal value is based on constructed value, the Department will compute constructed values (CVs), as appropriate, based on the sum of each respondent's costs, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data in order to determine the accurate per-unit CV.

Calculation of CV:

+ Direct Materials
+ Direct Labor
+ Factory overhead
= Cost of Manufacturing
+ Home Market SG&A *
= Cost of Production
+ U.S. Packing
+ Profit *
= Constructed Value (CV)

* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade. SG&A includes financing but not movement expenses.

B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Calculation of EP:

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
± Billing Adjustments
+ Packing Expenses
+ Rebated Import Duties
= Export Price (EP)

Calculation of CEP:

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
± Billing Adjustments
− Direct Selling Expenses
− Indirect Selling Expenses that relate to commercial activity in the United States
− The cost of any further manufacture or assembly incurred in the United States
− CEP Profit
+ Rebated Import Duties
− Commissions
= Constructed Export Price (CEP)

C. Fair Comparisons

To ensure that a fair comparison with EP or CEP is made, the Department will make adjustments to normal value. The Department will adjust for physical differences between the merchandise sold in the United States and the merchandise sold in the home market. For EP sales, the Department will add in U.S. direct selling

[1] The reference prices specified above are for all sales of Lemon Juice at the specified GPL, regardless of horticultural method (*i.e.,* whether organic or not).

Additional conversion factors and product types may be added to the Agreement. Signatories may request that the Department add a new conversion factor or product type by filing a written public request on the official record of the Agreement. Within ten days of the filing of the request, interested parties may comment on the requested additional conversion factor or product types, including the appropriate reference price that should apply to a new product type. The Department will consider such requests for new conversion factors or product types and issue a determination in a timely manner. Additional conversion factors or product types would apply to sales by all Signatories going forward.

The Reference Prices will remain in effect until changed. In accordance with section VII.E.2.b of the Agreement, the Reference Prices may be revised. No revision will be considered before October 1, 2017.

expenses, U.S. commissions [2] and packing expenses. For CEP sales, the Department will subtract the amount of the CEP offset, if warranted, and add in U.S. packing expenses.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–805]

Stainless Steel Bar From Spain: Initiation and Preliminary Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping duty order on stainless steel bar (SSB) from Spain with respect to Sidenor Aceros Especiales S.L. Based on the information on the record, we preliminarily determine that Sidenor Aceros Especiales S.L. is the successor-in-interest to Gerdau Aceros Especiales Europa for purposes of determining antidumping duty liability. We invite interested parties to comment on these preliminary results.

DATES: Effective October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on SSB from Spain on March 2, 1995.[1] In its September 6, 2016, request for a changed circumstances review, Sidenor Aceros Especiales S.L. (Sidenor), informed the Department that, effective May 20, 2016, the following occurred: (1) Gerdau S.A., the Brazilian owner of Gerdau Holdings Europa S.A.U., including its Spanish subsidiary company Gerdau Aceros Especiales Europa, S.L. (Gerdau), sold its European holdings to Clerbil S.L.; and (2) Clerbil S.L. renamed Gerdau Holdings Europa S.A.U. to be Sidenor Holdings Europa S.A.U., and Gerdau Aceros Especiales Europa, S.L., to be Sidenor Aceros Especiales S.L. leaving its operations mostly unchanged.[2] Gerdau is a respondent in the ongoing administrative review of the antidumping duty order on SSB from Spain covering the period March 1, 2015, through February 29, 2016.[3] Because this changed circumstances review was requested for an effective date after the POR of the ongoing administrative review, it does not have any bearing on that review.[4] Citing section 751(b) of the Act, and 19 CFR 351.216 Sidenor, requested that the Department initiate a changed circumstances review and determine that Sidenor Aceros Especiales S.L., is the successor-in-interest to Gerdau. Sidenor also requested that the Department issue the initiation and preliminary results as a single notice, pursuant to 19 CFR 351.221(c)(ii).

Scope of the Order

The merchandise subject to the order is SSB. The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.,* cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[5]

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Based on the request from Sidenor, and in accordance with section 751(b)(1) of Act and 19 CFR 351.216(b), we are initiating a changed circumstances review to determine whether Sidenor is the successor-in-interest to Gerdau. The Department's regulations at section 351.221(c)(3)(ii) instruct that, if we conclude that an expedited action is warranted, we may combine the notices of initiation and preliminary results of a changed circumstances review. In this instance, because we have the information necessary on the record to make a preliminary finding, we find that an expedited action is warranted and are combining the notices of initiation and preliminary results.

Preliminary Results of Expedited Changed Circumstances Review

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base.[6] While no single factor or combination of these factors will necessarily provide a

[2] If there are not commissions in both markets, then the Department will apply a commission offset. *See, e.g.,* 19 C.F.R. § 351.410(e).

[1] *See Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain,* 60 FR 11656 (March 2, 1995).

[2] *See* Sidenor's Letter to the Secretary of Commerce, entitled, ''Stainless Steel Bar from Spain: Sidenor request for changed-circumstances review,'' dated September 22, 2016, (Sidenor Request) at 3–6.

[3] *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 81 FR 26203 (May 2, 2016).

[4] *Id.*

[5] The HTSUS numbers provided in the scope changed since the publication of the order. *See Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain,* 60 FR 11656 (March 2, 1995).

[6] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (November 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992).

dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's operations are not materially dissimilar to those of its predecessor.[7] Thus, if the evidence demonstrates that, with respect to the production and sales of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.[8]

In its review request,[9] and its response to our supplemental questionnaire,[10] Sidenor has provided evidence for us to determine preliminarily that it is the successor-in-interest to Gerdau. Sidenor states that its management, production facilities, and customer/supplier relationships have not changed as a result of the changes in ownership or name of the company.[11] Sidenor provided corporate structure documentation showing changes to the ownership and name of the company.[12] Furthermore, Sidenor provided internal documents evidencing that its domestic and overseas customers and suppliers remained the same after the changes, as they were prior to them.[13] Sidenor provided internal documentation evidencing that its production facilities are the same before and after the changes in ownership and the name change.[14] Sidenor also provided a list of members of the management team and supporting documentation indicating that Gerdau's managers hold the same positions in Sidenor that they did in Gerdau, with the exception of the replacement of the Human Resources Director.[15]

Based on record evidence, we preliminarily determine that Sidenor is the successor-in-interest to Gerdau for purposes of antidumping duty liability because the ownership and name changes of the company resulted in no significant changes to management, production facilities, supplier relationships, and customers. As a result, we preliminarily determine that Sidenor operates as the same business entity as Gerdau. Thus, we preliminarily determine that Sidenor should receive the same antidumping duty cash deposit rate with respect to the subject merchandise as Gerdau, its predecessor company.

Because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive and, therefore, no change will be made to Sidenor's cash deposit rate as a result of these preliminary results. If Sidenor believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries, *i.e.,* March, to determine the proper assessment rate and receive a refund of any excess deposits.[16] As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct CBP to suspend shipments of subject merchandise made by Sidenor, at Gerdau's cash deposit rate, effective on the publication date of our final results.

Public Comment

Interested parties may submit case briefs no later than 14 days after the publication of this notice.[17] Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than five days after the deadline for filing case briefs.[18] Parties who submit case briefs or rebuttal briefs in this changed circumstance review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Interested parties who wish to comment on the preliminary results must file briefs electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and is available to registered users at *http://access.trade.gov.* An electronically-filed document must be received successfully in its entirety by the ACCESS no later than 5:00 p.m. Eastern Time on the date the document is due. Interested parties that wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 14 days of publication of this notice.[19] Parties will be notified of the time and date of any hearing, if requested.[20]

Notifications to Interested Parties

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days after the publication of the preliminary results if all parties in this review agree to our preliminary results. The final results will include the Department's analysis of issues raised in any written comments.

This notice of initiation and preliminary results is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: October 18, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–25906 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See, e.g., Brake Rotors.*

[8] *Id. See also e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India,* 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India,* 77 FR 73619 (December 11, 2012).

[9] *See* Sidenor Request.

[10] *See* Sidenor's Letter to the Secretary of Commerce, entitled, ''Stainless Steel Bar from Spain, CCR (Sidenor): Sidenor response to supplemental questions,'' dated October 7, 2016 (SQR).

[11] *Id.*

[12] *See* Sidenor Request at Exhibit 1 (the two structures are identical except for the parent), Exhibit 2 (public deed registered in the Central Mercantile Registry reflecting name change), Exhibit 3 (registration of the name change), Exhibits 4–5 (taxpayer identification certificates before and after), and Exhibit 6 (SEC form 6–K filing at note 3 and 4).

[13] *See* SQR at 3–5, and Exhibit 2 (customers), and at 2–3, and Exhibit 1 (supplier).

[14] *See* Sidenor Request at 4, and Exhibit 9 (list of production assets).

[15] *Id.,* at 4 and Exhibit 7 (organization charts before, unchanged with one exception after). The administration of the company changed from a Board of Directors to a Sole Administrator. *See* Sidenor Request at Exhibit 2.

[16] *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880 (November 30, 1999).

[17] *See* 19 CFR 351.309(c)(ii).

[18] *See* 19 CFR 351.309(d).

[19] *See* 19 CFR 351.310(c). *See also* 19 CFR 351.303 for general filing requirements.

[20] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE987

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public hearing meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold three public hearings in November 2016 to

solicit public input on a request by the State of New Jersey to designate 13 of its artificial reef sites located in federal waters as Special Management Zones (SMZ). The Council is also soliciting written comments on the NJ SMZ request through 11:59 p.m. on Friday November 25, 2016.

DATES: The public hearings will begin at 7 p.m. on November 15, 2016 and end at 10 p.m. on November 17, 2016, to view the agenda see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Council will hold three public hearings, the dates, times, and locations of which are listed below.

1. Tuesday November 15, 2016, from 7 p.m. to 9:30 p.m., Kingsborough Community College, 2001 Oriental Blvd., Brooklyn, NY 11235, Room M239 of the Marina and Academic Center (The Lighthouse).

2. Wednesday November 16, 2016, from 7 p.m. to 10 p.m., Clarion Hotel & Conference Center, 815 Route 37 West, Toms River, NJ 08755.

3. Thursday November 17, 2016, 7 p.m. to 10 p.m., Congress Hall, 200 Congress Place, Cape May, NJ 08204.

Addresses for written comments: Written comments may be sent through mail, email, or fax through 11:59 p.m. on Friday November 25, 2016. Comments may be mailed to: Dr. Chris Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. Comments may be faxed to: Dr. Chris Moore, Executive Director, Mid-Atlantic Fishery Management Council at fax number 302–674–5399. Comments may be emailed to Richard Seagraves, Senior Scientist, at *rseagraves@mafmc.org.* If sending comments through the mail, please write ''NJ SMZ Request'' on the outside of the envelope. If sending comments through email or fax, please write ''NJ SMZ Request comments'' in the subject line.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: 302–674–2331 or on their Web site, at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

In the November 2015, the New Jersey Department of Environmental Protection (DEP) petitioned the Mid-Atlantic Council to designate 13 artificial reef sites as SMZ's in the EEZ under provisions of Amendment 9 to the *Summer Flounder, Scup* and *Black Sea Bass* Fishery Management Plan. The justification for this request was based on the need to ameliorate gear conflicts between hook and line fishermen and fixed pot/trap gear at those sites. The Council received a report from the SMZ Monitoring Team (MT) at its October 2016 meeting which evaluated the NJDEP request relative to the following factors: (1) Fairness and equity; (2) promotion of conservation; (3) avoidance of excessive shares; (4) consistency with the objectives of Amendment 9, the Magnuson-Stevens Act, and other applicable law; (5) the natural bottom in and surrounding potential SMZs; and (6) impacts on historical uses. The MT's analysis concluded that the designation of the NJDEP 13 reef sites appears to be compatible with the Magnuson-Stevens Act and other applicable federal law. Based on evaluation of all relevant factors and issues as outlined in Amendment 9, the SMZ Monitoring Team recommended that the Council designate all 13 New Jersey's artificial reefs located in the EEZ as SMZs. The SMZ designation could stipulate that no fishing vessel or person on a fishing vessel may fish in the 13 New Jersey Special Management Zones with any gear except hook and line and spear fishing (including the taking of fish by hand). The MT analysis indicated that commercial fishing vessels deploying pot/trap gear off the coast of New Jersey would likely face minimal to no losses in ex-vessel revenue if the artificial reefs are designated as SMZs. The Council discussed the MT's recommendations and decided to hold public hearings in November 2016 in NJ and NY to solicit public comments on the NJ SMZ request. The Council is seeking public comment on NJ's SMZ request and is scheduled to make a decision relative to NJ's request at its December 2016 meeting in Annapolis, MD.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, 302–526–5251, at least 5 business days prior to the meeting date.

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

Dated: October 21, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25849 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE991

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) Devil's Hole Research Planning Group will meet to coordinate research in the proposed Devil's Hole Spawning Special Management Zone.

DATES: The meeting will be held on Wednesday, November 2, 2016, from 8:30 a.m. until 12 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418.

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, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. 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 Council selected preferred locations for designation as Spawning Special Management Zones (SMZs) in Amendment 36 to the Snapper Grouper Fishery Management Plan in 2016. Amendment 36, which is under Secretarial review, includes an action to prohibit harvest or possession of species managed under the Council's snapper grouper fishery management unit in the designated Spawning SMZs because of the area's potential to be spawning areas for multiple species. The Council is holding a meeting to coordinate research for the proposed Devil's Hole Spawning SMZ, one of the proposed Spawning SMZs off the coast of South Carolina. The Devil's Hole Research Planning Group is meeting to discuss past research in the proposed Spawning SMZ and discuss and coordinate future sampling events in the area. The group is comprised of research scientists, state and federal agency representatives, commercial fishermen, recreational

fishermen, and non-governmental organization representatives.

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 5 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: October 21, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25910 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE995

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet November 13–21, 2016. The Pacific Council meeting will begin on Wednesday, November 16, 2016 at 9 a.m., reconvening at 8 a.m. each day through Monday, November 21, 2016. All meetings are open to the public, except a closed session will be held from 8 a.m. to 9 a.m., Wednesday, November 16 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Council and its advisory entities will be held at the Hyatt Regency Orange County, 11999 Harbor Blvd., Garden Grove, CA 92840; telephone: (714) 750–1234.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll-free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The November 13–21, 2016 meeting of the Pacific Council will be streamed live on the Internet. The broadcasts begin initially at 9 a.m. Pacific Time (PT) Wednesday, November 16, 2016 and continue at 8 a.m. daily through Monday, November 21, 2016. Broadcasts end daily at 6 p.m. PT or when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast. To access the meeting online please use the following link: *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the November Webinar ID, 102–405–515, and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio portion only of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1–562–247–8422 (not a toll-free number), audio access code 879–397–319, and enter the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance November 2016 briefing materials and posted on the Council Web site at *www.pcouncil.org.*

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  1. Comments on Non-Agenda Items
C. Administrative Matters
  1. West Coast Regional Operating Agreement Final Review
  2. National Standard Guidelines Update
  3. Fiscal Matters
  4. Approval of Council Meeting Record
  5. Membership Appointments and Council Operating Procedures
  6. Future Council Meeting Agenda and Workload Planning
D. Salmon Management
  1. National Marine Fisheries Service Report
  2. Salmon Methodology Review
  3. Chinook Fishery Regulation Assessment Model Update
  4. Preseason Salmon Management Schedule for 2017 Final Action
E. Pacific Halibut Management
  1. Final 2017 Catch Sharing Plan and Annual Regulation Changes
F. Groundfish Management
  1. National Marine Fisheries Service Report
  2. Methodology Review Final Topic Selection
  3. Inseason Management Final Action
  4. Groundfish Essential Fish Habitat (EFH) and Rockfish Conservation Area (RCA) Amendment 28 Alternatives (Part 1 and Part 2)
  5. Trawl Gear Modification Exempted Fishing Permit (EFP) Final Action
  6. Five-Year Catch Share Program and Intersector Allocation Review Plans and Fishery Management Plan Update
  7. Mid-Biennium Harvest Specification Adjustment Policies
G. Coastal Pelagic Species Management
  1. National Marine Fisheries Service Report
  2. Methodology Review Preliminary Topic Selection
  3. Small-Scale Fishery Management Alternatives
  4. Northern Anchovy Stock Assessment and Management Measures
H. Current Habitat Issues
  1. Current Habitat Issues
I. Highly Migratory Species Management
  1. National Marine Fisheries Service Report
  2. International Issues
  3. U.S.-Canada Albacore Tuna Treaty
  4. Deep-Set Buoy Gear Exempted Fishing Permits (EFPs)
  5. Swordfish Fishery Management

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Tuesday, November 1, 2016.

SCHEDULE OF ANCILLARY MEETINGS

Day 1—Sunday, November 13, 2016	
SSC Economic and Groundfish Subcommittees	1 p.m.
Day 2—Monday, November 14, 2016	
SSC Economic and Groundfish Subcommittees	8 a.m.
Day 3—Tuesday, November 15, 2016	
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	8:30 a.m.
Groundfish Advisory Subpanel	1 p.m.
Budget Committee	1 p.m.
Day 4—Wednesday, November 16, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	8:30 a.m.
Enforcement Consultants	3 p.m.
Day 5—Thursday, November 17, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	Ad hoc.
Day 6—Friday, November 18, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	Ad hoc.
Day 7—Saturday, November 19, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	Ad hoc.
U.S. Government Accountability Office (GAO)	7 p.m.
Engagement on Commercial Fishing Vessel Classification Standards.	
Day 8—Sunday, November 20, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	Ad hoc.
Day 9—Monday, November 21, 2016	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council 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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 10 business days prior to the meeting date.

Dated: October 21, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25887 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE992

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 public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat Protection and Ecosystem-Based Management (Habitat) Advisory Panel (AP) in St. Petersburg, FL. The meeting is open to the public.

DATES: The meeting will be held from 9 a.m. until 4:30 p.m. on Tuesday, November 15, 2016, and from 9 a.m. until 4:30 p.m. on Wednesday, November 16, 2016.

ADDRESSES:

Meeting address: The meeting will be held at the Florida Fish and Wildlife and Resources Institute (FWRI), Florida Fish and Wildlife Conservation Commission, 100 8th Ave. SE. 3370, St. Petersburg, FL; phone: (727) 896–8626.

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, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; phone (843) 571–4366 or toll free (866) SAFMC–10; fax (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Items to be addressed or sessions to be conducted during this meeting include: Updates on the Fishery Ecosystem Plan (FEP) II development including new sections on South Atlantic Climate Variability and Fisheries and South Atlantic Food Webs and Connectivity; Draft Policy Statements for Artificial Reefs, South Atlantic Food Webs and Connectivity and South Atlantic Climate Variability and Fisheries; status report on ecosystem modeling and tool development to inform and support FEP II; Ecosystem research needs; the South Atlantic Landscape Conservation Cooperative (SALCC) Conservation Blueprint Version 2.1; and status of the Lenfest Fishery Ecosystem Task Force. In addition, NOAA Fisheries Habitat Conservation Division, as needed, will brief the Panel on Essential Fish Habitat related permit and policy reviews and comments.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 21, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25885 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE993

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 a Fishery Ecosystem Plan (FEP) II Managed Species Section Writing Team in St. Petersburg, FL.

DATES: The meeting will be held from 9 a.m. until 4:30 p.m. on Thursday, November 17, 2016.

ADDRESSES:

Meeting address: The meeting will be held at the Florida Fish and Wildlife and Resources Institute (FWRI), Florida Fish and Wildlife Conservation Commission, 100 8th Ave. SE. 3370, St. Petersburg, FL; phone: (727) 896–8626.

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, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; phone (843) 571–4366 or toll free (866) SAFMC–10; fax (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Items to be addressed or sessions to be conducted during this meeting include: Fishery Ecosystem Plan II Managed Species Section/Ecospecies online system development.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 21, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25886 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE983

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 50 Data Scoping Webinar.

SUMMARY: The SEDAR 50 assessment of the Atlantic and Gulf of Mexico stock of Blueline Tilefish will consist of a series of workshops and webinars: Stock Identification (ID) Work Group Meeting; Data Workshop; Assessment Workshop and Webinars; and a Review Workshop.

DATES: The SEDAR 50 Data Scoping Webinar will be held on Tuesday, November 15, 2016, from 1 p.m. to 4 p.m.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia

Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Data Scoping webinar are as follows:

1. Participants will review and discuss SEDAR 50 stock ID recommendations.

2. Participants will identify potential data sources and discuss data needs and treatments in order to prepare for the Data Workshop.

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.

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 5 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: October 21, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25884 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE973

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting jointly with the Atlantic States Marine Fisheries Commission's (ASMFC's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Thursday, November 17, 2016 from 2 p.m. to 5 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; Web site: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel, together with the Atlantic States Marine Fisheries Commission's Advisory Panel, will meet on Thursday, November 17, 2016 (see **DATES** and **ADDRESSES**). The purpose of this meeting is to discuss recreational management measures (*e.g.,* bag limits, size limits, and seasons) and strategies for recreational summer flounder, scup, and black sea bass fisheries in 2017. A detailed agenda and background documents will be made available on the Council's Web site (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: October 21, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25883 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; American Lobster—Annual Trap Transfer Program

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 take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995. This action proposes to revise and extend information collection for the American lobster fishery Trap Transfer Program.

DATES: Written comments must be submitted on or before December 27, 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 Peter Burns, Fishery Policy Analyst, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930; (978) 281–9144, *Peter.burns@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for revision and extension of a currently approved information collection.

The American lobster resource and fishery are cooperatively managed by the states and NMFS under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, according to the framework set forth by the Atlantic States Marine Fisheries Commission (ASMFC) in Amendment 3 of its Interstate Fishery Management Plan (ISFMP). This collection of information is in response to several addenda to Amendment 3 of the ISFMP that work to reduce trap fishing effort through limited entry fishing and trap allocation limit reductions. This program is intended to help control fishing efforts while increasing economic flexibility in the American lobster trap fishery.

Currently, Federal lobster permit holders qualified to fish with trap gear in Lobster Conservation Management Areas 2 and 3 are undergoing scheduled annual trap allocation reductions of 5 percent per year until 2021 (Area 2) and 2020 (Area 3). In 2015, in an effort to help mitigate the initial economic burden of these reductions, NMFS and state agencies implemented the Lobster Trap Transfer Program that allows all qualified Federal lobster permit holders to buy and sell trap allocation from Areas 2, 3, or Outer Cape Cod. Each transaction includes a conservation tax of 10 percent, which deducts a number of traps equal to 10 percent of the total number of traps with each transfer, permanently removing them from the fishery.

NMFS collects annual application forms from Lobster permit holders who wish to buy and/or sell Area 2, 3, or Outer Cape trap allocation through the Trap Transfer Program. The transfer applications are only accepted during a 2-month period (from August 1 through September 30) each year, and the revised allocations for each participating lobster permit resulting from the transfers become effective at the start of the following Federal lobster fishing year, on May 1. Both the seller and buyer of the traps are required to sign the application form, which includes each permit holder's permit and vessel information, the number of traps sold, and the revised number of traps received by the buyer, inclusive of the amount removed according to the transfer tax. Both parties must sign the form as an agreement to the number of traps in the transfer. The parties must date the document and clearly show that the transferring permit holder has sufficient allocation to transfer and the permit holder receiving the traps has sufficient room under any applicable trap cap. This information allows NMFS to process and track transfers of lobster trap allocations through the Trap Transfer Program, and better enables the monitoring and management of the American lobster fishery as a whole.

Originally, this collection was part of a new rulemaking action, and included efforts to obtain information from American lobster permit holders to implement a limited access permit program. NMFS used the information to qualify permit holders for participation in Area 2 and/or the Outer Cape Area, and to allocate traps to each qualified permit. This limited access portion of the collection is complete and no longer necessary, so a revision is requested to remove it from the collection. Also, now that the Trap Transfer Program has been in place for two years, NMFS can better estimate the number of applicants/respondents and have made a minor revision to the burden. The initial estimate of 432 respondents with 216 two-party transaction responses was nearly double what was actually received through the Trap Transfer Program in the first two years; with fewer permit holders participating in the program overall, and/or completing multiple transactions between their own permits. Adjusted estimates of respondents, total burden hours, and costs are noted below in Section III.

II. Method of Collection

Applications for the Trap Transfer Program are accepted annually from August 1 through September 30 by mail, fax, or email.

III. Data

OMB Control Number: 0648–0673.

Form Number(s): None.

Type of Review: Regular submission (revision and extension of a current information collection).

Affected Public: Businesses or other for-profit organizations; Individuals or households; Federal government; and State, Local, or Tribal government.

Estimated Number of Respondents: 102.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 17.

Estimated Total Annual Cost to Public: $573.24 in reporting/recordkeeping 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: October 21, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–25844 Filed 10–25–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to

the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 25, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs in OMB, within 30 days of publication of the notice, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0096. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0096, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to the Commission through its Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://regInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Ridenour, Special Counsel, (202) 418–5438, *aridenour@cftc.gov*, or Owen Kopon, Attorney-Advisor, (202) 418–5360, *okopon@cftc.gov,* Division of Market Oversight, and refer to OMB Control No. 3038–0096.

SUPPLEMENTARY INFORMATION:

Title: Revised Collection, Comment Request: Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, Final Rule (OMB Control No. 3038–0096). This is a request for a revision to a currently approved information collection.

Abstract: The Commission recently adopted a final rule regarding the reporting of cleared swap transactions (the ''Cleared Swap Reporting Release''),[1] which will require entities reporting swaps to report certain additional data elements. This Cleared Swap Reporting Release will also require registered derivatives clearing organizations (''DCOs'') to terminate ''original swaps'' (as defined in that final rule), which may require DCOs to connect to multiple registered swap data repositories (''SDRs''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information (''60 Day Notice''), implicated by the requirements of the Cleared Swap Reporting Release, was published on July 21, 2016 (81 FR 47362). The 60 Day Notice included a burden estimate for (a) DCOs to connect to SDRs for purposes of terminating original swaps, estimated to require a one-time hours burden of 3,000 per DCO and a recurring annual cost of $250,000; and (b) changes to reporting systems by all reporting entities and SDRs to account for additional and amended primary economic terms (''PET'') data fields in the Cleared Swap Reporting Release and future changes required by changes to PET fields and developments in the swaps market, estimated as a recurring burden of 200 hours per year.[2]

The Commission received one comment letter in response to the 60 Day Notice. CME Group commented that the Commission's assumptions relating to economies of scale for connections to more than one SDR were erroneous. CME Group also commented that the Commission's assumption that DCOs would not need to connect to every SDR because not every SDR accepted every asset class of swaps was erroneous, because only the equities asset class was accepted by fewer than four SDRs. While not providing a specific number of burden hours associated with the Cleared Swap Reporting Release, CME Group estimated that the build to comply with the rule would be ''almost 50% above the Commission's estimate[.]'' CME Group also commented that the Commission's estimate of annual costs was low because the incorrect assumptions on economies of scale and limited numbers of SDR connections applied to costs as well as burden hours. (CME Group Sept. 19, 2016 Letter, at 2–5).[3] The CME Group letter did not address the 200 hour recurring burden for changes to PET fields, and the Commission received no other comments on the 60 Day Notice.

Burden Statement: Based on the comment letter received in response to the 60 Day Notice, the Commission is revising its estimate of the burden for this collection by increasing the estimated costs associated with the termination of original swaps by 50 percent. The Commission is not revising the burden estimate association with additional and amended PET fields.

Below are tables indicating *the increase* in burden hours and costs above those in the current collection 3038–0096:

[1] *See* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, Final Rule, 81 FR 41736 (June 27, 2016).

[2] While not connected to the Cleared Swap Reporting Release, the Commission also proposed in the 60 Day Notice to reduce the number of SDRs in collection 3038–0096 from 15 to 4. When submitting the original OMB information collection for part 45 reporting, the Commission had assumed that up to 15 entities would register as SDRs. Currently, there are four SDRs provisionally registered with the Commission. Three other entities had submitted SDR applications. Two withdrew applications in 2012 and 2014. One (GTR) withdrew its application and resubmitted under the corporate entity DTCC Data Repository (US) LLC, which currently operates as a provisionally registered SDR. As the Commission has not received any SDR applications since 2012, the Commission believes that four is a reasonable number of SDRs for calculating PRA burdens.

[3] The Commission received a comment from Robert Rutkowski on Sept. 15, 2016 under this comment file. However, this comment letter related to the de minimis report, not the Cleared Swap Reporting Release or PRA Notice.

ADDITIONAL AND AMENDED PET FIELDS

[Same as in 60 day notice]

Affected entities	SDRs, SEFs, DCMs, DCOs, SD/MSPs, non-SD/MSP reporting entities		
Burden type	Burden per respondent	Number of respondents	Total burden
Annual hours burden	200 hours	449	89,800 hours.
Annual costs	$0	449	$0.

TERMINATION OF ORIGINAL SWAPS

[Increased by 50% from 60 day notice]

Affected entities	DCOs		
Burden type	Burden per respondent	Number of respondents	Total burden
One-time hours burden	4,500 hours	12	54,000 hours.
Annual costs	$375,000	12	$4,500,000.

Increases in Hours Burdens and New Total Hours Burden

Based on an increase in annual burden hours of 89,800, Commission staff estimate that the revised aggreagate total annual time burden for the collection is 562,945 hours.

Increases in Aggregate Costs

There are three components to the aggregate increase in annual costs associated with this revision, (a) costs associated with changes to reporting systems, to be incurred by 449 entities; (b) annualized costs associated with establishing SDR connections by DCOs; and (c) costs associated with maintaining SDR connections by DCOs.

First, the Commission estimates that the costs associated with additional and amended PET fields will be $15,196 per entity (200 hours × $75.98 per hour).[4] The aggregate increase across all 449 reporting entities and SDRs for the additional and amended PET fields is therefore $6,823,004.

Second, the Commission estimates that DCO to SDR connections will require each DCO to incur a one-time start-up cost of $341,910 (4,500 hours x $75.98 per hour). The Commission estimates that DCOs will use these connections for 20 years, and therefore the annualized start-up cost for SDR connections will be $17,095 per DCO. Based on 12 DCOs, the aggregate annualized start-up cost for SDR connections will be $205,146.

Third, DCOs will incur an aggregate annual cost of $4,500,000 to maintain those SDR connections.

By combining these three components, the *aggregate increase* to annual costs associated with this collection will be $11,528,150.

Total Aggregate Costs

Commission staff estimate that the revised *aggregate total annual cost* for the collection is $99,462,062. The burden estimate represents the burden that SDRs, swap execution facilities (''SEFs''), designated contract markets (''DCMs''), DCOs, swap dealers (''SDs''), major swap participants (''MSPs''), and non-SD/MSP swap counterparties incur to operate and maintain swap recordkeeping and reporting systems to facilitate the recordkeeping and reporting of swaps.

Respondents/Affected Entities: SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP swap counterparties.

Estimated Number of Respondents: 30,210.

Estimated Total Annual Burden on Respondents: 562,945 hours.

Estimated Total Annual Cost: $99,462,062.

Frequency of Collection: Ongoing.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 21, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–25925 Filed 10–25–16; 8:45 am]

BILLING CODE 6351–01–P

[4] In calculating the cost figures associated with burden hours, the Commission estimated the appropriate wage rate based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). Commission staff arrived at an hourly rate of $75.98 using figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (30% weight); ''programmer'' (30%); ''compliance advisor (intermediate)'' (20%); ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%).

BUREAU OF CONSUMER FINANCIAL PROTECTION

Compliance Bulletin and Policy Guidance; 2016–02, Service Providers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Bureau is reissuing its guidance on service providers, formerly titled CFPB Bulletin 2012–03, Service Providers to clarify that the depth and formality of the risk management program for service providers may vary depending upon the service being performed—its size, scope, complexity, importance and potential for consumer harm—and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. This amendment is needed to clarify that supervised entities have flexibility and to allow appropriate risk management.

DATES: The Bureau released this Compliance Bulletin and Policy Guidance on its Web site on October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Suzanne McQueen, Attorney Adviser, Office of Supervision Policy, 1700 G Street NW., 20552, 202–435–7439.

SUPPLEMENTARY INFORMATION:

1. Compliance Bulletin and Policy Guidance 2016–02, Service Providers

The Consumer Financial Protection Bureau (CFPB) expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as ''any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.'' (12 U.S.C. 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the supervised bank or nonbank as well as with the supervised service provider.

B. The CFPB's Supervisory Authority Over Service Providers

Title X authorizes the CFPB to examine and obtain reports from supervised banks and nonbanks for compliance with Federal consumer financial law and for other related purposes and also to exercise its enforcement authority when violations of the law are identified. Title X also grants the CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site.[1] The CFPB will exercise the full extent of its supervision authority over supervised service providers, including its authority to examine for compliance with Title X's prohibition on unfair, deceptive, or abusive acts or practices. The CFPB will also exercise its enforcement authority against supervised service providers as appropriate.[2]

C. The CFPB's Expectations

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. The CFPB will apply these expectations consistently, regardless of whether it is a supervised bank or nonbank that has the relationship with a service provider.

The Bureau expects that the depth and formality of the entity's risk management program for service providers may vary depending upon the service being performed—its size, scope, complexity, importance and potential for consumer harm—and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. While due diligence does not provide a shield against liability for actions by the service provider, it could help reduce the risk that the service provider will commit violations for which the supervised bank or nonbank may be liable, as discussed above.

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

For more information pertaining to the responsibilities of a supervised bank or nonbank that has business arrangements with service providers, please review the CFPB's *Supervision and Examination Manual: Compliance Management Review* and *Unfair, Deceptive, and Abusive Acts or Practices*.[3]

2. Regulatory Requirements

This Compliance Bulletin and Policy Guidance is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment

[1] *See, e.g.,* subsections 1024(e), 1025(d), and 1026(e), and sections 1053 and 1054 of the Dodd-Frank Act, 12 U.S.C. 5514(e), 5515(d), 5516(e), 5563, and 5564.

[2] *See* 12 U.S.C. 5531(a), 5536.

[3] *http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf* at 34 (Compliance Management Review) and 174 (Unfair, Deceptive, and Abusive Acts or Practices).

rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Compliance Bulletin and Policy Guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: October 19, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–25856 Filed 10–25–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2014–OS–0074]

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by November 25, 2016.

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

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Application for Trusteeship, DD Form 2827, OMB License 0730–0013.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 19 hours.

Needs and Uses: The information collection is needed to identify the prospective trustees for active duty military and retirees. The information is required in order for the Defense Finance and Accounting Service (DFAS) to make payments on behalf of incompetent military members or retirees. DFAS is representing all services as the functional proponent for Retired and Annuitant Pay.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25897 Filed 10–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2014–0012]

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by November 25, 2016.

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

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Application Forms and Information Guide, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control Number 0703–0026.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 14,000.

Responses per Respondent: 7.

Annual Responses: 98,000.

Average Burden per Response: 3 hours 30 minutes.

Annual Burden Hours: 46,666.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25909 Filed 10–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0115]

Agency Information Collection Activities; Comment Request; Lender's Request for Payment of Interest and Special Allowance—LaRS

AGENCY: Federal Student Aid (FSA), 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 December 27, 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–0115. 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 Beth Grebeldinger, 202–377–4018.

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: Lender's Request for Payment of Interest and Special Allowance—LaRS.

OMB Control Number: 1845–0013.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 7,350.

Total Estimated Number of Annual Burden Hours: 14,333.

Abstract: The Department of Education (the Department) is submitting the Lender's Interest and Special Allowance Request & Report, ED Form 799 for approval. The information collected on the ED Form 799 is needed to pay interest and special allowance to holders of Federal Family Education Loans, for internal financial reporting, budgetary projections, and for audit and lender reviews by the Department, Servicers, External Auditors and General Accounting Office (GAO).

The legal authority for collecting this information is Title IV, Part B of the Higher Education Act of 1965, as amended by the Higher Education Reconciliation Act of 2005 (''the HERA''), (Pub. L. 109–171). The Department is requesting the continual approval for regulatory sections 682.304 and 682.414.

Dated: October 21, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–25848 Filed 10–25–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 1, 2016—8:30 a.m. to 6:00 p.m.; Friday, December 2, 2016—8:30 a.m. to 4:00 p.m.

ADDRESSES: Hilton Washington DC North/Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

December 1–2, 2016

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Report of the Committee of Visitors review of the High Energy Physics Program
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee,

you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov*. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel Web site, at: *http://science.energy.gov/hep/hepap/meetings/*.

Issued at Washington, DC, on October 20, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–25867 Filed 10–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under Section 9008(d) of the Food, Conservation, and Energy Act of 2008 amended by the Agricultural Act of 2014. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: November 17, 2016—8:30 a.m.–5:30 p.m.; November 18, 2016—8:30 a.m.–3:00 p.m.

ADDRESSES: Hamilton Crowne Plaza, 1001 14th Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Email: *Elliott.Levine@ee.doe.gov* and Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To develop advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Update the Biomass Research and Development Initiative
- Annual Committee Recommendations

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at; Email: *Elliott.Levine@ee.doe.gov* and Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com at least 5 business days* prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The summary of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html*.

Issued at Washington, DC, on October 20, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–25865 Filed 10–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 15, 2016—1:00 p.m.–5:15 p.m.

ADDRESSES: El Monte Sagrado, 317 Kit Carson Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of September 28, 2016
- Old Business
  - Report from Chair
- New Business
  - Review 2017 Meeting Schedule
- Update From Co-Deputy Designated Federal Officers and Executive Director
- Update on Chromium Interim Measures
- Break
- Presentation: Annual Surveillance Report
- Public Comment Period
- Updates from EM Los Alamos Field Office and New Mexico Environment Department
- Wrap-Up Comments From NNMCAB Members
- Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the

meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://energy.gov/em/nnmcab/northern-new-mexico-citizens-advisory-board.*

Issued at Washington, DC, on October 20, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–25866 Filed 10–25–16; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14726–001]

Pyramid Lake Paiute Tribe; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to a File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 14726–001.

c. *Date Filed:* August 29, 2016.

d. *Submitted By:* Pyramid Lake Paiute Tribe.

e. *Name of Project:* Prosser Creek Hydroelectric Project.

f. *Location:* The project would be constructed at the existing Prosser Creek Dam owned and operated by the U.S. Bureau of Reclamation in Nevada County, California. The project would occupy 4.03 acres of federal land administered by U.S. Forest Service, Tahoe National Forest.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Donna Noel, Director of Natural Resources, Pyramid Lake Paiute Tribe, P.O. Box 256, Nixon, Nevada 89424; (775) 574–1000; email—*dnoel@plpt.nsn.us.*

i. *FERC Contact:* Quinn Emmering at (202) 502–6382; or email at *quinn.emmering@ferc.gov.*

j. The Pyramid Lake Paiute Tribe filed its request to use the Traditional Licensing Process on August 29, 2016. The Pyramid Lake Paiute Tribe provided public notice of its request on August 26, 2016. In a letter dated October 20, 2016, the Director of the Division of Hydropower Licensing approved the Pyramid Lake Paiute Tribe's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Pyramid Lake Paiute Tribe as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The Pyramid Lake Paiute Tribe filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25838 Filed 10–25–16; 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: EC16–66–001.

Applicants: Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Palisades, LLC, Entergy Nuclear Power Marketing, LLC.

Description: Joint Application to Amend Existing Authorization under Federal Power Act Section 203 to Acquire Securities and Request for Shortened Notice Period of Entergy Nuclear Indian Point 2, LLC, et al.

Filed Date: 10/18/16.

Accession Number: 20161018–5182.

Comments Due: 5 p.m. ET 11/8/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–059; ER10–2319–050; ER10–2317–050; ER13–1351–032; ER10–2330–057.

Applicants: J.P. Morgan Ventures Energy Corporation, BE CA LLC, BE Alabama LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

Description: Notice of Non-Material Change in Status of the J.P. Morgan Sellers, et al.

Filed Date: 10/19/16.

Accession Number: 20161019–5090.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER16–1129–003; ER16–1130–003; ER16–1131–003; ER16–1132–003.

Applicants: VPI Enterprises, Inc., DifWind Farms Limited I, DifWind Farms Limited II, DifWind Farms Limited V.

Description: Notice of Change in Status of the Coachella Sellers, et al.

Filed Date: 10/18/16.

Accession Number: 20161018–5177.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER16–2376–000; ER16–2377–000.

Applicants: FPL Energy Marcus Hook, L.P., FPL Energy MH50, L.P.

Description: Supplement to the September 22, 2016 Reactive Power Capability Testing Forms filed by FPL Energy Marcus Hook, L.P. and FPL Energy MH 50, L.P., et al.

Filed Date: 10/19/16.

Accession Number: 20161019–5053.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER16–2492–002.

Applicants: Phoenix Energy New England, LLC.

Description: Tariff Amendment: Amended MBR Tariff Filing to be effective 9/26/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5081.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER16–2492–003.

Applicants: Phoenix Energy New England, LLC.

Description: Tariff Amendment: Amended Tariff Filing to be effective 9/26/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5091.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER16–2692–001.

Applicants: Avista Corporation.

Description: Compliance filing: Avista Corp Order 827 and 828 Compliance Filing errata to be effective 10/14/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5113.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER17–135–000.

Applicants: DesertLink, LLC.

Description: DesertLink, LLC submits tariff filing per 35.1: Baseline new to be effective 12/19/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5139.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER17–136–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT-Approved ERCOT Rate to be effective 9/20/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5140.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER17–137–000.

Applicants: Emera Maine.

Description: Compliance filing: Order Nos. 827 and 828 Combined Compliance Filing to be effective 12/14/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5031.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER17–138–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: True-Up SGIA Golden Solar, LLC WDT480 to be effective 12/19/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5032.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER17–139–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: True-Up SGIA Golden Solar, LLC WDT481 to be effective 12/19/2016.

Filed Date: 10/19/16.

Accession Number: 20161019–5033.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER17–140–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: Revised Tariff Sheet for Recovery of Costs for the 2017 Operation of NESCOE to be effective 1/1/2017.

Filed Date: 10/19/16.

Accession Number: 20161019–5083.

Comments Due: 5 p.m. ET 11/9/16.

Docket Numbers: ER17–141–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2017.

Filed Date: 10/19/16.

Accession Number: 20161019–5096.

Comments Due: 5 p.m. ET 11/9/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–2–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Supplement to October 5, 2016 Application for Authorization of Issuance of Short-Term Debt Securities Under Section 204 of the Federal Power Act of Oklahoma Gas and Electric Company.

Filed Date: 10/18/16.

Accession Number: 20161018–5050.

Comments Due: 5 p.m. ET 11/8/16.

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: October 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25811 Filed 10–25–16; 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: EC16–187–000.

Applicants: Quantum Pasco Power, LP, Rockland Pasco Holdings, LLC.

Description: Supplement to September 23, 2016 Joint Application of Quantum Pasco Power, LP, et al. for Authorization of Disposition of Jurisdictional Facilities Under Section 203 of the FPA and Request for Shortened Notice Period.

Filed Date: 10/17/16.

Accession Number: 20161017–5065.

Comments Due: 5 p.m. ET 10/27/16.

Docket Numbers: EC17–14–000.

Applicants: Sunflower Wind Project, LLC.

Description: Application for Disposition of Jurisdictional Assets of Sunflower Wind Project, LLC.

Filed Date: 10/17/16.

Accession Number: 20161017–5144.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: EC17–15–000.

Applicants: Cimarron Bend Wind Project I, LLC, Cimarron Bend Assets, LLC.

Description: Application for Disposition of Jurisdictional Assets of Cimarron Bend Wind Project I, LLC, et al.

Filed Date: 10/17/16.

Accession Number: 20161017–5147.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: EC17–16–000.

Applicants: Lindahl Wind Project, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Lindahl Wind Project, LLC.

Filed Date: 10/17/16.

Accession Number: 20161017–5148.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: EC17–17–000.

Applicants: Coram California Development, L.P.

Description: Application for Disposition of Jurisdictional Facilities, et al. of Coram California Development, L.P.

Filed Date: 10/17/16.

Accession Number: 20161017–5165.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: EC17–18–000.

Applicants: TTK Power, LLC, Empire Generating Co, LLC.

Description: Application under Section 203 of the Federal Power Act, et al. of Empire Generating Co, LLC, et al.

Filed Date: 10/18/16.

Accession Number: 20161018–5110.

Comments Due: 5 p.m. ET 11/8/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–14–000.

Applicants: ESS Rabbit Hill Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of ESS Rabbit Hill Project, LLC.

Filed Date: 10/17/16.

Accession Number: 20161017–5177.

Comments Due: 5 p.m. ET 11/7/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2564–007; ER10–2600–007; ER10–2289–007.

Applicants: Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Notification of Changes in Status of Tucson Electric Power Company, et al.

Filed Date: 10/17/16.

Accession Number: 20161017–5179.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: ER10–2794–020; ER14–2672–005; ER12–1825–018.

Applicants: EDF Trading North America, LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC.

Description: Notice of Non-Material Change in Status of EDF Trading North America, LLC, et al.

Filed Date: 10/17/16.

Accession Number: 20161017–5178.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: ER16–1483–004.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2016–10–17 Compliance Filing with Sept. 16 Order Frequency Response to be effective 8/15/2016.

Filed Date: 10/17/16.

Accession Number: 20161017–5138.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: ER17–114–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2016–10–17 Errata to Order 827 Order 828 Compliance Filing to be effective 9/21/2016.

Filed Date: 10/17/16.

Accession Number: 20161017–5141.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: ER17–131–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Quarterly Filing of City and County of San Francisco's WDT SA 275 for Q3 2016 to be effective 9/30/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5000.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER17–132–000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: PGE11 MBR Sec 6 waiver revision to be effective 8/29/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5002.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER17–133–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA No. 4541, Queue W1–124/AA2–049, Notice of Cancellation of 2840, 2926, 3061 to be effective 5/10/2011.

Filed Date: 10/18/16.

Accession Number: 20161018–5054.

Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER17–134–000.

Applicants: American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Inc. Submits ECSA No. 4553 to be effective 12/9/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5105.

Comments Due: 5 p.m. ET 11/8/16.

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: October 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25876 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–98–000]

Dominion Carolina Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Transco to Charleston Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Transco to Charleston Project (Project), proposed by Dominion Carolina Gas Transmission, LLC (Dominion) in the above-referenced docket. Dominion requests authorization to construct and operate new pipeline and compressor station facilities in South Carolina.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the following facilities:

- Approximately 55 miles of 12-inch-diameter pipeline in Spartanburg, Laurens, Newberry, and Greenwood Counties (Moore to Chappells Pipeline);
- approximately 5 miles of 4-inch-diameter pipeline in Dillon County (Dillon Pipeline);
- installation of two new 1,400-horsepower (hp) compressor units at the existing Moore Compressor Station in Spartanburg County;
- construction of a new 3,150-hp compressor station in Dorchester County (Dorchester Compressor Station);
- conversion of an existing 1,050-hp compressor unit from standby to base load at the existing Southern Compressor Station in Aiken County;
- upgrades to the existing Charleston Town Border Station in Charleston County and to the existing Greenwood Town Border Station in Greenwood County; and
- associated pipeline support facilities (metering and regulating stations, pig launcher and receiver assemblies, valves, and pipeline interconnects).

The FERC staff mailed copies of the EA to federal, state, and local government representatives and

agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the Project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Project, it is important that we receive your comments in Washington, DC on or before November 18, 2016.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the Project docket number (CP16–98–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located 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 also file your comments electronically using the *eFiling* feature on the Commission's Web site at *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.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

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 (*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.,* CP16–98). 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.*

Dated: October 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25792 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–1–000]

Equitrans, LP; Notice of Request Under Blanket Authorization

Take notice that on October 13, 2016, Equitrans, LP (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222–3111, filed in Docket No. CP17–1–000 a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and Equitrans' blanket certificate issued in Docket No. CP96–352–000, to construct and operate its H–125 Uprate Project for system flexibility and reliability. Equitrans requests authorization to retest certain portions and increase the Maximum Allowable Operating Pressure (MAOP) of its existing H–125 pipeline in Washington County, Pennsylvania, as well as replace, remove or modify appurtenant facilities located in Allegheny and Washington Counties, Pennsylvania. Equitrans states that the proposed project will result in an increase in MAOP of the H–125 pipeline from 328 pounds per square inch gauge (psig) to 546 psig. Equitrans asserts that this modifications will allow for more flexibility for its customers to better serve Pittsburgh and surrounding markets, and that the proposed uprate is not intended to increase or decrease available capacity on its system. Equitrans estimates the cost of the project to be $3,750,685, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Paul W. Diehl, Counsel—Midstream, Equitrans, LP, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222, by telephone at (412) 395–5540, by facsimile at (412) 553–7781, or by email at *pdiehl@eqt.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for

[1] See the previous discussion on the methods for filing comments.

authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25833 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD16–8–000]

Commission Information Collection Activities (FERC–725I); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection [FERC–725I (Mandatory Reliability Standards for the Northeast Power Coordinating Council)] to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 54571, 8/16/2016) requesting public comments. The Commission received no comments in response to the RD16–8–000 60-day notice and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by November 25, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0258, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. RD16–8–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725I, Mandatory Reliability Standards for the Northeast Power Coordinating Council.

OMB Control No.: 1902–0258.

Type of Request: Three-year approval of the FERC–725I information collection requirements, as modified.

Abstract: On June 9, 2016, the North American Electric Reliability Corporation (NERC) and the Northeast Power Coordination Council, Inc. (''NPCC'') filed a petition for Commission approval, pursuant to section 215(d)(1) of the Federal Power Act (''FPA'') [1] and Section 39.5 [2] of the Federal Energy Regulatory Commission's regulations, of the retirement of NPCC Regional Reliability Standard PRC–002–NPCC–01 (Disturbance Monitoring) and the two related NPCC regional definitions, Current Zero Time and Generating Plant.

Type of Respondents: Public utilities.

Estimate of Annual Burden: [3] The Commission estimates the reduction (due to the retirement of Reliability Standard PRC–002–NPCC–01) in the annual public reporting burden for the information collection as follows:

[1] 16 U.S.C. 824o (2012).

[2] 18 CFR 39.5 (2015).

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours (4)	Total annual burden hours (3) * (4) = (5)
R13: GO[4] and TO to have evidence it acquired and installed dynamic disturbance recorders and a mutually agreed upon implementation schedule with the RC (record retention)	1	1	1	10	10
R14.5: GO and TO to have evidence of a maintenance and testing program for stand-alone disturbance monitoring equipment including monthly verification of active analog quantities	169	12	2,028	5	10,140
R14.7: GO and TO to record efforts to return failed units to service if it takes longer than 90 days[5]	33	1	33	10	330
R14.7: GO and TO record retention	33	1	33	10	330
R17: RC provide certain disturbance monitoring equipment data to the Regional Entity upon request	5	1	5	5	25
R17: RC record retention	5	1	5	10	50
TOTAL REDUCTIONS			2,105		10,885

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25841 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

[4] For purposes of these charts, generation owner is abbreviated to GO, transmission owner is abbreviated to TO, reliability coordinator is abbreviated to RC, and planning coordinator is abbreviated to PC.

[5] We estimate that an entity will experience a unit failure greater than 90 days once every five years. Therefore, 20 percent of NPCC's 169 generator owners and transmission owners will experience a unit failure of this duration each year.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–138–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Revised Schedule for Environmental Review of the Atlantic Sunrise Project

This notice identifies the Federal Energy Regulatory Commission (FERC or Commission) staff's revised schedule for the completion of the environmental impact statement (EIS) for Transcontinental Gas Pipe Line Company, LLC's (Transco) Atlantic Sunrise Project. The first notice of schedule, issued on March 9, 2016, identified October 21, 2016 as the EIS issuance date. Based on additional information filed by Transco, however, we intend to issue a draft General Conformity Determination for the Atlantic Sunrise Project with a 30-day comment period. Commission staff has therefore revised the schedule for issuance of the final EIS.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—December 30, 2016.

90-day Federal Authorization Decision Deadline—March 30, 2017.

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription (*https://www.ferc.gov/docs-filing/esubscription.asp*).

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25834 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–073]

FirstLight Hydro Generating Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Amendment of Minimum and Maximum Reservoir Elevation Requirement.

b. *Project No.:* 2485–073.

c. *Date Filed:* September 16, 2016.

d. *Applicant:* FirstLight Hydro Generating Company (FirstLight).

e. *Name of Project:* Northfield Mountain Pumped Storage Project.

f. *Location:* The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gus Bakas, Director—Massachusetts Hydro, FirstLight Hydro Generating Company, Northfield Mountain Station, 99 Millers

Falls Road, Northfield, MA 01360. Phone (413) 422–5915.

i. *FERC Contact:* Mr. Christopher Chaney, (202) 502–6778, or *christopher.chaney@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, or 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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2485–073) on any comments, motions to intervene, or protests filed.

k. *Description of Request:* FirstLight is seeking authorization to modify the upper reservoir's upper and lower water surface elevation limits from 1,000.5 feet mean sea level (msl) and 938 feet msl, to 1,004.5 feet msl and 920 feet msl, respectively. FirstLight proposes to use the additional storage capacity between December 1, 2016, and March 31, 2017. According to FirstLight, approval of changes in the water surface elevation limits would result in an increase in the maximum daily generation from 8,729 megawatt-hours (MWh) to 10,779 MWh, and provide Independent System Operator-New England with additional resources to address winter reliability needs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.,* P–2485). 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, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the amendment request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25836 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2531–075]

Brookfield White Pine Hydro LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2531–075.

c. *Date filed:* December 15, 2015.

d. *Applicant:* Brookfield White Pine Hydro LLC (White Pine Hydro).

e. *Name of Project:* West Buxton Hydroelectric Project.

f. *Location:* The existing project is located on the Saco River in the Towns of Buxton, Hollis, and Standish, within York and Cumberland Counties, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank Dunlap, Licensing Specialist, Brookfield White Pine Hydro LLC, 150 Main Street, Lewiston, ME 04240; Telephone—(207) 755–5603; Email—*Frank.Dunlap@BrookfieldRenewable.com* OR Kelley Maloney, Manager of licensing and Compliance, Brookfield White Pine Hydro LLC, 150 Maine Street, Lewiston, ME 04240; Telephone—(207) 755–5606.

i. *FERC Contact:* Allan Creamer, (202) 502–8365, or *allan.creamer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.*

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2531–075.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The West Buxton Project consists of: (1) A 585-foot-long by 30-foot-high concrete gravity dam with a crest elevation of 173.8 feet (United States Geological Survey or USGS datum), consisting of (i) two overflow sections topped with three inflatable rubber dam sections that have a crest elevation of 178.1 feet (USGS datum) when fully inflated, (ii) a gated section containing a 20-foot-wide by 15-foot-high vertical lift gate, (iii) two 40-foot-wide by 11-foot-high stanchion sections, (iv) an 11-foot-wide log sluice section, and (v) an intake structure composed of two vertical lift gates regulating the flow of water to the lower powerhouse and five gate openings (two sealed by stoplogs) controlling water flow to the upper powerhouse; (2) a 118-acre impoundment at a normal pool elevation of 177.8 feet (USGS datum); (3) a 105-foot-long by 39-foot-wide upper powerhouse integral with the dam, containing five horizontal axis Francis turbine generating units that total 3,812 kW; (4) a 241.5-foot-long concrete conduit leading from the intake structure to a 74-foot-long by 30 to 45-foot-wide surge chamber, and then to the lower powerhouse; (5) a 51.2-foot long by 45.5-foot-wide lower powerhouse, containing one 4,000 kW vertical axis Kaplan turbine generating unit; (6) two 38-kV transmission lines, connecting the upper and lower powerhouses to the non-project West Buxton switching station; and (7) appurtenant facilities.

White Pine Hydro operates the project in a run-of-river mode, in accordance with the 1997 Saco River Instream Flow Agreement, which provides that outflow approximate inflow from the upstream Bonny Eagle Project No. 2529 and that White Pine Hydro act to minimize impoundment level fluctuations. White Pine Hydro also operates the project with a minimum outflow of 768 cfs, or inflow, whichever is less, in accordance with the project's current water quality certificate. The project generates an annual average of 34,007 MWh.

m. A copy of the application 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 the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	December 2016.
Commission issues EA	April 2017.
Comments on EA or EIS	May 2017.
Modified terms and conditions	July 2017.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25837 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–104–000]

Broadview Energy KW, 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 Broadview Energy KW, 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 November 7, 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: October 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25878 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–6–000; QF11–193–002; QF11–194–002; QF11–195–002; QF11–196–002;QF11–197–002; QF11–198–002; QF11–199–002; QF11–200–002; QF11–201–002; QF1–202–002; QF11–203–002]

Notice of Petition for Enforcement; Allco Renewable Energy Limited Allco Finance Limited, Ecos Energy, LLC

Take notice that on October 19, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA),[1] Allco Renewable Energy Limited and Allco Finance Limited filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources to remedy their alleged improper implementation of PURPA, all as more fully explained in the petition.

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.

[1] 16 U.S.C. 824a–3(h)(2)(B) (2012).

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 November 9, 2016.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25835 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–5–000; QF16–876–001; QF16–877–001; QF16–879–001; QF16–880–001; QF16–881–001; QF16–882–001; QF16–883–001; QF16–884–001; QF16–885–001; QF16–886–001; QF16–887–001; QF16–888–001; QF16–889–001; QF16–899–001]

FLS Energy, Inc.; Notice of Petition for Enforcement

Take notice that on October 17, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA) [1] and sections 206, 306, and 309 of the Federal Power Act,[2] FLS Energy, Inc. filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Montana Public Service Commission and NorthWestern Corporation, alleging that they failed to implement PURPA, all as more fully explained in the petition.

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

[1] 16 U.S.C. 824a–3(h)(2)(B) (2012).

[2] 16 U.S.C. 824e, 824k, 825e, 825h.

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 November 7, 2016.

Dated: October 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25790 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–16–000]

Commission Information Collection Activities (FERC–577); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection [FERC–577, Gas Pipeline Certificates: Environmental Impact Statement] to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 55456, 8/19/2016) requesting public comments. The Commission received no comments on the FERC–577 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by November 25, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0128, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–16–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–577, Gas Pipeline Certificates: Environmental Impact Statement.

OMB Control No.: 1902–0128.

Type of Request: Three-year extension of the FERC–577 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–577 information collection contains the Commission's information collections pertaining to 18 CFR Parts: 2, 157, 284, and 380. These regulations implement National Environmental Policy Act (NEPA) and include the environmental compliance conditions portions of the same regulations. The FERC–577 also includes the reporting requirements for landowner notifications. These requirements are contained within 18 CFR Parts: 2.55(b), 157.203(d), 380.15, and 2.55(a).

Type of Respondents: Gas pipelines.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden for the information collection as:

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–577 (NATURAL GAS FACILITIES: ENVIRONMENTAL REVIEW AND COMPLIANCE)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [2]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Gas Pipeline Certificates [3].	92	16	1,472	193.518 hrs.; $14,417	284,858 hrs.; $21,221,824.	$230,672
Landowner Notification [4]	165	144	23,760	2 hrs.; $149	47,520 hrs.; $3,540,240.	21,456
Total			25,232		332,378 hrs.; $24,762,064.	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25791 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14801–000]

Skandana, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 7, 2016, Skandana, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Eagleville Hydroelectric Project (project) to be located on the Chenango River, near the Village of Morrisville, Madison County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) An approximately 750-foot-long and 35-foot-wide concrete dam; (2) an impoundment with a surface area of 80 acres and a volume of 459.1 acre-feet at a normal water surface elevation of 1,330.0 feet above mean sea level; (3) a concrete spillway; (4) a steel penstock; (5) a three story high concrete, wood and steel powerhouse 120 feet wide by 249 feet long; (6) two turbine-generating units with a total installed capacity of 1,000 kilowatts; (7) a tailrace; (8) an approximately 8-mile-long, 115-kilovolt transmission line from the powerhouse to the Cody Road substation; and (9) appurtenant facilities. The estimated annual generation of the Eagleville Hydroelectric Project would be 8,500,000 kilowatt-hours.

Applicant Contact: Mr. Stephen T. Helmer, 105 Marangale Road, Manlius, New York 13104–1008; phone: (315) 233–8286.

FERC Contact: Tim Looney; phone: (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14801–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14801) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25840 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14728–001]

Pyramid Lake Paiute Tribe; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to a File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14728–001.

c. *Date Filed:* August 29, 2016.

d. *Submitted By:* Pyramid Lake Paiute Tribe.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $74.50 per Hour = Average Cost per Response. The Commission staff believes that the industry's level and skill set are comparable to FERC, so the FERC 2016 average hourly cost (for salary plus benefits) of $74.50 per hour is used.

[3] Requirements are found in 18 CFR Parts: 157, 284, 2, and 380.

[4] Requirements are found in 18 CFR Parts: 2.55(b), 157.203(d), 380.15, and 2.55(a).

e. *Name of Project:* Boca Hydroelectric Project.

f. *Location:* The project would be constructed at the existing Boca Dam owned and operated by the U.S. Bureau of Reclamation in Nevada County, California. The project would occupy approximately 3.36 acres of federal land administered by the U.S. Forest Service, Tahoe National Forest.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Donna Noel, Director of Natural Resources, Pyramid Lake Paiute Tribe, P.O. Box 256, Nixon, Nevada 89424; (775) 574–1000; email—*dnoel@plpt.nsn.us*.

i. *FERC Contact:* Kyle Olcott at (202) 502–8963; or email at *kyle.olcott@ferc.gov*.

j. The Pyramid Lake Paiute Tribe filed its request to use the Traditional Licensing Process on August 29, 2016. The Pyramid Lake Paiute Tribe provided public notice of its request on August 26, 2016. In a letter dated October 20, 2016, the Director of the Division of Hydropower Licensing approved the Pyramid Lake Paiute Tribe's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Pyramid Lake Paiute Tribe as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The Pyramid Lake Paiute Tribe filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25839 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP16–9–000, PF15–12–000	10–7–2016	Alice Arena.
Exempt:		
1. P–10482–000	10–3–2016	State of New York Assemblyman Aileen M. Gunther.
2. CP15–558–000	10–6–2016	Delaware Township, New Jersey Mayor Susan D. Lockwood.
3. CP15–490–000	10–7–2016	U.S. Department of Transportation.
4. CP15–138–000	10–7–2016	U.S. House Representative Joseph R. Pitts.
5. P–10810–000	10–12–2016	U.S. House Representative John Moolenaar.

Dated: October 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25880 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–36–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: § 4(d) Rate Filing: Updated Shipper Index Oct 2016 to be effective 12/1/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5124.

Comments Due: 5 p.m. ET 10/31/16.

Docket Numbers: RP17–37–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits tariff filing per 154.204: Negotiated Rate PAL Agreement—Koch Energy Services, LLC to be effective 10/18/2016.

Filed Date: 10/18/16.

Accession Number: 20161018–5137.

Comments Due: 5 p.m. ET 10/31/16.

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: October 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25812 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–105–000]

Broadview Energy JN, 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 Broadview Energy JN, 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 November 7, 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: October 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25879 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–94–000]

ESS Snook Project, 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 ESS Snook Project, 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 November 7, 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: October 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–25877 Filed 10–25–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0062; FRL–9954–49–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (Renewal)'' (EPA ICR No. 2243.08, OMB Control No. 2020–0033) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through October 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 35762) on June 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2005–0062, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jessica Trice, Office of Federal Activities, NEPA Compliance Division, 2252A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–6646; email address: *trice.jessica@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, establishes a national policy for the environment. The Council on Environmental Quality (CEQ) oversees the NEPA implementation. CEQ's Regulations at 40 CFR parts 1500 through 1508 set the standard for NEPA compliance. They also require agencies to establish their own NEPA implementing procedures. EPA's procedures for implementing NEPA are found in 40 CFR part 6. Through this part, EPA adopted the CEQ Regulations and supplemented those regulations for actions by EPA that are subject to NEPA requirements. EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, EPA actions involving renovations or new construction of facilities, and certain grants awarded for projects authorized by Congress through the Agency's annual Appropriations Act. EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114 (''Environmental Effects Abroad of Major Federal Actions''). EPA's NEPA regulations apply to the actions of EPA that are subject to NEPA in order to ensure that environmental information is available to the Agency's decision-makers and the public before decisions are made and before actions are taken. When EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. Compliance with the procedures is the responsibility of EPA's Responsible Officials, and for applicant proposed actions applicants may be required to provide environmental information to EPA as part of the environmental review process. For this Information Collection Request (ICR), applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs' ICRs) are addressed through the NEPA process.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are certain grant or permit applicants who must submit environmental information documentation to EPA for their projects to comply with NEPA or Executive Order 12114, including Wastewater Treatment Construction Grants Program facilities, State and Tribal Assistance Grant recipients and new source National Pollutant Discharge Elimination System permittees.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 62 (total).

Frequency of response: on occasion.

Total estimated burden: 13,677 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,688,598 (per year), includes $2,145 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 23,848 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to fewer NEPA documents being completed

following the elimination of awarding SAAP grants in 2010. This is further supported by information posted online in EPA's NEPA Compliance Database on NEPA documents for its own actions that require documentation.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–25873 Filed 10–25–16; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2016–6026]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995.

The Export Import Bank of the United States, pursuant to the Export Import Bank Act of 1945, as amended (12 U.S.C. 635, *et seq.*), facilitates the finance of the export of U.S. goods and services. The ''Report of Premiums Payable for Exporters Only'' form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers.

The application can be viewed at: *http://exim.gov/sites/default/files/pub/pending/eib92-29.pdf.*

DATES: Comments should be received on or before December 27, 2016 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–29 Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.

Type of Review: Regular.

Need and Use: The ''Report of Premiums Payable for Exporters Only'' form is used by exporters to report and pay premiums on insured shipments to various foreign buyers under the terms of the policy and to certify that premiums have been correctly computed and remitted. The ''Report of Premiums Payable for Exporters Only'' is used by EXIM to determine the eligibility of the shipment(s) and to calculate the premium due to EXIM Bank for its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 2,200.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 6,600 hours.

Frequency of Reporting or Use: Monthly.

Government Expenses:

Reviewing Time per Year: 6,600 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $280,500 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $336,600.

Bassam Doughman,

IT Program Manager, Office of the Chief Information Officer.

[FR Doc. 2016–25789 Filed 10–25–16; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1035 and 3060–1092]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 25, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; On occasion, semi-annual, weekly and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $97,025.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a three year extension of the information collection titled ''Part 73, Subpart F International Broadcast Stations'' under OMB Control No. 3060–1035. This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority To Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

OMB Control Number: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Numbers: FCC Forms 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for profit institutions; and State, Local and Tribal Governments.

Number of Respondents: 1,100 respondents; 2,750 responses.

Estimated Time per Response: .50 hours to 6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 308(b), 309(j)(3) and 309(j)(4).

Total Annual Burden: 7,288 hours.

Total Annual Cost: $2,223,375.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. FCC Form 609–T is used by Designated Entities (DEs) to request prior Commission approval pursuant to Section 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the FCC to determine whether the public interest would be served by the approval of the reportable eligibility event.

FCC Form 611–T is used by DE licensees to file an annual report,

pursuant to Section 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

The information collected will be used to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. Further, this information will assist the Commission in preventing companies from circumventing the objectives of the designated entity eligibility rules by allowing us to review: (1) The FCC 609–T applications seeking approval for ''reportable eligibility events'' and (2) the FCC Form 611–T annual reports to ensure that licensees receiving designated entity benefits are in compliance with the Commission's policies and rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–25846 Filed 10–25–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 16–330; Report No. 3052]

Petition for Reconsideration of a Policy Statement

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration; request for comments.

SUMMARY: A petition has been filed jointly by CTIA—The Wireless Association; National Cable & Telecommunications Association; COMPTEL; and United States Telecom Association (collectively, the ''Associations'') seeking reconsideration of the Commission's policy statement in this proceeding. The Commission seeks comments on the petition for reconsideration.

DATES: Submit comments on or before November 9, 2016. Replies must be filed on or before November 16, 2016.

ADDRESSES: You may submit comments, identified by EB Docket No. 16–330, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Gregory Haledjian, (202) 418–7440

SUPPLEMENTARY INFORMATION: On February 3, 2015, the Commission issued a policy statement (5 U.S.C. 553(b)(A)) in this proceeding. The Associations jointly filed a petition for reconsideration on March 6, 2015. The Commission issued a Public Notice (EB Docket No. 16–330, Report No. 3052) announcing the filing of the petition for reconsideration and seeking public comment. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–25814 Filed 10–25–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012182–002.

Title: Hyundai Glovis/Eukor Car Carriers Inc. Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Eukor Car Carriers Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington DC 20036.

Synopsis: The amendment adds the U.S. Gulf Coast (including Puerto Rico) to the geographic scope of the Agreement.

Agreement No.: 012437.

Title: MOL/NMCC/WLS/WWL Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd.; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (U.S.A.) Inc.; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Eric C. Jeffrey, Esq.; Nixon Peabody; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement authorizes the parties to charter space to one another on an as needed, as available, basis for the carriage of vehicles and other Ro-Ro cargo in the trades between the United States and all foreign countries.

Agreement No.: 012438.

Title: CSAV/''K'' Line Belgium/Germany/East Coast United States Car Carrier Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; and Compania Sud Americana de Vapores S.A.

Filing Party: John P. Meade, Esq.; General Counsel; ''K'' Line America, Inc.; 6199 Bethlehem Road; Preston, MD 21655.

Synopsis: The Agreement authorizes CSAV to charter space from K Line on ro/ro vessels in the trade between Germany, Belgium, and the U.S. East Coast.

By Order of the Federal Maritime Commission.

Dated: October 21, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–25903 Filed 10–25–16; 8:45 am]

BILLING CODE 6731–AA–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 November 21, 2016.

A. *Federal Reserve Bank of Philadelphia* (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Hamilton Bancorp, Inc.,* Ephrata, Pennsylvania; to become a bank holding company by acquiring Stonebridge Bank, West Chester, Pennsylvania.

B. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *BankFinancial Corporation,* Burr Ridge, Illinois; to become a bank holding company through the conversion of its federal savings bank subsidiary, BankFinancial, F.S.B., Olympia Fields, Illinois, into a national bank to be known as BankFinancial, National Association.

Board of Governors of the Federal Reserve System, October 21, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–25891 Filed 10–25–16; 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 November 4, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Edward B. Tomlinson, II, Rowlett, Texas, individually and as a Voting Person under a Voting Agreement dated November 1, 2013 (the ''Voting Agreement''), Charles S. Leis, Eagle, Idaho, individually and as a Voting Person under the Voting Agreement, and the following parties to the Voting Agreement, which constitutes a group of persons acting in concert: Sherry Wortham, Wills Point, Texas, Linda Tomlinson Mitchell, Gun Barrel City, Texas, Jeffrey S. Moore, Lisle, Illinois, Jeffrey Soulier, Kihei, Hawaii, Edward B. Tomlinson, II, Rowlett, Texas, Brad Wagenaar, Honolulu, Hawaii, Charles S. Leis, Eagle, Idaho, Stanley B. Leis, Eagle, Idaho, Stephen T. Leis, Kihei, Hawaii, James F. Bowen, Rowlett, Texas, H. Grady Chandler, Garland, Texas, Daniel R. Goodfellow, Wenatchee, Washington, J. Stephen Goodfellow, Wenatchee, Washington, The Revocable Trust of Dorvin D. Leis, Kahului, Hawaii (Edward B. Tomlinson, II, Charles S. Leis, and Stephen T. Leis as co-trustees), Samuel S. Aguirre Revocable Living Trust, Alen, Hawaii (Samuel S. Aguirre as trustee), Paul R. Botts Revocable Living Trust, Kailua, Hawaii (Paul R. Botts and Cheryl A. Botts as co-trustees), the Goodfellow Main Trust fbo Chad S. Goodfellow, Wenatchee, Washington (Chad S. Goodfellow as trustee), the Goodfellow Main Trust fbo Chelsea D. Goodfellow, Wenatchee, Washington (Chad S. Goodfellow as trustee), the Harvey C. King 1992 Revocable Living Trust, Kailua, Hawaii (Harvey C. King as trustee), the Roger MacArthur Revocable Living Trust, Wailuku, Hawaii (Roger MacArthur and Helen MacArthur as co-trustees), the William W. Wilmore Revocable Living Trust, Kahului, Hawaii (William W. Wilmore and Barbara K. Wilmore as co-trustees);* to collectively control and retain 25 percent or more of the shares of Texas Brand Bancshares, Inc., and therefore indirectly, Texas Brand Bank, both of Garland, Texas.

Board of Governors of the Federal Reserve System, October 21, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–25892 Filed 10–25–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of ETAC Member Meeting

TIME AND DATE: November 14, 2016, 1 p.m.–3 p.m.

PLACE: 77 K Street NE., Washington, DC 20002.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda

Employee Thrift Advisory Council

November 14, 2016, 1:00 p.m.–3:00 p.m. (In-Person), 77 K Street, NE., Washington, DC 20002.

1. Approval of the minutes of the May 23, 2016 Joint Board/ETAC meeting
2. Thrift Savings Plan Statistics
3. Target Architecture Plan
4. Blended Retirement System
5. 2017–2021 Strategic Plan
6. Post Separation Retention Rate
7. New Business

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: October 24, 2016.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2016–25979 Filed 10–24–16; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2401–N]

RIN 0938–ZB30

Medicaid Program; Final FY 2014 and Preliminary FY 2016 Disproportionate Share Hospital Allotments, and Final FY 2014 and Preliminary FY 2016 Institutions for Mental Diseases Disproportionate Share Hospital Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final federal share disproportionate share hospital (DSH) allotments for federal fiscal year (FY) 2014 and the preliminary federal share DSH allotments for FY 2016, and corresponding limitations on aggregate state DSH payments to institutions for mental disease and other mental health facilities. In addition, this notice includes background information

describing the methodology for determining the amounts of states' FY DSH allotments.

DATES: Effective November 25, 2016. The final allotments and limitations set forth in this notice are effective for the fiscal years specified.

FOR FURTHER INFORMATION CONTACT: Stuart Goldstein, (410) 786–0694 and Richard Cuno, (410) 786–1111.

SUPPLEMENTARY INFORMATION:

I. Background

A. Fiscal Year DSH Allotments

A state's federal fiscal year (FY) disproportionate share hospital (DSH) allotment represents the aggregate limit on the federal share amount of the state's payments to DSH hospitals in the state for the FY. The amount of such allotment is determined in accordance with the provisions of section 1923(f)(3) of the Social Security Act (the Act). Under such provisions, in general a state's FY DSH allotment is calculated by increasing the amount of its DSH allotment for the preceding FY by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the previous FY.

The Affordable Care Act amended Medicaid DSH provisions, adding section 1923(f)(7) of the Act which would have required reductions to states' FY DSH allotments beginning with FY 2014, the calculation of which was described in the Disproportionate Share Hospital Payment Reduction final rule published in the September 18, 2013 **Federal Register** (78 FR 57293). Under the DSH reduction methodology, first, each state's unreduced FY DSH allotment would have been calculated in accordance with the provisions of section 1923(f) of the Act, excluding section 1923(f)(7) of the Act; then, the reduction amount for each state would have been determined under the provisions of section 1923(f)(7) of the Act and implementing regulations at 42 CFR 447.294; and, finally, the net FY DSH allotment for each state would have been determined by subtracting the DSH reduction amount for the state from its unreduced FY 2014 DSH allotment.

The reductions under section 1923(f)(7) of the Act were delayed and modified by section 1204 of Division B (Medicare and Other Health Provisions) of the Pathway for SGR Reform Act of 2013 (Pub. L. 113–67 enacted on December 26, 2013). The reductions of states' fiscal year DSH allotments under section 1923(f)(7) of the Act that were applicable to FY 2014 and 2015 were repealed, and the FY 2016 reductions were increased. Subsequently, the reductions were delayed and modified by the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10 enacted on April 16, 2015) (MACRA). The reductions of states' fiscal year DSH allotments under section 1923(f)(7) of the Act that were applicable to FY 2017 were repealed and are instead scheduled to begin in FY 2018.

Because there are no reductions to DSH allotments for FY 2014 and FY 2016 under section 1923(f)(7) of the Act, this notice contains only the state-specific final FY 2014 DSH allotments and preliminary FY 2016 DSH allotments, as calculated under the statute without application of the reductions that would have been imposed under the Affordable Care Act provisions beginning with FY 2014. This notice also provides information on the calculation of such FY DSH allotments, the calculation of the states' institutions for mental disease (IMD) DSH limits, and the amounts of states' final FY 2014 IMD DSH limits and preliminary FY 2016 IMD DSH limits.

B. Determination of Fiscal Year DSH Allotments

Generally, in accordance with the methodology specified under section 1923(f)(3) of the Act, a state's FY DSH allotment is calculated by increasing the amount of its DSH allotment for the preceding FY by the percentage change in the CPI–U for the previous FY. Also in accordance with section 1923(f)(3) of the Act, a state's DSH allotment for a FY is subject to the limitation that an increase to a state's DSH allotment for a FY cannot result in the DSH allotment exceeding the greater of the state's DSH allotment for the previous FY or 12 percent of the state's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Furthermore, under section 1923(h) of the Act, federal financial participation (FFP) for DSH payments to IMDs and other mental health facilities is limited to state-specific aggregate amounts. Under this provision, the aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a state's FY 1995 total computable (state and federal share) IMD and other mental health facility DSH expenditures applicable to the state's FY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the state's current year total computable DSH allotment and the applicable percentage specified in section 1902(h) of the Act (the applicable percentage is the IMD share of DSH total computable expenditures as of FY 1995).

In general, we determine states' DSH allotments for a FY and the IMD DSH limits for the same FY using the most recent available estimates of or actual medical assistance expenditures, including DSH expenditures in their Medicaid programs and the most recent available change in the CPI–U used for the FY in accordance with the methodology prescribed in the statute. The indicated estimated or actual expenditures are obtained from states for each relevant FY from the most recent available quarterly Medicaid budget reports (Form CMS–37) or quarterly Medicaid expenditure reports (Form CMS–64), respectively, submitted by the states. For example, as part of the initial determination of a state's FY DSH allotment (referred to as the preliminary DSH allotments) that is determined before the beginning of the FY for which the DSH allotments and IMD DSH limits are being determined, we use estimated expenditures for the FY obtained from the August submission of the CMS–37 submitted by states prior to the beginning of the FY; such estimated expenditures are subject to update and revision during the FY before such actual expenditure data become available. We also use the most recent available estimated CPI–U percentage change that is available before the beginning of the FY for determining the states' preliminary FY DSH allotments; such estimated CPI–U percentage change is subject to update and revision during the FY before the actual CPI–U percentage change becomes available. In determining the final DSH allotments and IMD DSH limits for a FY we use the actual expenditures for the FY and actual CPI–U percentage change for the previous FY.

II. Provisions of the Notice

A. Calculation of the Final FY 2014 Federal Share State DSH Allotments, and the Preliminary FY 2016 Federal Share State DSH Allotments

1. Final FY 2014 Federal Share State DSH Allotments

Addendum 1 to this notice provides the states' final FY 2014 DSH allotments determined in accordance with section 1923(f)(3) of the Act. As described in the background section, in general, the DSH allotment for a FY is calculated by increasing the FY DSH allotment for the preceding FY by the CPI–U increase for the previous fiscal year. For purposes of calculating the states' final FY 2014 DSH allotments, the preceding final fiscal year DSH allotments (for FY 2013) were published in the February 2, 2016

Federal Register (81 FR 5448). For purposes of calculating the states' final FY 2014 DSH allotments we are using the actual Medicaid expenditures for FY 2014. Finally, for purposes of calculating the states' final FY 2014 DSH allotments, the applicable historical percentage change in the CPI–U for the previous FY (FY 2013) was 1.6 percent; we note that this is an increase from the estimated 1.5 percentage change in the CPI–U for FY 2013 that was available and used in the calculation of the preliminary FY 2014 DSH allotments which were published in the February 28, 2014 **Federal Register** (79 FR 11436).

2. Calculation of the Preliminary FY 2016 Federal Share State DSH Allotments

Addendum 2 to this notice provides the preliminary FY 2016 DSH allotments determined in accordance with section 1923(f)(3) of the Act. The preliminary FY 2016 DSH allotments contained in this notice were determined based on the most recent available estimates from states of their FY 2016 total computable Medicaid expenditures. Also, the preliminary FY 2016 allotments contained in this notice were determined by increasing the preliminary FY 2015 DSH allotments as contained in the notice published in the February 2, 2016 **Federal Register** (81 FR 5448) by 0.3 percent, representing the most recent available estimate of the percentage increase in the CPI–U for FY 2015 (the previous FY to FY 2016).

We will publish states' final FY 2016 DSH allotments in future notices based on the states' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2016 available following the end of FY 2016 and the actual change in the CPI–U for FY 2015.

B. Calculation of the Final FY 2014 and Preliminary FY 2016 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a state can make to IMDs and other mental health facilities. FFP is not available for IMD or DSH payments that exceed the IMD limits. In this notice, we are publishing the final FY 2014 and the preliminary FY 2016 IMD DSH limits determined in accordance with the provisions discussed above.

Addendums 3 and 4 to this notice detail each state's final FY 2014 and preliminary FY 2016 IMD DSH limit, respectively, determined in accordance with section 1923(h) of the Act.

III. Collection of Information Requirements

This notice does not impose any new or revised information collection or recordkeeping requirements or burden. While discussed in section I.B. of this preamble and in Addendums 3 and 4, the requirements and burden associated with Form CMS–37 (OMB control number 0938–0101) and Form CMS–64 (OMB control number 0938–0067) are unaffected by this notice. Consequently, this notice, CMS–37, and CMS–64 are not subject to Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice reaches the $100 million economic threshold and thus is considered a major rule under the Congressional Review Act.

The final FY 2014 DSH allotments being published in this notice are approximately $11 million more than the preliminary FY 2014 DSH allotments published in the February 28, 2014 **Federal Register** (79 FR 11436). The increase in the final FY 2014 DSH allotments is due to the difference between the actual percentage change in the CPI–U for FY 2013 used in the calculation of the final FY 2014 allotments (1.6 percent) as compared to the estimated percentage change in the CPI–U for FY 2013 used in the calculation of the preliminary FY 2014 allotments (1.5 percent). The final FY 2014 IMD DSH limits being published in this notice are approximately $563 thousand more than the preliminary FY 2014 IMD DSH limits published in the February 28, 2014 **Federal Register** (79 FR 11436). The increases in the IMD DSH limits are because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY. Since the final FY 2014 DSH allotments were increased as compared to the preliminary FY 2014 DSH allotments, the associated FY 2014 IMD DSH limits for some states were also increased.

The preliminary FY 2016 DSH allotments being published in this notice are about $36 million more than the preliminary FY 2015 DSH allotments published in the February 2, 2016 **Federal Register** (81 FR 5448). The increase in the DSH allotments is due to the application of the statutory formula for calculating DSH allotments under which the prior fiscal year allotments are increased by the percentage increase in the CPI–U for the prior fiscal year. The preliminary FY 2016 IMD DSH limits being published in this notice are about $260 thousand less than the final FY 2014 IMD DSH limits published in the February 28, 2014 **Federal Register** (79 FR 11436). Although the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY and the preliminary FY 2016 DSH allotments are greater than the preliminary FY 2015 DSH allotments, the associated preliminary FY 2016 IMD DSH limits for some states decreased. This is attributable to a decrease in the FMAP rates for certain states.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any one year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have significant economic impact on a substantial number of small entities. Specifically, any impact on providers is due to the effect of the various controlling statutes; providers are not impacted as a result of the independent regulatory action in publishing this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Medicaid statute specifies the methodology for determining the amounts of states' DSH allotments and IMD DSH limits; and as described previously, the application of the methodology specified in statute results in the decreases or increases in states' DSH allotments and IMD DSH limits for the applicable FYs. The statute applicable to these allotments and limits does not apply to the determination of the amounts of DSH payments made to specific DSH hospitals; rather, these allotments and limits represent an overall limit on the total of such DSH payments. In this regard, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This notice will have no consequential effect on state, local, or tribal governments, in the aggregate, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this notice does not impose any costs on state or local governments, the requirements of E.O. 13132 are not applicable.

A. Alternatives Considered

The methodologies for determining the states' fiscal year DSH allotments and IMD DSH Limits, as reflected in this notice, were established in accordance with the methodologies and formula for determining states' allotments as specified in statute. This notice does not put forward any further discretionary administrative policies for determining such allotments.

B. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the Table 1, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of this notice. Table 1 provides our best estimate of the change (decrease) in the federal share of states' Medicaid DSH payments resulting from the application of the provisions of the Medicaid statute relating to the calculation of states' FY DSH allotments and the increase in the FY DSH allotments from FY 2015 to FY 2016.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE FY 2015 TO FY 2016

[In millions]

Category	Transfers
Annualized Monetized Transfers	$36.
From Whom To Whom?	Federal Government to States.

C. Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: September 8, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: October 13, 2016.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

KEY TO ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FY 2014

[The Final FY 2014 DSH Allotments for the NON-Low DSH States are presented in the top section of this addendum, and the Final FY 2014 DSH Allotments for the Low-DSH States are presented in the bottom section of this addendum]

Column	Description
Column A	State.
Column B	FY 2014 FMAPs. This column contains the States' FY 2014 Federal Medical Assistance Percentages.
Column C	Prior FY (2013) DSH Allotments. This column contains the States' prior FY 2013 DSH Allotments.
Column D	Prior FY (2013) DSH Allotments (Col C) x (100 percent + Percentage Increase in CPIU): 101.6 percent. This column contains the amount in Column C increased by 1 plus the percentage increase in the CPI–U for the prior FY (101.6 percent).
Column E	FY 2014 TC MAP Exp. Including DSH. This column contains the amount of the States' FY 2014 total computable (TC) medical assistance expenditures including DSH expenditures.
Column F	FY 2014 TC DSH Expenditures. This column contains the amount of the States' FY 2014 total computable DSH expenditures.
Column G	FY 2014 TC MAP Exp. Net of DSH. This column contains the amount of the States' FY 2014 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column E minus the amount in Column F.
Column H	12 percent Amount. This column contains the amount of the ''12 percent limit'' in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column I	Greater of FY 2013 Allotment or 12 percent Limit. This column contains the greater of the State's prior FY (FY 2013) DSH allotment or the amount of the 12 percent Limit, determined as the maximum of the amount in Column C or Column H.
Column J	FY 2014 DSH Allotment. This column contains the States' final FY 2014 DSH allotments, determined as the minimum of the amount in Column I or Column D. For states with ''na'' in Columns I or D, refer to the footnotes in the addendum.

ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2014

State	FY 2014 FMAPs (%)	Prior FY (2013) DSH Allotments	Prior FY (2013) DSH allotment (Col C) × 100% + pct increase in CPIU: 101.6%	FY 2014 TC MAP Exp. including DSH	FY 2014 TC DSH expenditures	FY 2014 TC MAP EXP. net of DSH Col E–F	"12% Amount" = Col G × .12/ (1 − .12/Col B)* (in FS)	Greater of Col H. Or Col C (12% Limit, FY 2012 allotment)	FY 2014 DSH allotment MIN Col I, Col D
A	B	C	D	E	F	G	H	I	J
ALABAMA	68.12	$323,093,267	$328,262,759	$5,211,164,487	$481,382,790	$4,729,781,697	$688,936,698	$688,936,698	$328,262,759
ARIZONA	67.23	106,384,369	108,086,519	9,184,808,597	143,402,254	9,041,406,343	1,320,703,419	1,320,703,419	108,086,519
CALIFORNIA	50.00	1,151,840,630	1,170,270,080	63,473,249,870	2,483,466,487	60,989,783,383	9,629,965,797	9,629,965,797	1,170,270,080
COLORADO	50.00	97,190,657	98,745,708	5,919,783,385	197,297,029	5,722,486,356	903,550,477	903,550,477	98,745,708
CONNECTICUT	50.00	210,141,962	213,504,233	6,820,658,024	149,024,544	6,671,633,480	1,053,415,813	1,053,415,813	213,504,233
DISTRICT OF COLUMBIA	70.00	64,355,975	65,385,671	2,367,792,161	54,250,889	2,313,541,272	335,064,598	335,064,598	65,385,671
FLORIDA	58.79	210,141,962	213,504,233	20,303,199,078	336,086,757	19,967,112,321	3,010,557,470	3,010,557,470	213,504,233
GEORGIA	65.93	282,378,262	286,896,314	9,396,958,654	435,057,563	8,961,901,091	1,314,722,356	1,314,722,356	286,896,314
ILLINOIS	50.00	225,902,609	229,517,051	16,616,392,364	457,503,046	16,158,889,318	2,551,403,577	2,551,403,577	229,517,051
INDIANA	66.92	224,589,223	228,182,651	9,094,042,848	260,455,931	8,833,586,917	1,291,646,693	1,291,646,693	228,182,651
KANSAS	56.91	43,341,780	44,035,248	2,727,710,336	77,294,578	2,650,415,758	403,033,162	403,033,162	44,035,248
KENTUCKY	69.83	152,352,923	154,790,570	7,792,776,771	211,149,028	7,581,627,743	1,098,582,186	1,098,582,186	154,790,570
LOUISIANA [1]	na	na	na	na	na	na	na	na	731,960,000
MAINE	61.55	110,324,530	112,089,722	2,365,417,230	39,328,950	2,326,088,280	346,730,334	346,730,334	112,089,722
MARYLAND	50.00	80,116,623	81,398,489	9,210,329,395	100,897,485	9,109,431,910	1,438,331,354	1,438,331,354	81,398,489
MASSACHUSETTS	50.00	320,466,492	325,593,956	14,250,839,665	0	14,250,839,665	2,250,132,579	2,250,132,579	325,593,956
MICHIGAN	66.32	278,438,100	282,893,110	13,502,617,518	562,486,296	12,940,131,222	1,895,853,099	1,895,853,099	282,893,110
MISSISSIPPI	73.05	160,233,246	162,796,978	4,865,309,235	222,637,569	4,642,671,666	666,628,335	666,628,335	162,796,978
MISSOURI	62.03	497,773,773	505,738,153	8,828,757,766	728,957,576	8,099,800,190	1,205,110,388	1,205,110,388	505,738,153
NEVADA	63.10	48,595,328	49,372,853	2,281,105,301	78,243,748	2,202,861,553	326,420,111	326,420,111	49,372,853
NEW HAMPSHIRE	50.00	168,217,088	170,908,561	1,322,700,772	109,314,773	1,213,385,999	191,587,263	191,587,263	170,908,561
NEW JERSEY	50.00	676,394,441	687,216,752	12,470,313,962	1,213,920,187	11,256,393,775	1,777,325,333	1,777,325,333	687,216,752
NEW YORK	50.00	1,687,702,633	1,714,705,875	51,806,022,238	3,366,485,105	48,439,537,133	7,648,347,968	7,648,347,968	1,714,705,875
NORTH CAROLINA	65.78	309,959,394	314,918,744	11,992,545,816	406,901,519	11,585,644,297	1,700,491,666	1,700,491,666	314,918,744
OHIO	63.02	426,850,861	433,680,475	19,439,277,855	672,625,070	18,766,652,785	2,781,672,580	2,781,672,580	433,680,475
PENNSYLVANIA	53.52	589,710,881	599,146,255	23,461,728,946	956,292,192	22,505,436,754	3,481,187,789	3,481,187,789	599,146,255
RHODE ISLAND	50.11	68,296,138	69,388,876	2,434,239,452	138,322,435	2,295,917,017	362,262,089	362,262,089	69,388,876
SOUTH CAROLINA	70.57	344,107,463	349,613,182	5,321,038,897	495,387,414	4,825,651,483	697,721,479	697,721,479	349,613,182
TENNESSEE [2]	na	na	na	na	na	na	na	na	0
TEXAS	58.69	1,004,741,257	1,020,817,117	31,385,332,042	1,526,236,093	29,859,095,949	4,503,997,450	4,503,997,450	1,020,817,117
VERMONT [3]	56.76	23,640,971	24,019,227	1,526,126,311	37,448,781	1,488,677,530	226,534,414	226,534,414	24,019,227
VIRGINIA	50.00	92,050,138	93,522,940	7,547,405,238	178,694,576	7,368,710,662	1,163,480,631	1,163,480,631	93,522,940
WASHINGTON	50.00	194,381,315	197,491,416	10,233,713,069	365,034,687	9,868,678,382	1,558,212,376	1,558,212,376	197,491,416
WEST VIRGINIA	71.09	70,922,912	72,057,679	3,331,020,307	74,411,705	3,256,608,602	470,155,300	470,155,300	72,057,679
TOTAL	0.00	10,244,637,203	10,408,551,398	396,484,377,590	16,559,997,057	379,924,380,533	58,293,764,783	58,293,764,783	11,140,511,397
LOW DSH STATES									
ALASKA	50.00	21,402,636	21,745,078	1,412,407,094	23,114,859	1,389,292,235	219,361,931.84	219,361,932	21,745,078
ARKANSAS	70.10	45,325,292	46,050,497	4,840,075,746	37,579,991	4,802,495,755	695,328,645	695,328,645	46,050,497
DELAWARE	55.31	9,512,282	9,664,479	1,691,771,386	14,203,340	1,677,568,046	257,085,076	257,085,076	9,664,479
HAWAII	51.85	10,240,000	10,403,840	1,949,895,249	0	1,949,895,249	304,447,885.55	304,447,886	10,403,840
IDAHO	71.64	17,271,044	17,547,381	1,585,631,105	24,108,102	1,561,523,003	225,085,529.04	225,085,529	17,547,381
IOWA	57.93	41,378,149	42,040,199	3,921,556,276	43,692,924	3,877,863,352	586,922,597	586,922,597	42,040,199
MINNESOTA	50.00	78,476,334	79,731,955	9,917,891,767	43,384,841	9,874,506,926	1,559,132,673	1,559,132,673	79,731,955
MONTANA	66.33	11,926,371	12,117,193	1,072,160,721	18,113,453	1,054,047,268	154,422,872	154,422,872	12,117,193
NEBRASKA	54.74	29,733,219	30,208,951	1,771,909,070	41,226,990	1,730,682,080	265,992,149	265,992,149	30,208,951
NEW MEXICO	69.20	21,402,636	21,745,078	4,168,980,357	2,385,192	4,166,595,165	604,884,725	604,884,725	21,745,078
NORTH DAKOTA	50.00	10,036,360	10,196,942	911,750,976	2,102,554	909,648,422	143,628,698	143,628,698	10,196,942
OKLAHOMA	64.02	38,049,129	38,657,915	4,666,284,967	43,523,823	4,622,761,144	682,697,044	682,697,044	38,657,915
OREGON	63.14	47,561,414	48,322,397	6,784,093,341	32,160,564	6,751,932,777	1,000,352,841	1,000,352,841	48,322,397
SOUTH DAKOTA	53.54	11,604,719	11,790,395	778,125,953	1,642,404	776,483,549	120,095,125	120,095,125	11,790,395
UTAH	70.34	20,612,808	20,942,613	2,064,362,848	31,747,312	2,032,615,536	294,084,697	294,084,697	20,942,613
WISCONSIN	59.06	99,326,563	100,915,788	7,396,295,700	50,838,381	7,345,457,319	1,106,220,253	1,106,220,253	100,915,788

WYOMING	50.00	237,807	241,612	539,403,281	466,255	538,937,026	85,095,320	85,095,320	241,612
TOTAL LOW DSH STATES	0.00	514,096,763	522,322,311	55,472,595,837	410,290,985	55,062,304,852	8,304,838,060	8,304,838,060	522,322,313
TOTAL	0.00	10,758,733,966	10,930,873,709	451,956,973,427	16,970,288,042	434,986,685,385	66,598,602,843	66,598,602,843	11,662,833,710

[1] FY 2014 DSH allotment for Louisiana determined under the provisions of section 1903(f)(3)(C) and (D) of the Act.
[2] Tennessee's DSH allotment for FY 2014, determined under section 1923(f)(6)(A) of the Social Security Act, is 0.
[3] Per 1905(z)(1)(A) of Act, Vermont's regular FMAP is increased by 2.2 percentage points for the period 1/1/2014—12/31/2015.

KEY TO ADDENDUM 2—PRELIMINARY DSH ALLOTMENTS FOR FY 2016

[The Preliminary FY 2016 DSH Allotments for the NON-Low DSH States are presented in the top section of this addendum, and the Preliminary FY 2016 DSH Allotments for the Low-DSH States are presented in the bottom section of this addendum]

Column	Description
Column A	State.
Column B	FY 2016 FMAPs. This column contains the States' FY 2016 Federal Medical Assistance Percentages.
Column C	Prior FY (2015) DSH Allotments. This column contains the States' prior FY 2015 DSH Allotments.
Column D	Prior FY (2015) DSH Allotments (Col C) x (100percent + Percentage Increase in CPIU): 100.3percent. This column contains the amount in Column C increased by 1 plus the estimated percentage increase in the CPI–U for the prior FY (100.3 percent).
Column E	FY 2016 TC MAP Exp. Including DSH. This column contains the amount of the States' projected FY 2016 total computable (TC) medical assistance expenditures including DSH expenditures.
Column F	FY 2016 TC DSH Expenditures. This column contains the amount of the States' projected FY 2016 total computable DSH expenditures.
Column G	FY 2016 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2016 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column E minus the amount in Column F.
Column H	12 percent Amount. This column contains the amount of the ''12 percent limit'' in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column I	Greater of FY 2015 Allotment or 12 percent Limit. This column contains the greater of the State's prior FY (FY 2015) DSH allotment or the amount of the 12 percent Limit, determined as the maximum of the amount in Column C or Column H.
Column J	FY 2016 DSH Allotment. This column contains the States' preliminary FY 2016 DSH allotments, determined as the minimum of the amount in Column I or Column D. For states with ''na'' in Columns I or D, refer to the footnotes in the addendum.

ADDENDUM 2—PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2016

State	FY 2016 FMAPs (%)	Prior FY (2015) DSH Allotments	Prior FY (2015) DSH allotment (Col C) × 100% + pct increase in CPIU: 100.3%	FY 2016 TC MAP Exp. including DSH	FY 2016 TC DSH expenditures	FY 2016 TC MAP EXP. net of DSH Col E–F	"12% Amount" = Col G × .12/(1-.12/ Col B) * (in FS)	Greater of Col H or Col C (12% Limit, FY 2015 Allotment)	FY 2016 DSH Allotment MIN Col I, Col D
A	B	C	D	E	F	G	H	I	J
ALABAMA	69.87	$333,186,701	$334,186,261	$5,930,834,000	$479,878,000	$5,450,956,000	$789,752,816	$789,752,816	$334,186,261
ARIZONA	68.92	109,707,817	110,036,940	12,053,707,000	170,695,000	11,883,012,000	1,726,585,777	1,726,585,777	110,036,940
CALIFORNIA	50.00	1,187,824,131	1,191,387,603	111,044,623,000	615,463,000	110,429,160,000	17,436,183,158	17,436,183,158	1,191,387,603
COLORADO	50.72	100,226,893	100,527,574	8,094,087,000	221,186,000	7,872,901,000	1,237,541,959	1,237,541,959	100,527,574
CONNECTICUT	50.00	216,706,796	217,356,916	7,523,550,000	121,554,000	7,401,996,000	1,168,736,211	1,168,736,211	217,356,916
DISTRICT OF COLUMBIA	70.00	66,366,456	66,565,555	2,768,440,000	36,674,000	2,731,766,000	395,635,076	395,635,076	66,565,555
FLORIDA	60.67	216,706,796	217,356,916	21,269,943,000	360,904,000	20,909,039,000	3,127,720,722	3,127,720,722	217,356,916
GEORGIA	67.55	291,199,759	292,073,358	9,111,625,000	435,016,000	8,676,609,000	1,266,113,277	1,266,113,277	292,073,358
ILLINOIS	50.89	232,959,806	233,658,685	16,127,216,000	394,376,000	15,732,840,000	2,470,488,745	2,470,488,745	233,658,685
INDIANA	66.60	231,605,390	232,300,206	12,434,804,000	128,475,000	12,306,329,000	1,801,322,003	1,801,322,003	232,300,206
KANSAS	55.96	44,695,778	44,829,865	3,237,360,000	78,926,000	3,158,434,000	482,473,066	482,473,066	44,829,865
KENTUCKY	70.32	157,112,428	157,583,765	10,502,654,000	498,275,000	10,004,379,000	1,447,547,184	1,447,547,184	157,583,765
LOUISIANA	62.21	743,671,360	745,902,374	8,188,536,000	881,390,000	7,307,146,000	1,086,423,149	1,086,423,149	745,902,374
MAINE	62.67	113,771,068	114,112,381	2,595,932,000	42,279,000	2,553,653,000	379,011,092	379,011,092	114,112,381
MARYLAND	50.00	82,619,466	82,867,324	10,300,033,000	102,916,000	10,197,117,000	1,610,071,105	1,610,071,105	82,867,324
MASSACHUSETTS	50.00	330,477,865	331,469,299	17,688,569,000	0	17,688,569,000	2,792,931,947	2,792,931,947	331,469,299
MICHIGAN	65.60	287,136,507	287,997,917	18,245,307,000	399,957,000	17,845,350,000	2,620,869,313	2,620,869,313	287,997,917
MISSISSIPPI	74.17	165,238,933	165,734,650	5,593,780,000	225,000,000	5,368,780,000	768,606,876	768,606,876	165,734,650
MISSOURI	63.28	513,324,226	514,864,199	9,977,517,000	741,320,000	9,236,197,000	1,367,706,426	1,367,706,426	514,864,199
NEVADA	64.93	50,113,446	50,263,786	3,487,301,000	79,052,000	3,408,249,000	501,713,828	501,713,828	50,263,786
NEW HAMPSHIRE	50.00	173,472,190	173,992,607	1,982,620,000	215,300,000	1,767,320,000	279,050,526	279,050,526	173,992,607
NEW JERSEY	50.00	697,525,004	699,617,579	15,818,782,000	1,055,083,000	14,763,699,000	2,331,110,368	2,331,110,368	699,617,579
NEW YORK	50.00	1,740,426,463	1,745,647,742	67,708,685,000	5,212,860,000	62,495,825,000	9,867,761,842	9,867,761,842	1,745,647,742
NORTH CAROLINA	66.24	319,642,526	320,601,454	14,344,107,000	584,963,000	13,759,144,000	2,016,384,289	2,016,384,289	320,601,454
OHIO	62.47	440,185,682	441,506,239	23,409,769,000	0	23,409,769,000	3,477,095,152	3,477,095,152	441,506,239
PENNSYLVANIA	52.01	608,133,449	609,957,849	25,118,027,000	970,040,000	24,147,987,000	3,766,868,694	3,766,868,694	609,957,849
RHODE ISLAND	50.42	70,429,709	70,640,998	2,798,911,000	140,859,000	2,658,052,000	418,591,302	418,591,302	70,640,998
SOUTH CAROLINA	71.08	354,857,380	355,921,952	6,627,245,000	514,209,000	6,113,036,000	882,561,812	882,561,812	355,921,952
TENNESSEE [1]	65.05	na	na	na	na	na	na	na	53,100,000
TEXAS	57.13	1,036,129,374	1,039,237,762	40,938,942,000	2,913,588,000	38,025,354,000	5,776,348,701	5,776,348,701	1,039,237,762
VERMONT [2]	54.45	24,379,515	24,452,654	1,950,326,000	37,449,000	1,912,877,000	294,434,354	294,434,354	24,452,654
VIRGINIA	50.00	94,925,784	95,210,561	8,682,506,000	202,125,000	8,480,381,000	1,339,007,526	1,339,007,526	95,210,561
WASHINGTON	50.00	200,453,788	201,055,149	13,268,547,000	412,552,000	12,855,995,000	2,029,893,947	2,029,893,947	201,055,149
WEST VIRGINIA	71.42	73,138,544	73,357,960	4,023,484,000	73,139,000	3,950,345,000	569,775,106	569,775,106	73,357,960
TOTAL	.....	11,308,351,030	11,342,276,083	522,847,769,000	18,345,503,000	504,502,266,000	77,526,317,353	77,526,317,353	11,395,376,080
LOW DSH STATES									
ALASKA	50.00	22,071,255	22,137,469	1,845,425,000	28,763,000	1,816,662,000	286,841,368.42	286,841,368	22,137,469
ARKANSAS	70.00	46,741,254	46,881,478	6,474,078,000	50,820,000	6,423,258,000	930,264,952	930,264,952	46,881,478
DELAWARE	54.83	9,809,445	9,838,873	2,024,107,000	23,869,000	2,000,238,000	307,279,149	307,279,149	9,838,873
HAWAII [3]	53.98	10,559,898	10,591,578	2,280,099,000	0	2,280,099,000	351,823,946.70	351,823,947	10,591,578
IDAHO	71.24	17,810,592	17,864,024	1,954,296,000	25,668,000	1,928,628,000	278,316,256.69	278,316,257	17,864,024
IOWA	54.91	42,670,802	42,798,814	4,977,980,000	46,668,000	4,931,312,000	757,245,421	757,245,421	42,798,814
MINNESOTA	50.00	80,927,935	81,170,719	12,331,901,000	154,640,000	12,177,261,000	1,922,725,421	1,922,725,421	81,170,719
MONTANA	65.24	12,298,951	12,335,848	1,114,619,000	1,656,000	1,112,963,000	163,658,241	163,658,241	12,335,848
NEBRASKA	51.16	30,662,084	30,754,070	2,123,413,000	45,557,000	2,077,856,000	325,750,091	325,750,091	30,754,070
NEW MEXICO	70.37	22,071,255	22,137,469	6,102,795,000	32,020,000	6,070,775,000	878,260,278	878,260,278	22,137,469
NORTH DAKOTA	50.00	10,349,895	10,380,945	1,291,738,000	1,765,000	1,289,973,000	203,679,947	203,679,947	10,380,945
OKLAHOMA	60.99	39,237,784	39,355,497	5,461,374,000	52,314,000	5,409,060,000	808,079,778	808,079,778	39,355,497
OREGON	64.38	49,047,232	49,194,374	9,507,193,000	82,564,000	9,424,629,000	1,390,051,810	1,390,051,810	49,194,374
SOUTH DAKOTA	51.61	11,967,251	12,003,153	901,031,000	1,617,000	899,414,000	140,627,387	140,627,387	12,003,153
UTAH	70.24	21,256,752	21,320,522	2,546,400,000	30,842,000	2,515,558,000	364,064,823	364,064,823	21,320,522
WISCONSIN	58.23	102,429,524	102,736,813	8,533,715,000	170,702,000	8,363,013,000	1,264,057,747	1,264,057,747	102,736,813

ADDENDUM 2—PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2016—Continued

State	FY 2016 FMAPs (%)	Prior FY (2015) DSH Allotments	Prior FY (2015) DSH allotment (Col C) × 100% + pct increase in CPIU: 100.3%	FY 2016 TC MAP Exp. including DSH	FY 2016 TC DSH expenditures	FY 2016 TC MAP EXP. net of DSH Col E–F	"12% Amount" = Col G × .12/(1-.12/ Col B) * (in FS)	Greater of Col H or Col C (12% Limit, FY 2015 Allotment)	FY 2016 DSH Allotment MIN Col I, Col D
A	B	C	D	E	F	G	H	I	J
WYOMING	50.00	245,236	245,972	608,180,000	482,000	607,698,000	95,952,316	95,952,316	245,972
TOTAL LOW DSH STATES	.....	530,157,145	531,747,616	70,078,344,000	749,947,000	69,328,397,000	10,468,678,931	10,468,678,931	531,747,618
TOTAL	.....	11,838,508,175	11,874,023,700	592,926,113,000	19,095,450,000	573,830,663,000	87,994,996,285	87,994,996,285	11,927,123,698

[1] Tennessee's DSH allotment for FY 2016 determined under section 1923(f)(6)(A) of the Act
[2] FMAP for Vermont for FY 2016 determined in accordance with section 1905(z)(1)(A) of the Act.

KEY TO ADDENDUM 3—FINAL IMD DSH LIMITS FOR FY 2014

[The final FY 2014 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this addendum and the preliminary FY 2014 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the addendum]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient Hospital & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage, Col. C/D. This column contains the ''applicable percentage'' representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2014 Federal Share DSH Allotment. This column contains the states' FY 2014 DSH allotments from Column J Addendum 1.
Column G	FY 2014 FMAP.
Column H	FY 2014 DSH Allotments in Total Computable, Col. F/G. This column contains states' FY 2013 total computable DSH allotment (determined as Column F/Column G).
Column I	Applicable Percentage Applied to FY 2014 Allotments in TC, Col E x Col H. This column contains the applicable percentage of FY 2013 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	FY 2014 TC IMD DSH Limit. Lesser of Col. I or C. This column contains the total computable FY 2014 TC IMD DSH Limit equal to the lesser of the amount in Column I or Column C.
Column K	FY 2014 IMD DSH Limit in Federal Share, Col. G x J. This column contains the FY 2014 Federal Share IMD DSH limit determined by converting the total computable FY 2014 IMD DSH Limit from Column J into a federal share amount by multiplying it by the FY 2014 FMAP in Column G.

ADDENDUM 3—FINAL IMD DSH LIMIT FOR FY: 2014

STATE	Inpatient hospital services FY 95 DSH total computable	IMD and mental health services FY 95 DSH total computable	Total inpatient & IMD & mental health FY 95 DSH total computable Col B + C	Applicable percent Col C/D	FY 2014 allotment in FS	FY 2014 FMA Ps (%)	FY 2014 allotments in TC col F/G	Applicable percentage applied to FY 2013 allotments in TC Col E × Col H	FY 2014 TC IMD limit (lesser of Col I or Col C)	FY 2014 IMD limit in FS Col G × J	MMA low DSH Status
A	B	C	D	E	F	G	H	I	J	K	L
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07	$328,262,759	68.12	$481,888,959	$5,138,861	$4,451,770	$3,032,546	N/A
ARIZONA	93,916,100	28,474,900	122,391,000	23.27	108,086,519	67.23	160,771,261	37,404,267	28,474,900	19,143,675	N/A
CALIFORNIA	2,189,879,543	1,555,919	2,191,435,462	0.07	1,170,270,080	50.00	2,340,540,160	1,661,783	1,555,919	777,960	N/A
COLORADO	173,900,441	594,776	174,495,217	0.34	98,745,708	50.00	197,491,416	673,160	594,776	297,388	N/A
CONNECTICUT	303,359,275	105,573,725	408,933,000	25.82	213,504,233	50.00	427,008,466	110,240,246	105,573,725	52,786,863	N/A
DISTRICT OF COLUMBIA	39,532,234	6,545,136	46,077,370	14.20	65,385,671	70.00	93,408,101	13,268,308	6,545,136	4,581,595	N/A
FLORIDA	184,468,014	149,714,986	334,183,000	33.00	213,504,233	58.79	363,164,200	119,844,186	119,844,186	70,456,397	N/A
GEORGIA	407,343,557	0	407,343,557	0.00	286,896,314	65.93	435,152,911	0	0	0	N/A
ILLINOIS	315,868,508	89,408,276	405,276,784	22.06	229,517,051	50.00	459,034,102	101,267,700	89,408,276	44,704,138	N/A
INDIANA	79,960,783	153,566,302	233,527,085	33.00	228,182,651	66.92	340,978,259	112,522,826	112,522,826	75,300,275	N/A
KANSAS	11,587,208	76,663,508	88,250,716	33.00	44,035,248	56.91	77,376,995	25,534,408	25,534,408	14,531,632	N/A
KENTUCKY	158,804,908	37,443,073	196,247,981	19.08	154,790,570	69.83	221,667,722	42,293,025	37,443,073	26,146,498	N/A
LOUISIANA	1,078,512,169	132,917,149	1,211,429,318	10.97	731,960,000	62.11	1,178,489,776	129,303,046	129,303,046	80,310,122	N/A
MAINE	99,957,958	60,958,342	160,916,300	33.00	112,089,722	61.55	182,111,652	60,096,845	60,096,845	36,989,608	N/A
MARYLAND	22,226,467	120,873,531	143,099,998	33.00	81,398,489	50.00	162,796,978	53,723,003	53,723,003	26,861,501	N/A
MASSACHUSETTS	469,653,946	105,635,054	575,289,000	18.36	325,593,956	50.00	651,187,912	119,571,677	105,635,054	52,817,527	N/A
MICHIGAN	133,258,800	304,765,552	438,024,352	33.00	282,893,110	66.32	426,557,765	140,764,063	140,764,063	93,354,726	N/A
MISSISSIPPI	182,608,033	0	182,608,033	0.00	162,796,978	73.05	222,856,917	0	0	0	N/A
MISSOURI	521,946,524	207,234,618	729,181,142	28.42	505,738,153	62.03	815,312,192	231,713,221	207,234,618	128,547,634	N/A
NEVADA	73,560,000	0	73,560,000	0.00	49,372,853	63.10	78,245,409	0	0	0	N/A
NEW HAMPSHIRE	92,675,916	94,753,948	187,429,864	33.00	170,908,561	50.00	341,817,122	112,799,650	94,753,948	47,376,974	N/A
NEW JERSEY	736,742,539	357,370,461	1,094,113,000	32.66	687,216,752	50.00	1,374,433,504	448,931,632	357,370,461	178,685,231	N/A
NEW YORK	2,418,869,368	605,000,000	3,023,869,368	20.01	1,714,705,875	50.00	3,429,411,750	686,138,803	605,000,000	302,500,000	N/A
NORTH CAROLINA	193,201,966	236,072,627	429,274,593	33.00	314,918,744	65.78	478,745,430	157,985,992	157,985,992	103,923,186	N/A
OHIO	535,731,956	93,432,758	629,164,714	14.85	433,680,475	63.02	688,163,242	102,194,208	93,432,758	58,881,324	N/A
PENNSYLVANIA	388,207,319	579,199,682	967,407,001	33.00	599,146,255	53.52	1,119,481,044	369,428,745	369,428,745	197,718,264	N/A
RHODE ISLAND	108,503,167	2,397,833	110,901,000	2.16	69,388,876	50.11	138,473,111	2,993,980	2,397,833	1,201,554	N/A
SOUTH CAROLINA	366,681,364	72,076,341	438,757,705	16.43	349,613,182	70.57	495,413,323	81,383,368	72,076,341	50,864,274	N/A
TENNESSEE	0	0	0	0.00	0	65.29	0	0	0	0	N/A
TEXAS	1,220,515,401	292,513,592	1,513,028,993	19.33	1,020,817,117	58.69	1,739,337,395	336,265,750	292,513,592	171,676,227	N/A
VERMONT	19,979,252	9,071,297	29,050,549	31.23	24,019,227	56.76	42,317,172	13,213,920	9,071,297	5,148,868	N/A
VIRGINIA	129,313,480	7,770,268	137,083,748	5.67	93,522,940	50.00	187,045,880	10,602,253	7,770,268	3,885,134	N/A
WASHINGTON	171,725,815	163,836,435	335,562,250	33.00	197,491,416	50.00	394,982,832	130,344,335	130,344,335	65,172,167	N/A
WEST VIRGINIA	66,962,606	18,887,045	85,849,651	22.00	72,057,679	71.09	101,361,203	22,299,608	18,887,045	13,426,800	N/A
TOTAL	13,402,460,846	4,118,758,904	17,521,219,750		11,140,511,397		19,847,024,163	3,779,602,867	3,439,738,238	1,931,100,088	
LOW DSH STATES											
ALASKA	2,506,827	17,611,765	20,118,592	33.00	21,745,078	50.00	43,490,156	14,351,751	14,351,751	7,175,876	LOW DSH
ARKANSAS	2,422,649	819,351	3,242,000	25.27	46,050,497	70.10	65,692,578	16,602,492	819,351	574,365	LOW DSH
DELAWARE	0	7,069,000	7,069,000	33.00	9,664,479	55.31	17,473,294	5,766,187	5,766,187	3,189,278	LOW DSH
HAWAII	0	0	0	0.00	10,403,840	51.85	20,065,265	0	0	0	LOW DSH
IDAHO	2,081,429	0	2,081,429	0.00	17,547,381	71.64	24,493,832	0	0	0	LOW DSH
IOWA	12,011,250	0	12,011,250	0.00	42,040,199	57.93	72,570,687	0	0	0	LOW DSH
MINNESOTA	24,240,000	5,257,214	29,497,214	17.82	79,731,955	50.00	159,463,910	28,420,850	5,257,214	2,628,607	LOW DSH
MONTANA	237,048	0	237,048	0.00	12,117,193	66.33	18,268,043	0	0	0	LOW DSH
NEBRASKA	6,449,102	1,811,337	8,260,439	21.93	30,208,951	54.74	55,186,246	12,101,159	1,811,337	991,526	LOW DSH
NEW MEXICO	6,490,015	254,786	6,744,801	3.78	21,745,078	69.20	31,423,523	1,187,029	254,786	176,312	LOW DSH
NORTH DAKOTA	214,523	988,478	1,203,001	33.00	10,196,942	50.00	20,393,884	6,729,982	988,478	494,239	LOW DSH
OKLAHOMA	20,019,969	3,273,248	23,293,217	14.05	38,657,915	64.02	60,384,122	8,485,398	3,273,248	2,095,533	LOW DSH
OREGON	11,437,908	19,975,092	31,413,000	33.00	48,322,397	63.14	76,532,146	25,255,608	19,975,092	12,612,273	LOW DSH
SOUTH DAKOTA	321,120	751,299	1,072,419	33.00	11,790,395	53.54	22,021,657	7,267,147	751,299	402,245	LOW DSH
UTAH	3,621,116	934,586	4,555,702	20.51	20,942,613	70.34	29,773,405	6,107,908	934,586	657,388	LOW DSH

WISCONSIN	6,609,524	4,492,011	11,101,535	33.00	100,915,788	59.06	170,869,942	56,387,081	4,492,011	2,652,982	LOW DSH
WYOMING	0	0	0	0.00	241,612	50.00	483,224	0	0	0	LOW DSH
TOTAL LOW DSH STATES	98,662,480	63,238,167	161,900,647		522,322,313		888,585,914	188,662,592	58,675,341	33,650,624	
TOTAL	13,501,123,326	4,181,997,071	17,683,120,397		11,662,833,710		20,735,610,077	3,968,265,459	3,498,413,578	1,964,750,712	

KEY TO ADDENDUM 4—PRELIMINARY IMD DSH LIMITS FOR FY 2016

[The preliminary FY 2016 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this addendum and the preliminary FY 2016 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the addendum]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total. Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient Hospital & IMD & Mental Health FY 95 DSH Total. Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage, Col. C/D. This column contains the ''applicable percentage'' representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2016 Federal Share DSH Allotment. This column contains the states' preliminary FY 2016 DSH allotments from Column J Addendum 1.
Column G	FY 2016 FMAP.
Column H	FY 2016 DSH Allotments in Total Computable, Col. F/G. This column contains states' FY 2016 total computable DSH allotment (determined as Column F/Column G).
Column I	Applicable Percentage Applied to FY 2016 Allotments in TC, Col E × Col H. This column contains the applicable percentage of FY 2015 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	FY 2016 TC IMD DSH Limit. Lesser of Col. I or C. This column contains the total computable FY 2016 TC IMD DSH Limit equal to the lesser of the amount in Column I or Column C.
Column K	FY 2016 IMD DSH Limit in Federal Share, Col. G × J. This column contains the FY 2016 Federal Share IMD DSH limit determined by converting the total computable FY 2016 IMD DSH Limit from Column J into a federal share amount by multiplying it by the FY 2016 FMAP in Column G.

ADDENDUM 4—PRELIMINARY IMD DSH LIMIT FOR FISCAL YEAR: 2016

State	Inpatient hospital services FY 95 DSH total computable	IMD and mental health services FY 95 DSH total computable	Total inpatient & IMD & mental health FY 95 DSH total computable Col B + C	Applicable percent Col C/D	FY 2016 allotment in FS	FY 2016 FMAPs (%)	FY 2016 allotments in TC Col F/G	Applicable percentage applied to FY 2016 allotments in TC Col E × Col H	FY 2016 TC IMD limit (lesser of Col I or Col C)	FY 2016 IMD limit in FS Col G × J	MMA low DSH status
A	B	C	D	E	F	G	H	I	J	K	L
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07	$334,186,261	69.87	$478,297,211	$5,100,559	$4,451,770	$3,110,452	N/A
ARIZONA	93,916,100	28,474,900	122,391,000	23.27	110,036,940	68.92	159,658,938	37,145,479	28,474,900	19,624,901	N/A
CALIFORNIA	2,189,879,543	1,555,919	2,191,435,462	0.07	1,191,387,603	50.00	2,382,775,206	1,691,770	1,555,919	777,960	N/A
COLORADO	173,900,441	594,776	174,495,217	0.34	100,527,574	50.72	198,201,053	675,579	594,776	301,670	N/A
CONNECTICUT	303,359,275	105,573,725	408,933,000	25.82	217,356,916	50.00	434,713,832	112,229,530	105,573,725	52,786,863	N/A
DISTRICT OF COLUMBIA	39,532,234	6,545,136	46,077,370	14.20	66,565,555	70.00	95,093,650	13,507,734	6,545,136	4,581,595	N/A
FLORIDA	184,468,014	149,714,986	334,183,000	33.00	217,356,916	60.67	358,260,946	118,226,112	118,226,112	71,727,782	N/A
GEORGIA	407,343,557	0	407,343,557	0.00	292,073,358	67.55	432,380,989	0	0	0	N/A
ILLINOIS	315,868,508	89,408,276	405,276,784	22.06	233,658,685	50.89	459,144,596	101,292,076	89,408,276	45,499,872	N/A
INDIANA	79,960,783	153,566,302	233,527,085	33.00	232,300,206	66.60	348,799,108	115,103,706	115,103,706	76,659,068	N/A
KANSAS	11,587,208	76,663,508	88,250,716	33.00	44,829,865	55.96	80,110,552	26,436,482	26,436,482	14,793,855	N/A
KENTUCKY	158,804,908	37,443,073	196,247,981	19.08	157,583,765	70.32	224,095,229	42,756,180	37,443,073	26,329,969	N/A
LOUISIANA	1,078,512,169	132,917,149	1,211,429,318	10.97	745,902,374	62.21	1,199,007,192	131,554,202	131,554,202	81,839,869	N/A
MAINE	99,957,958	60,958,342	160,916,300	33.00	114,112,381	62.67	182,084,540	60,087,898	60,087,898	37,657,086	N/A
MARYLAND	22,226,467	120,873,531	143,099,998	33.00	82,867,324	50.00	165,734,648	54,692,434	54,692,434	27,346,217	N/A
MASSACHUSETTS	469,653,946	105,635,054	575,289,000	18.36	331,469,299	50.00	662,938,598	121,729,348	105,635,054	52,817,527	N/A
MICHIGAN	133,258,800	304,765,552	438,024,352	33.00	287,997,917	65.60	439,021,215	144,877,001	144,877,001	95,039,313	N/A
MISSISSIPPI	182,608,033	0	182,608,033	0.00	165,734,650	74.17	223,452,407	0	0	0	N/A
MISSOURI	521,946,524	207,234,618	729,181,142	28.42	514,864,199	63.28	813,628,633	231,234,750	207,234,618	131,138,066	N/A
NEVADA	73,560,000	0	73,560,000	0.00	50,263,786	64.93	77,412,269	0	0	0	N/A
NEW HAMPSHIRE	92,675,916	94,753,948	187,429,864	33.00	173,992,607	50.00	347,985,214	114,835,121	94,753,948	47,376,974	N/A
NEW JERSEY	736,742,539	357,370,461	1,094,113,000	32.66	699,617,579	50.00	1,399,235,158	457,032,604	357,370,461	178,685,231	N/A
NEW YORK	2,418,869,368	605,000,000	3,023,869,368	20.01	1,745,647,742	50.00	3,491,295,484	698,520,178	605,000,000	302,500,000	N/A
NORTH CAROLINA	193,201,966	236,072,627	429,274,593	33.00	320,601,454	66.24	483,999,780	159,719,927	159,719,927	105,798,480	N/A
OHIO	535,731,956	93,432,758	629,164,714	14.85	441,506,239	62.47	706,749,222	104,954,279	93,432,758	58,367,444	N/A
PENNSYLVANIA	388,207,319	579,199,682	967,407,001	33.00	609,957,849	52.01	1,172,770,331	387,014,209	387,014,209	201,286,090	N/A
RHODE ISLAND	108,503,167	2,397,833	110,901,000	2.16	70,640,998	50.42	140,105,113	3,029,266	2,397,833	1,208,987	N/A
SOUTH CAROLINA	366,681,364	72,076,341	438,757,705	16.43	355,921,952	71.08	500,734,316	82,257,467	72,076,341	51,231,863	N/A
TENNESSEE	0	0	0	0.00	53,100,000	65.05	81,629,516	0	0	0	N/A
TEXAS	1,220,515,401	292,513,592	1,513,028,993	19.33	1,039,237,762	57.13	1,819,075,375	351,681,478	292,513,592	167,113,015	N/A
VERMONT	19,979,252	9,071,297	29,050,549	31.23	24,452,654	54.45	44,908,455	14,023,072	9,071,297	4,939,321	N/A
VIRGINIA	129,313,480	7,770,268	137,083,748	5.67	95,210,561	50.00	190,421,122	10,793,571	7,770,268	3,885,134	N/A
WASHINGTON	171,725,815	163,836,435	335,562,250	33.00	201,055,149	50.00	402,110,298	132,696,398	132,696,398	66,348,199	N/A
WEST VIRGINIA	66,962,606	18,887,045	85,849,651	22.00	73,357,960	71.42	102,713,470	22,597,109	18,887,045	13,489,128	N/A
TOTAL	13,402,460,846	4,118,758,904	17,521,219,750		11,395,376,080		20,298,543,664	3,857,495,519	3,470,599,160	1,944,261,931	
LOW DSH STATES											
ALASKA	2,506,827	17,611,765	20,118,592	33.00	22,137,469	50.00	44,274,938	14,610,730	14,610,730	7,305,365	LOW DSH
ARKANSAS	2,422,649	819,351	3,242,000	25.27	46,881,478	70.00	66,973,540	16,926,230	819,351	573,546	LOW DSH
DELAWARE	0	7,069,000	7,069,000	33.00	9,838,873	54.83	17,944,324	5,921,627	5,921,627	3,246,828	LOW DSH
HAWAII	0	0	0	0.00	10,591,578	53.98	19,621,300	0	0	0	LOW DSH
IDAHO	2,081,429	0	2,081,429	0.00	17,864,024	71.24	25,075,834	0	0	0	LOW DSH
IOWA	12,011,250	0	12,011,250	0.00	42,798,814	54.91	77,943,569	0	0	0	LOW DSH
MINNESOTA	24,240,000	5,257,214	29,497,214	17.82	81,170,719	50.00	162,341,438	28,933,705	5,257,214	2,628,607	LOW DSH
MONTANA	237,048	0	237,048	0.00	12,335,848	65.24	18,908,412	0	0	0	LOW DSH
NEBRASKA	6,449,102	1,811,337	8,260,439	21.93	30,754,070	51.16	60,113,507	13,181,602	1,811,337	926,680	LOW DSH
NEW MEXICO	6,490,015	254,786	6,744,801	3.78	22,137,469	70.37	31,458,674	1,188,357	254,786	179,293	LOW DSH
NORTH DAKOTA	214,523	988,478	1,203,001	33.00	10,380,945	50.00	20,761,890	6,851,424	988,478	494,239	LOW DSH
OKLAHOMA	20,019,969	3,273,248	23,293,217	14.05	39,355,497	60.99	64,527,787	9,067,680	3,273,248	1,996,354	LOW DSH
OREGON	11,437,908	19,975,092	31,413,000	33.00	49,194,374	64.38	76,412,510	25,216,128	19,975,092	12,859,964	LOW DSH
SOUTH DAKOTA	321,120	751,299	1,072,419	33.00	12,003,153	51.61	23,257,417	7,674,948	751,299	387,745	LOW DSH
UTAH	3,621,116	934,586	4,555,702	20.51	21,320,522	70.24	30,353,818	6,226,977	934,586	656,453	LOW DSH

ADDENDUM 4—PRELIMINARY IMD DSH LIMIT FOR FISCAL YEAR: 2016—Continued

State	Inpatient hospital services FY 95 DSH total computable	IMD and mental health services FY 95 DSH total computable	Total inpatient & IMD & mental health FY 95 DSH total computable Col B + C	Applicable percent Col C/D	FY 2016 allotment in FS	FY 2016 FMAPs (%)	FY 2016 allotments in TC Col F/G	Applicable percentage applied to FY 2016 allotments in TC Col E × Col H	FY 2016 TC IMD limit (lesser of Col I or Col C)	FY 2016 IMD limit in FS Col G × J	MMA low DSH status
A	B	C	D	E	F	G	H	I	J	K	L
WISCONSIN	6,609,524	4,492,011	11,101,535	33.00	102,736,813	58.23	176,432,789	58,222,820	4,492,011	2,615,698	LOW DSH
WYOMING	0	0	0	0.00	245,972	50.00	491,944	0	0	0	LOW DSH
TOTAL LOW DSH STATES	98,662,480	63,238,167	161,900,647	.....	531,747,618	.....	916,893,692	194,022,228	59,089,759	33,870,772	.....
TOTAL	13,501,123,326	4,181,997,071	17,683,120,397	.....	11,927,123,698	.....	21,215,437,356	4,051,517,746	3,529,688,919	1,978,132,703	.....

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants.

OMB No.: 0970–0462.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of the Health Profession Opportunity Grants (HPOG) Program. ACF has developed a multi-pronged research and evaluation approach for the HPOG program to better understand and assess the activities conducted and their results. Two rounds of HPOG grants have been awarded—the first in 2010 (HPOG 1.0) and the second in 2015 (HPOG 2.0). There are federal evaluations associated with each round of grants. HPOG grants provide funding to government agencies, community-based organizations, post-secondary educational institutions, and tribal-affiliated organizations to provide education and training services to Temporary Assistance for Needy Families (TANF) recipients and other low-income individuals. Under HPOG 2.0, ACF awarded grants to five tribal-affiliated organizations and 27 non-tribal entities. The proposed data collection activities described in this notice will provide data for the implementation studies of the National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants (*i.e.,* the HPOG 2.0 National Evaluation and the HPOG 2.0 Tribal Evaluation) as well as the impact study for the HPOG 2.0 National Evaluation. OMB previously approved baseline data collection and informed consent forms for the HPOG 2.0 Evaluations under OMB Control Number 0970–0462. The design for the HPOG 2.0 National Evaluation features an implementation study, cost benefit study, and impact study. This information collection clearance request pertains to the implementation study and impact study.

The goal of the HPOG 2.0 National Evaluation Implementation Study is to describe and assess the implementation, systems change, outcomes and other important information about the operations of the 27 non-tribal HPOG grantees, which are operating 38 distinct programs. To achieve these goals, it is necessary to collect data about the non-tribal HPOG program designs and implementation, HPOG partner and program networks, the composition and intensity of HPOG services received, participant characteristics and HPOG experiences, and participant outputs and outcomes.

The goal of the HPOG 2.0 National Evaluation Impact Study is to measure and analyze key participant outcomes and impacts including completion of education and training, receipt of certificates and/or degrees, earnings, and employment in a healthcare career.

The goal of the HPOG 2.0 Tribal Evaluation is to conduct a comprehensive implementation and outcome evaluation of the five Tribal HPOG 2.0 grantee programs. The evaluation will identify and assess how programmatic health profession training operations are working; determine differences in approaches being used when programs are serving different sub-populations, including participants with different characteristics and skill levels; and identify programs and practices that are successful in supporting the target population to achieve portable industry-recognized certificates or degrees as well as employment-related outcomes.

The information collection activities to be submitted in the request package include: (1) *Screening Interview to identify respondents for the HPOG 2.0 National Evaluation first-round telephone interviews.* (2) *HPOG 2.0 National Evaluation first-round telephone interviews* with management and staff. These interviews will collect information about the HPOG program context and about program administration, activities and services, partner and stakeholder roles and networks, and respondent perceptions of the program's strengths. (3) *HPOG 2.0 National Evaluation in-person implementation interviews* with HPOG personnel will collect information from six HPOG 2.0 programs with promising approaches to the topic areas of specific interest to ACF. (4) *HPOG 2.0 National Evaluation participant contact update forms* will collect updated participant contact information for impact study participants (treatment and control) every 3 months, during the three year follow-up period. (5) *HPOG 2.0 Tribal Evaluation grantee and partner administrative staff interviews* will collect information on high-level program strategies, partnerships in place to implement the Tribal HPOG 2.0 program, program development and lessons learned. (6) *HPOG 2.0 Tribal Evaluation program implementation staff interviews* will collect information from instructors, trainers, recruitment and orientation staff, and providers of program or supportive services on Tribal HPOG 2.0 program processes including recruitment, screening, orientation, provision of supportive services, and program implementation. (7) *HPOG 2.0 Tribal Evaluation employer interviews* will collect information from local or regional employers that are partnering with Tribal HPOG 2.0 programs or have employed participants, and collect information on employers' impressions of the Tribal HPOG 2.0 program and program graduates. (8) *HPOG 2.0 Tribal Evaluation program participant focus groups* will collect information on participants' perceptions, experience, outcomes and satisfaction with the Tribal HPOG 2.0 program. (9) *HPOG 2.0 Tribal Evaluation program participant completer interviews* will collect information on the current employment status of the participants who completed a training program and their perceptions of and satisfaction with the Tribal HPOG 2.0 program. (10) *HPOG 2.0 Tribal Evaluation program participant non-completer interviews* will collect information on reasons participants left the program, short-term outcomes, how they feel the program could be improved, and any plans for future academic training.

Respondents: For the HPOG 2.0 National Evaluation: HPOG program managers; HPOG program staff; and representatives of partner agencies and stakeholders, including support service providers, education and vocational training providers, Workforce Investment Boards, TANF agencies, and participants at the 27 non-tribal HPOG 2.0 grantees. For the HPOG 2.0 Tribal Evaluation: Tribal HPOG 2.0 program staff; administrative staff at grantee institutions; representatives from partner agencies and stakeholders, including local employers; and Tribal HPOG program participants at the five Tribal HPOG 2.0 grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Additional Burden for Previously Approved Information Collection					
PAGES—Participant-Level Baseline Data Collection (participants at non-Tribal grantees)	4,860	1,620	1	.5	810
Burden for Newly Requested Information Collection					
HPOG 2.0 National Evaluation					
Screening Interview to identify respondents for the HPOG 2.0 National Evaluation first-round telephone interviews	38	13	1	.5	7
HPOG 2.0 National Evaluation first-round telephone interviews with management and staff	190	63	1	1.25	79
HPOG 2.0 National Evaluation in-person implementation interviews	60	20	1	1.5	30
HPOG 2.0 National Evaluation welcome packet and participant contact update forms	45,000	15,000	4	.1	6000
HPOG 2.0 Tribal Evaluation					
HPOG 2.0 Tribal Evaluation grantee and partner administrative staff interviews	105	35	1	1	35
HPOG 2.0 Tribal Evaluation program implementation staff interviews	150	50	1	1.5	75
HPOG 2.0 Tribal Evaluation employer interviews	90	30	1	.75	23
HPOG 2.0 Tribal Evaluation program participant focus groups	405	135	1	1.5	203
HPOG 2.0 Tribal Evaluation program participant completer interviews	300	100	1	1	100
HPOG 2.0 Tribal Evaluation program participant non-completer interviews	150	50	1	1	50

Estimated Total Annual Burden Hours: 7,412.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Mary Jones,

ACF/OPRE Certifying Officer.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Guidelines Stating Principles for Working With Federally Recognized Indian Tribes

AGENCY: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), is issuing guidelines stating principles for working with federally recognized Indian tribes.

DATES: Effective October 20, 2016.

FOR FURTHER INFORMATION CONTACT: Camille Loya, Director of Policy, Administration for Native Americans (ANA) at (202) 401–5964, or *Camille.Loya@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ACF states the following principles for working with federally recognized Indian tribes:

Purpose: The mission of ACF is to foster health and well-being by providing federal leadership, partnership, and resources for the compassionate and effective delivery of human services. This mission has special application with respect to the government-to-government relationship with federally recognized Indian tribes, including Alaska Natives. ACF issues these Principles for Working with Federally Recognized Tribes to establish a policy standard governing ACF's relationships with federally recognized Indian tribes. The Principles are designed to build upon and complement ACF's Tribal Consultation Policy and to articulate ACF's commitment to promote and sustain strong government-to-government relationships, foster Indian self-determination, support tribal sovereignty, and demonstrate transparency in ACF's actions as public servants.

Bases and Authority: ACF's Principles are based upon the unique relationship between the federal government and Indian tribes affirmed by President Obama in the Memorandum for the Heads of Executive Departments and Agencies issued November 5, 2009. The Memorandum states:

> The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions.

The HHS Consultation Policy affirms the nature of the relationship between the federal government and Indian tribes and the importance of clear policies:

> The U.S. Department of Health and Human Services (HHS) and Indian Tribes share the goal to establish clear policies to further the government-to-government relationship between the Federal Government and Indian Tribes.
>
> * * * * *
>
> Since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as sovereign nations. A unique government-to-government relationship exists between Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. This relationship is derived from the political and legal relationship that Indian Tribes have with the Federal Government and is not based upon race.

The Principles are derived from the general federal trust responsibility between the United States and tribes. Since the formation of the Union, the United States has recognized the inherent sovereignty of tribal nations. As a result, a unique government-to-government relationship exists between American Indian and Alaska Native (AI/AN) tribes and the federal government. The government-to-government relationship is political and independent of race or ethnicity. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations, and executive orders, as well as political, legal, moral, and ethical principles.

ACF, as an Operating Division within HHS, hereby establishes this set of principles for working with federally recognized tribes, as defined in 25 U.S.C. 5304, in accord with ACF's vision of ''children, youth, families, individuals, and communities who are resilient, safe, healthy, and economically secure.'' These principles are intended to foster AI/AN health and well-being by providing federal leadership, partnership, and resources for compassionate and effective human services delivery.

ACF establishes these principles in accordance with ACF values of dedication, excellence, professionalism, integrity, and stewardship. Once implemented, these principles will help ACF advance its values by establishing clear policies that further the government-to-government relationship between ACF and Indian tribes.

ACF establishes this statement of principles to further the shared goal of thriving, resilient, safe, healthy, and economically secure children, families, and communities. Shared ACF and tribal goals also include, but are not limited to, strengthening health care by eliminating health and human service disparities Indians experience; ensuring access to critical health and human services; and advancing or enhancing health, safety, and well-being of AI/AN people. Finally, ACF and Indian tribes share the goal of establishing clear policies to further the government-to-government relationship between the federal government and Indian tribes.

ACF establishes this statement of principles in order to complement existing ACF Tribal Consultation Policies. On November 5, 2009, President Obama signed an Executive Memorandum reaffirming the government-to-government relationship between Indian tribes and the federal government, directing each executive department and agency to submit a plan on consultation with tribal governments before developing regulatory policies that substantially affect this population. The importance of consultation with Indian tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and Executive Order 13175 in 2000. The purpose of the ACF Tribal Consultation Policy is to build meaningful relationships with federally recognized tribes by engaging in open, continuous, and meaningful consultation that leads to information exchange, mutual understanding, and informed decision-making.

The principles build upon communication and decision-making protocols articulated in the ACF Tribal Consultation Policy by setting forth specific leadership and partnership principles intended to guide effective day-to-day human services delivery to AI/AN peoples.

Section I. Overarching Principles for Working With Federally Recognized Indian Tribes

- ACF strives to honor the unique legal relationship between the federal government and Indian tribes as defined at 25 U.S.C. 5304, and supports tribes' authority to exercise their inherent tribal powers.
- ACF recognizes tribal sovereignty and the principle that tribal nations have authority over tribal citizens.
- ACF recognizes tribal members as American citizens, as well as citizens of their respective tribes, who are entitled to all the benefits of other citizens of the states where they reside.
- ACF is committed to furthering the government-to-government relationship with each tribe, which forms the heart of all federal Indian policy. ACF respects and supports tribes' authority to exercise their inherent sovereign powers, including the authority to manage their own affairs, to exist as nations, and exercise authority over their citizens and territory.
- ACF strives to act in accordance with the general trust responsibility between the United States and tribes. Trust responsibility is derived from treaties with tribes, statutes, and opinions of the U.S. Supreme Court and provides a fundamental basis for the relationship between the federal government and federally recognized Indian tribes.
- While not legally binding, in accord with the December 2010 Presidential Proclamation under which the United States fully endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ACF promotes and pursues the objectives of UNDRIP, including, but not limited to, recognition that indigenous peoples are entitled to all human rights recognized in international law.
- ACF is committed to tribal self-determination, tribal autonomy, tribal nation-building, and the long-term goal of maximizing tribal control over governmental institutions in tribal communities recognizing that tribal problems are best addressed in federal-tribal partnership informed by tribal traditions, values, and custom.
- ACF works to evaluate and improve AI/AN children and families' health and well-being by collecting and analyzing AI/AN data, including, but not limited to, child welfare data, workforce and employment data, child development and school readiness data, data on at-risk and vulnerable youth, and evaluative social and economic data, with the goal of sharing information and knowledge gained to collaboratively address established tribal priorities.
- ACF supports state and tribal governments, courts, and human services systems to strengthen AI/AN families, protect AI/AN children, and ensure that AI/AN children and youth

have and maintain familial and cultural connections with their tribes and Indian, as defined at 25 U.S.C. 5304, extended families.

• In all its actions, ACF respects, supports, and promotes Indian tribes' authority to exercise inherent sovereign powers, including authority over both tribal citizens and property.

Section II. Consultation and Communication With Tribes

• ACF recognizes that the government-to-government relationship with Indian tribes merits regular, meaningful, and informed consultation with AI/AN tribal officials in the development of new or amended funding; amended funding formulas; and programmatic policies, regulations, and legislative actions initiated by ACF that affect or may affect tribes.

• ACF recognizes that—in addition to, but not in lieu of, formal consultation—there can be great benefit in timely, detailed, and informal communications with tribal officials and other community leaders.

• ACF acts to facilitate on-going, routine, informal communication with tribal programs in its day-to-day work.

• ACF seeks to integrate tribal consultation and communication responsibilities into the operational duties of all staff positions including managers, federal project officers, and program specialists.

• ACF recognizes that meaningful communication and, to the extent practicable, consultation on a government-to-government basis is sound ACF management policy and good governance.

• ACF supports the Intradepartmental Council on Native American Affairs, the HHS Secretary's Tribal Advisory Committee, the ACF Tribal Advisory Committee, and other task forces, advisory groups, and work teams that provide input from elected tribal representatives to ACF leaders and components, and to otherwise ensure human services coordination around issues affecting AI/AN populations.

• ACF supports Regional Office strategic partnerships and/or regionally structured coordinated communications with tribes and tribal programs to promote and facilitate strong tribal-state relationships and policy and to foster improved outcomes for Indian children, youth, and families through training on tribal consultation, providing introductions, sharing information, and ensuring timely follow-up on issues and concerns.

Section III. Culture and Mutual Respect

• ACF recognizes that each tribe's history and contemporary culture are unique, and that solutions that work for one tribe may not be suitable for others.

• ACF respects traditional tribal cultural practices and values and is committed to ensuring cultural competence and effective cross-cultural communication in day-to-day work.

• ACF seeks to foster an internal ACF culture at every level that encourages all staff to identify and be responsive to the needs of tribes and Indian people as part of routine deliberative and other work demonstrating respect for the Indian tribes we serve and with whom we partner.

Section IV. Nation-Building and Effective Delivery of Human Services to Indian Communities

• ACF believes that continuity of funding at sufficient levels for essential tribal social service functions is critical to the long-term growth of tribal nations and the economic, health, and social well-being of Indian peoples.

• In accord with Executive Order 13175, ACF seeks to maximize tribes' flexibility to administer grant programs within the prescribed statutory and regulatory parameters and thus design solutions responsive and appropriate to their communities while ensuring accountability.

• ACF believes that pilot and demonstration projects that are available to state or local governments should be available to tribal governments to the extent authorized by law, and endeavors, where appropriate and practicable, to locate pilot and demonstration projects in tribal communities.

• ACF is committed to partnering with tribes to build a continuum of research, as described ACF's Common Framework for Research, from descriptive studies to impact studies that build understanding of human service needs in tribal communities, high quality and culturally responsive services, and efficacy and effectiveness of services in improving relevant outcomes in tribal communities.

• ACF aims, through flexible provision of technical support, to help tribal grantees develop and operationalize their own performance measures and indicators, allowing for performance measurement over time and in a manner most meaningful to local tribal communities.

• ACF supports using data to collaborate in identifying and testing changes that support data-driven improvements in ACF-funded programs and projects.

• ACF is committed to implementing all statutes authorizing ACF programs and to working in partnership with tribes to strengthen tribal systems and institutions critical to fulfilling the purposes of these statutes.

V. Coordination and Outreach

• ACF, when working with external agencies on issues involving tribes, advocates respect for tribal self-determination, tribal autonomy, tribal nation-building, and the government-to-government relationship.

• The Administration for Children and Families, through its regional offices, is committed to supporting tribes, states, and local jurisdictions to improve communication and meaningful consultation, and to build relationships among tribes, states, local, and private entities that promote resilient, safe, healthy, and economically secure Indian children, youth, families, and communities.

• ACF works to facilitate communication and build relationships among the federal agencies engaged with tribal governments and to promote the sharing of federal resources and expertise, including, but not limited to, identifying cross-training opportunities.

• Because of the relationship between the work of external institutions and the health and well-being of Indian children, youth, and families, ACF is committed to fostering coordinated efforts with educational, public safety, justice, housing, environmental protection, and public health services.

VI. Administrative Data Management

• In collaboration with Indian tribes, ACF aims to build knowledge of effective models, strategies, and approaches for addressing the needs and lifting the strengths and capacities of Indian children, youth, and families through a focus on collaborative research and evaluation.

• In collaboration with Indian tribes, ACF develops and implements a research agenda that identifies and addresses data gaps, builds tribal research and evaluation capacities, and disseminates research findings on issues determined, in partnership with tribes, to be significant.

VII. Sustainability

• ACF will ensure the ACF Guiding Principles are institutionalized through management and staff training so that progress in areas important to tribes and tribal communities continues consistent with ACF values of dedication, excellence, professionalism, integrity, stewardship, and respect.

• These ACF Guiding Principles are intended solely to improve the internal awareness and management of the ACF. They may only be implemented to the extent permitted by statute and regulations and are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law or equity by any party in any matter, civil or criminal, against the United States, its departments, agencies, officers, employees, or agents, or any other person.

Dated: October 20, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Dated: October 20, 2016.

Lillian Sparks Robinson,

Commissioner, Administration for Native Americans.

[FR Doc. 2016–25794 Filed 10–25–16; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2817]

Low Sexual Interest, Desire, and/or Arousal in Women: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Low Sexual Interest, Desire, and/or Arousal in Women: Developing Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in developing drugs for the treatment of low sexual interest, desire, and/or arousal in women. Specifically, this guidance addresses FDA's current thinking regarding the overall clinical development program, with a focus on phase 3 trial designs, to support an indication for the treatment of these conditions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–2817 for Low Sexual Interest, Desire, and/or Arousal in Women: Developing Drugs for Treatment; Draft Guidance for Industry; Availability. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jennifer Mercier, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5390, Silver Spring, MD 20993–0002, 301–796–0957.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Low Sexual Interest, Desire, and/or Arousal in Women: Developing Drugs

for Treatment.'' The purpose of this draft guidance is to assist sponsors in developing drugs for the treatment of low sexual interest, desire, and/or arousal in women. Specifically, this draft guidance addresses FDA's current thinking regarding the overall clinical development program, with a focus on phase 3 trial designs, to support an indication for the treatment of these conditions.

On October 27, 2014, FDA convened a public patient-focused drug development meeting and heard directly from women suffering from female sexual desire and arousal disorders. The following day, FDA held a public scientific workshop with invited experts in sexual medicine to discuss scientific challenges involved in developing drugs to treat these disorders, including diagnostic criteria, endpoints, and patient-reported outcome instruments. Comments from the public and experts that were communicated during these proceedings, as well as comments submitted to FDA through the public docket, were used to inform this draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on developing drugs for the treatment of low sexual interest, desire, and/or arousal in women. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 have been approved under OMB Control Number 0910–0001.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25788 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0823]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Format and Content Requirements for Over-the-Counter Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by November 25, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0340. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Format and Content Requirements for OTC Drug Product Labeling—21 CFR Part 201—OMB Control Number 0910–0340—Extension

In the **Federal Register** of March 17, 1999 (64 FR 13254) (the 1999 labeling final rule), we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products in part 201 (21 CFR part 201). The regulations in part 201 require OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. Specifically, the 1999 labeling final rule added new § 201.66 to part 201. Section 201.66 sets content and format requirements for the Drug Facts portion of labels on OTC drug products.

On June 20, 2000 (65 FR 38191), we published a **Federal Register** final rule that required all OTC drug products marketed under the OTC monograph system to comply with the labeling requirements in § 201.66 by May 16, 2005, or sooner (65 FR 38191 at 38193). Currently marketed OTC drug products are already required to be in compliance with these labeling requirements, and thus will incur no further burden to comply with Drug Facts labeling requirements in § 201.66. Modifications of labeling already required to be in Drug Facts format are usual and customary as part of routine redesign practice, and thus do not create additional burden within the meaning of the PRA. Therefore, the burden to comply with the labeling requirements in § 201.66 is a one-time burden applicable only to new OTC drug products introduced to the marketplace under new drug applications (NDAs), abbreviated new drug applications (ANDAs), or an OTC drug monograph, except for products in ''convenience size'' packages.[1] New OTC drug products must comply with the labeling requirements in § 201.66 as they are introduced to the marketplace.

Based on a March 1, 2010, estimate provided by the Consumer Healthcare Products Association (75 FR 49495 at 49496, August 13, 2010), we estimated that approximately 900 new OTC drug product stock-keeping units (SKUs) are introduced to the marketplace each

[1] In a final rule published in the **Federal Register** of April 5, 2002, the Agency delayed the compliance dates for the 1999 labeling final rule for all OTC drug products that: (1) Contain no more than two doses of an OTC drug and (2) because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements set forth in § 201.66(d)(1) and (9) and, therefore, qualify for the labeling modifications currently set forth in § 201.66(d)(10) (67 FR 16304 at 16306). The Agency issued this delay in order to develop additional rulemaking for these ''convenience size'' products (December 12, 2006; 71 FR 74474). These products are not currently subject to the requirements of § 201.66. PRA approval for any requirements to which they may be subject in the future will be handled in a separate rulemaking.

year. We estimated that these SKUs are marketed by 300 manufacturers. We estimated that the preparation of labeling for new OTC drug products would require 12 hours to prepare, complete, and review prior to submitting the new labeling to us. Based on this estimate, the annual reporting burden for this type of labeling is approximately 10,800 hours.

All currently marketed sunscreen products are required to be in compliance with the Drug Facts labeling requirements in § 201.66, and thus will incur no further burden under the information collection provisions in the 1999 labeling final rule. However, a new OTC sunscreen drug product, like any new OTC drug product, will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. We estimate that 60 new SKUs of OTC sunscreen drug products would be marketed each year (77 FR 27230 at 27234). We estimate that these 60 SKUs would be marketed by 20 manufacturers. We estimate that approximately 12 hours would be spent on each label, based on the most recent estimate used for other OTC drug products to comply with the 1999 Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens.

In determining the burden for § 201.66, it is also important to consider exemptions or deferrals of the regulation allowed products under § 201.66(e). Since publication of the 1999 labeling final rule, we have received only one request for exemption or deferral. One response over a 10-year period equates to an annual frequency of response equal to 0.1. In the 1999 labeling final rule, we estimated that a request for deferral or exemption would require 24 hours to complete (64 FR 13254 at 13276). We continue to estimate that this type of response will require approximately 24 hours. Multiplying the annual frequency of response (0.1) by the number of hours per response (24) gives a total response time for requesting exemption of deferral equal to 3 hours.

In the **Federal Register** of April 1, 2016 (81 FR 18861), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
201.66(c) and (d) for new OTC drug products	300	3	900	12	10,800
201.66(c) and (d) for new OTC sunscreen products	20	3	60	12	720
201.66(e)	1	0.125	.125	24	3
Total					11,523

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25854 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

The Sentinel Post-Licensure Rapid Immunization Safety Monitoring Program; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Thursday, September 1, 2016 (81 FR 60357). The document announced a public workshop entitled ''The Sentinel Post-Licensure Rapid Immunization Safety Monitoring (PRISM) Program.'' The document was published with a Web site that changed after the publication of the notice of the workshop. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Chris Nguyen, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 4124, Silver Spring, MD 20993–0002; or Cynthia Whitmarsh, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 4122, Silver Spring, MD 20993–0002.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 2016, in FR Doc. 2016–21046, on page 60357, the following correction is made:

On page 60357, in the third column under the **SUPPLEMENTARY INFORMATION** caption, the fifth sentence in the second paragraph is corrected to read ''More information can be found at: *https://www.sentinelsystem.org/vaccines-blood-biologics*.''

Dated: October 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25853 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0730]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 25, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs,

OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0298. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 parts per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made, (2) detailed information on the conditions of use of the substance, (3) a clear statement of the basis for the request for exemption from regulation as a food additive, (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance, (5) results of a literature search for toxicological data on the substance and its impurities, and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (*i.e.,* food packaging and food processing equipment) or of the articles themselves.

In the **Federal Register** of May 11, 2016 (81 FR 29271), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, we consulted our records of the number of regulation exemption requests received in the past 3 years. The annual hours per response reporting estimate of 48 hours is based on information received from representatives of the food packaging and processing industries and Agency records.

We estimate that approximately 7 requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 336 hours. The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of the FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by FDA is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (*e.g.,* use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and we would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Internet at *http://www.fda.gov/Food/IngredientsPackagingLabeling/PackagingFCS/ThresholdRegulationExemptions/ucm093685.htm.* Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: October 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25793 Filed 10–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Advisory Committee on Organ Transplantation (ACOT). The meeting will be open to the public.

DATES: November 22, 2016, from 11:00 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held via audio conference call and Adobe Connect Webinar. Webinar information can be found on the Web site at: *http://www.acotmeetings.net/.*

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Executive Secretary, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8W60, Rockville, MD 20857; telephone (301) 443–6839; *rwalsh@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12, ACOT is charged with advising the Secretary, acting through the Administrator, Health Resources and Services Administration (HRSA), on all aspects of organ donation, procurement, allocation, and transplantation, and on such other matters that the Secretary determines.

Agenda: The Committee will hear presentations on topics including public reporting of transplant center outcomes data, updates on activities of the Organ Procurement and Transplantation Network (OPTN), including the development of an OPTN Collaborative Innovation and Improvement Network (COIIN) project to assess effective practices for utilization kidneys at high risk of discard while maintaining quality outcome measures, and a report on recent efforts by the Centers for Medicare & Medicaid Services to identify innovative approaches to care for End Stage Renal Disease patients. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be posted on the Department's organ donation Web site at *http://organdonor.gov/about-dot/acot.html#meetings.*

The draft meeting agenda will be posted on *http://www.acotmeetings.net/.* Those participating at this meeting should register by visiting *http://www.acotmeetings.net/.* The deadline to register for this meeting is Monday, November 21, 2016. For all logistical questions and concerns, please contact Susie Gingrich, Leonard Resource Group, at (202) 289–8322 or send an email to *sgringrich@lrginc.com.*

Participants can join this meeting via teleconference by:

1. (Audio Portion) Calling the Conference Phone Number (1–800–832–0736) and providing the Participant Passcode (1337210); and

2. (Visual Portion) Connecting to the ACOT Adobe Connect Pro Meeting using the following URL *https://lrg.adobeconnect.com/acot/* and entering as GUEST: (copy and paste the link into your browser if it does not work directly, and enter as a guest).

Participants should plan to call and connect 15 minutes prior to the meeting for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *http://www.adobe.com/go/meeting_test.* In order to obtain a quick overview, go to the following URL: *http://www.adobe.com/go/connectpro_overview.* Call (202) 289–8322 or email Susie Gingrich at *sgringrich@lrginc.com* if you are having trouble connecting to the meeting site.

Public Comment: It is preferred that persons interested in providing an oral presentation email a written request, along with a copy of their presentation, to Robert Walsh, Executive Secretary, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, at *rwalsh@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are encouraged to combine their comments and present them through a single representative.

The allocation of time may be adjusted to accommodate the level of expressed interest. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may request it during the public comment period. Public participation and ability to comment will be limited as time permits.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–25855 Filed 10–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Renewal of Charter for the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services is hereby giving notice that the Advisory Commission on Childhood Vaccines (ACCV) has been rechartered. The effective date of the renewed charter is July 21, 2016.

FOR FURTHER INFORMATION CONTACT: Narayan Nair, MD, MPH, Executive Secretary, Advisory Commission on Childhood Vaccines, Health Resources and Services Administration, Department of Health and Human Services, Room 08N146B, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443–6593; fax: (301) 44–8196; email: *nnair@hrsa.gov.*

SUPPLEMENTARY INFORMATON: The ACCV was established by section 2119 of the Public Health Service Act (the Act) (42 U.S.C. 300aa–19), as enacted by Public Law (Pub. L.) 99–660, and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP). Other activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or

revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the VICP.

On July 21, 2016, the ACCV charter was renewed. Renewal of the ACCV charter gives authorization for the Commission to operate until July 21, 2018.

A copy of the ACCV charter is available on the ACCV Web site at *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://www.facadatabase.gov/.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–25857 Filed 10–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Service Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that a meeting is scheduled for the Advisory Commission on Childhood Vaccines (ACCV). This meeting will be open to the public. Information about the ACCV and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

DATES: The meeting will be held on December 1 and 2, 2016, at 10:00 a.m. EST.

ADDRESSES: This meeting will be held via Adobe Connect Webinar. The public can join the meeting by:

1. (Audio Portion) Calling the conference phone number 800–779–3561 and providing the following information:

Leader Name: Dr. Narayan Nair.

Password: 8164763.

2. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the ACCV should contact Annie Herzog, Program Analyst, Division of Injury Compensation Programs (DICP), Health Resources and Services Administration in one of three ways: (1) Send a request to the following address: Annie Herzog, Program Analyst, DICP, Health Resources and Services Administration, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857; (2) call (301) 443–6593; or (3) send an email to *aherzog@hrsa.gov.*

At this time the meeting is scheduled to be held over 2 days via conference call and Adobe Connect webinar; however, meeting times and locations could change. For the latest information regarding meeting start time and location, please check the ACCV Web site: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

SUPPLEMENTARY INFORMATION: The ACCV was established by section 2119 of the Public Health Service Act (the Act) (42 U.S.C. 300aa–19), as enacted by Public Law (Pub. L.) 99–660, and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

Other activities of ACCV include: Recommending changes to the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out VICP.

The agenda items for the December 2016 meeting will include, but are not limited to, updates from the Division of Injury Compensation Programs (DICP), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or provide written comments to the ACCV should be sent to Annie Herzog using the address and phone number above by November 29, 2016. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Annie Herzog, using the address and phone number above at least 10 days prior to the meeting.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–25875 Filed 10–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charters for Certain Federal Advisory Committees

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App), the U.S. Department of Health and Human Services is hereby announcing that the charters have been renewed for the following federal advisory committees for which Office of

the Assistant Secretary for Health provides management support: Chronic Fatigue Syndrome Advisory Committee (CFSAC); President's Council on Fitness, Sports, and Nutrition (PCFSN; the Council); Secretary's Advisory Committee on Human Research Protections (SACHRP); and Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA). Functioning as federal advisory committees, these committees are governed by the provisions of the Federal Advisory Committee Act (FACA). Under FACA, it is stipulated that the charter for a federal advisory committee must be renewed every two years in order for the committee to continue to operate.

FOR FURTHER INFORMATION CONTACT: Olga B. Nelson, Committee Management Officer, Office of the Assistant Secretary for Health; U.S. Department of Health and Human Services; 200 Independence Avenue SW., Room 714B; Washington, DC 20201; (202) 690–5205.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002 as a discretionary federal advisory committee. The Committee provides science-based advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on a broad range of issues and topics pertaining to myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS), including (1) opportunities to improve knowledge and research about the epidemiology, etiologies, biomarkers and risk factors for ME/CFS; (2) research on the diagnosis, treatment, and management of ME/CFS and potential impact of treatment options; (3) strategies to inform the public, health care professionals, and the biomedical academic and research communities about ME/CFS advances; (4) partnerships to improve the quality of life of ME/CFS patients; and (5) strategies to insure that input from ME/CFS patients and care givers is incorporated into HHS policy and research.

The new charter includes the following amendments: (1) The language in the Description of Duties has been simplified. A fifth duty has been added to emphasize the importance of getting stakeholder input on HHS policy and research concerning ME/CFS; (2) authority has been given to the Assistant Secretary for Health (ASH) as an official to whom the Committee will report. Extending this authority to include the ASH gives clear responsibility to the ASH for better monitoring and implementation of the recommendations that are approved by the Secretary; and (3) the Committee structure has been changed to (a) increase the number of voting public members to 13 to give patients and/or caretakers of ME/CFS more representation on the Committee. This amendment has been made to the charter to respond to recent concerns that had been expressed by CFS advocates, (b) remove the Centers for Medicare and Medicaid Services (CMS) as a non-voting *ex-officio* member. A determination was made that there is not much for CMS to contribute to or to seek advice from CFSAC. It would be more beneficial to have CMS involved in the Committee's deliberative process if diagnostics or treatments are developed for ME/CFS. This activity is not projected to take place during the two-year period that the new charter will be in effect, and (c) expand the Committee structure to add two new *ex-officio* positions for the Department of Veterans Affairs (VA) and the Department of Defense (DoD). Expanding the Committee structure to include these two government agencies will provide valuable information on services available to patients with ME/CFS and research being conducted on illnesses with similar symptoms to ME/CFS.

On September 5, 2016, the Secretary of Health and Human Services approved for the CFSAC charter with the proposed amendments to be renewed. The new charter has been made effective; the charter was filed with the appropriate Congressional committees and the Library of Congress on September 5, 2016. Renewal of the CFSAC charter provides authorization for the Committee to continue to operate until September 5, 2018. A copy of the Committee charter is available on the CFSAC Web site at *http://www.hhs.gov/advcomcfs.*

The PCFSN is a non-discretionary federal advisory committee. The PCFSN was established under Executive Order 13545, dated June 22, 2010. This authorizing directive was issued to amend the purpose, function, and name of the Council, which formerly operated as the President's Council on Physical Fitness and Sports (PCPFS). The scope of the Council was changed to include nutrition to bring attention to the importance of good nutritional habits with regular physical activity for maintaining a healthy lifestyle. The PCFSN is the only federal advisory committee that is focused solely on the promotion of physical activity, fitness, sports, and nutrition. Since the PCFSN was established by Presidential directive, appropriate action had to be taken by the President or agency head to authorize continuation of the PCFSN. The President issued Executive Order 13708, dated September 30, 2015. Under the authority given in this directive, the Council can continue to operate until September 30, 2017.

No amendments were recommended for the PCFSN charter. The charter was approved by the Secretary of Health and Human Services on September 8, 2016, and it was filed with the appropriate Congressional committees and the Library of Congress on September 10, 2016. A copy of the Council charter is available on the PCFSN Web site at *http://fitness.gov.*

SACHRP is a discretionary federal advisory committee. SACHRP provides advice to the Secretary, through the Assistant Secretary for Health, on matters pertaining to the continuance and improvement of functions within the authority of the Department of Health and Human Services concerning protections for human subjects in research.

There was one amendment recommended and approved for the SACHRP charter. The charter stipulated that appointment of the Designated Federal Officer (DFO) was restricted to the Director of the Office for Human Research Protections. This restriction has been removed to allow for other senior level program and management OHRP staff to be considered for appointment as the DFO. On September 30, 2016, the Secretary of Health and Human Services approved for the SACHRP charter to be renewed. The new charter was filed with the appropriate Congressional committees and the Library of Congress on October 1, 2016. SACHRP is authorized to continue to operate until October 1, 2018. A copy of the charter is available on the Committee Web site at *http://www.hhs.gov/ohrp/sachrp/.*

The ACBTSA is a discretionary federal advisory committee. The Committee provides advice to the Secretary, through the Assistant Secretary for Health, on a range of policy issues related to the safety of blood, blood products, organs and tissues. For organs and blood stem cells, the Committee's work is limited to policy issues related to donor derived infectious disease complications of transplantation around the safety and availability of the blood supply and blood products.

There were two minor amendments recommended and approved for the ACBTSA charter. The charter has been amended to include the option for a Vice Chair and/or Co-Chairs to be

appointed for the Committee leadership. The Committee structure has been expanded to include *ex-officio* representation from the Department of Veterans Affairs (VA). The VA has the largest conglomerate of hospitals in the United States. The agency has responsibility for the largest patient population that uses the largest quantity of blood and tissue products in the United States. Therefore, it was determined that involvement of the VA would be beneficial to the ACBTSA for ensuring that the Committee properly addresses current issues and concerns regarding blood and tissue safety and availability.

On October 5, 2016, the new charter for the ACBTSA was approved by the Secretary of Health and Human Services, and it was filed with the appropriate Congressional committees and the Library of Congress on October 9, 2016. ACBTSA is authorized to operate until October 9, 2018. A copy of the charter can be obtained on the ACBTSA Web site at *http://www.hhs.gov/ash/bloodsafety.*

Copies of the charters for the designated committees also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://facadatabase.gov/.*

Dated: October 20, 2016.

Karen B. DeSalvo,

Acting Assistant Secretary for Health.

[FR Doc. 2016–25916 Filed 10–25–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Short-Term Alternative Animal Models or In Vitro Tests Used To Identify Substances With the Potential To Cause Excessive Inflammation or Exaggerated Immune Responses; Request for Information

SUMMARY: The National Toxicology Program (NTP) at the National Institute of Environmental Health Sciences (NIEHS) requests available data and information on approaches and/or technologies currently used to identify substances with the potential to cause excessive inflammation or exaggerated immune responses leading to tissue injury when swallowed, inhaled, or absorbed through the skin. Submitted information will be used to assess the state of the science and determine technical needs for non-animal test methods that could be used to evaluate the potential of chemicals to induce inflammation and immune-related conditions.

DATES: Receipt of information: Deadline is December 12, 2016.

ADDRESSES: Data and information should be submitted electronically at *http://ntp.niehs.nih.gov/go/input.*

FOR FURTHER INFORMATION CONTACT: Dr. Dori Germolec, Toxicology Branch, Division of NTP, NIEHS; email: *germolec@niehs.nih.gov;* telephone: (919) 541–3230.

SUPPLEMENTARY INFORMATION:

Background: NTP has an interest in developing more efficient and scalable test platforms to provide the scientific basis for predictive models of chemical effects on human disease. Short-term toxicity tests may be conducted to determine the potential for a single or short-term dose of a substance to cause inflammation-related responses or impact local and systemic immune function when inhaled (inhalation toxicity testing), swallowed (oral toxicity testing), or absorbed through the skin (dermal toxicity testing). A number of observations support a role for environmental influences on inflammatory and immune-related diseases such as diabetes. One specific use of information received in response to this request is to assist NTP in identifying *in vitro* or alternative animal model screens that might be used to assess the potential for chemicals to cause outcomes related to Type 1 diabetes. In addition, information received from this request will provide fundamental knowledge on the use of these *in vitro* platforms for identifying environmental triggers of excessive inflammation and exaggerated immune responses that could lead to tissue injury.

Request for Information: NTP requests available data and information on approaches and/or technologies currently used to identify substances with the potential to cause excessive inflammation or exaggerated immune responses leading to tissue injury. Respondents should provide information on any activities relevant to the development or validation of alternatives to *in vivo* tests currently used in the assessment of immune toxicity and autoimmunity.

Respondents to this request for information should include their name, affiliation (if applicable), mailing address, telephone, email, and sponsoring organization (if any) with their communications. The deadline for receipt of the requested information is December 12, 2016.

Responses to this request are voluntary. No proprietary, classified, confidential, or sensitive information should be included in responses. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Background Information on NTP: NTP is an interagency program established in 1978 (43 FR 53060) to strengthen the Department's activities in toxicology research and testing and to develop and validate new and better testing methods. Other activities of the program focus on strengthening the science base in toxicology and providing information about potentially toxic chemicals to health-regulatory and research agencies, scientific and medical communities, and the public. NTP is located administratively at the NIEHS. Information about NIEHS and NTP is available at *http://www.niehs.nih.gov* and *http://ntp.niehs.nih.gov,* respectively.

Dated: October 20, 2016.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2016–25924 Filed 10–25–16; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccine Research and Design (HIVRAD) Program (P01).

Date: November 16–17, 2016.

Time: 9:00 a.m. to 4:00 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: Vasundhara Varthakavi, DVM, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5020, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid Assessment of Zika Virus (ZIKV) Complications (R21).

Date: November 18, 2016.

Time: 12:00 p.m. to 5:00 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: Raymond R. Schleef, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3E61, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5019, *schleefr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25818 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, November 01, 2016, 08:30 a.m. to November 01, 2016, 12:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 26, 2016, 81FR66043.

The meeting notice is amended to change the location to the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25822 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed 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: Environmental Health Sciences Review Committee.

Date: November 15–16, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Convention, 4700 Emperor Blvd., Durham, NC 27709.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; National Institute of Health for Independence Award K99.

Date: November 16, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone, Room 3078, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD, EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 21, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25920 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel; Global Network for Women's and Children's Health Research Data Coordinating Center.

Date: December 2, 2016.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6710, 6710B Rockledge Drive Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Priscah Mujuru, DRPH, COHNS, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Bethesda Drive,, Bethesda, MD 20892, 301–435–6908, *mujurup@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 21, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25919 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Informatics.

Date: October 26, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sung Sug Yoon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, Bethesda, MD 20892, *sungsug.yoon@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Oncogenesis.

Date: November 2, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25816 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Novel Assays to Address Translational Gaps in Treatment Development.

Date: November 7, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pragmatic Strategies for Assessing Psychotherapy Quality in Practice.

Date: November 7, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; U19 Global Mental Health.

Date: November 10, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; 93.281, National Institutes of Health, HHS)

Dated: October 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25821 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, Office of Science Policy, Office of Biotechnology Activities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Science Advisory Board for Biosecurity, November 04, 2016, 12:00 p.m. to November 04, 2016, 03:00 p.m., National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD, 20892 which was published in the **Federal Register** on October 11, 2016, 81FR 196.

The call-in number has changed to 1 (866) 939–3921 and the passcode is 43519965. The meeting date, time and location remains the same. The meeting is open to the public.

Dated: October 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25921 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel.

Date: November 18, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25823 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–16–034 Vitamin D Ancillary Studies (R01).

Date: November 16, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: November 21, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25820 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics on Infectious Diseases and Drug Discovery.

Date: November 16, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: November 17–18, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301)435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology.

Date: November 18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 3014351221, *andrea.keane-myers@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: November 18, 2016.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic, Skeletal Muscle and Oral Sciences.
Date: November 21–22, 2016.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites by Hilton Chicago O'Hare Rosemont, 5500 North River Road, Rosemont, IL 60018.
Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25815 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed 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 Child Health and Human Development Special Emphasis Panel; Embryo-Uterine Cross-talk Controlling Establishment of Pregnancy.
Date: November 21, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25819 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.
Date: November 18, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.
Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathophysiology and therapeutic targets for eye diseases.
Date: November 18, 2016.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25817 Filed 10–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0026; OMB No. 1660–0115]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental and Historic Preservation Screening Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection activities required to administer the Environmental and Historic Preservation Environmental Screening Form.

DATES: Comments must be submitted on or before December 27, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use

only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2016–0026. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Beth McWaters-Bjorkman, Environmental Protection Specialist, FEMA, Grant Programs Directorate, 202–786–9854, *elizabeth.mcwaters-bjorkman@fema.dhs.gov.* 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: FEMA's Grant Programs Directorate (GPD) awards thousands of grants and each year through various grant programs. These programs award funds for projects used to improve homeland security and emergency preparedness. The National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, Sec. 102(B) and (C), 42 U.S.C. 4332, the National Historic Preservation Act of 1966 (NHPA), Public Law 89–665, 16 U.S.C. 470f and a variety of other environmental and historic preservation laws and Executive Orders (E.O.) require the Federal government to examine the potential impacts of its proposed actions on communities, public health and safety, and cultural, historic, and natural resources prior to undertaking those actions. The GPD process of considering these potential impacts is called an environmental and historic preservation (EHP) review which is employed to examine compliance with multiple EHP authorities through one consolidated process.

With input from recipients, FEMA is proposing to revise the EHP Screening Form for clarity and ease of use. The 2013 EHP Screening Form does not require any new information, and includes an appendix with guidance on providing photographs with the EHP submission. Recipients are no longer required to submit floodplain and wetlands maps or information about the proposed project's relationship to an existing master plan.

Collection of Information

Title: Environmental and Historic Preservation Screening Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0115.

FEMA Forms: FEMA Form 024–0–1, Environmental and Historic Preservation Screening Form.

Abstract: NEPA requires that each Federal agency to examine the impact of its actions (including the actions of recipients using grant funds) on the human environment, to look at potential alternatives to that action, and to inform both decision-makers and the public of those impacts through a transparent process. This Screening Form will facilitate FEMA's review of recipient actions in FEMA's effort to comply with the environmental requirements.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Number of Respondents: 2,000.

Number of Responses: 2,000.

Estimated Total Annual Burden Hours: 16,000.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $796,320. 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 $5,504,580.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: October 19, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–25800 Filed 10–25–16; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0024; OMB No. 1660–0076]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Mitigation Grant Program (HMGP) Application and Reporting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Hazard Mitigation Grant Program application and reporting requirements.

DATES: Comments must be submitted on or before December 27, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2016–0024. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Chief, HMA Grants Policy Branch, 202–212–4071. You may contact Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, established the Hazard Mitigation Grant Program. Grant requirements and grants management procedures of the program are outlined in 44 CFR part 206 Subpart N and 2 CFR part 200. FEMA administers the HMGP, and Grantees implement the grants under the HMPG per grant agreement and rules and regulations. The HMGP is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. Grantees are defined as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or an Indian tribal government that chooses to act as a grantee.

Collection of Information

Title: Hazard Mitigation Grant Program (HMGP) Application and Reporting.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0076.

FEMA Forms: FEMA Form 009–0–111A, Quarterly Progress Reports.

Abstract: FEMA administers the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitor grantee project activities and expenditure of funds.

Affected Public: State, local or Tribal Government.

Number of Respondents: 56.

Number of Responses: 4,626.

Estimated Total Annual Burden Hours: 48,572.

Estimated Cost: None.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: October 20, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–25896 Filed 10–25–16; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0030]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice of availability of grant application and application deadline.

SUMMARY: Pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229), the Administrator of the Federal Emergency Management Agency (FEMA) is publishing this notice describing the Fiscal Year (FY) 2016 Assistance to Firefighters Grant (AFG) Program application process, deadlines, and award selection criteria. This notice explains the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel, which was held November 9–10, 2015. The application period for the FY 2016 AFG Program will be held October 11, 2016 through November 18, 2016, and will be announced on the AFG Web site *www.fema.gov/firegrants,* as well as *www.grants.gov.*

Authority: 15 U.S.C. 2229.

DATES: Grant applications for the Assistance to Firefighters Grants will be accepted electronically at *https://portal.fema.gov,* from October 11, 2016 through November 18, 2016, at 5:00 p.m. Eastern Time.

ADDRESSES: Assistance to Firefighters Grants Branch, DHS/FEMA, 400 C Street SW., 3N, Washington, DC 20472–3635.

FOR FURTHER INFORMATION CONTACT: Catherine Patterson, Branch Chief, Assistance to Firefighters Grant Branch, 1–866–274–0960.

SUPPLEMENTARY INFORMATION: The AFG Program awards grants directly to fire departments, nonaffiliated emergency medical services (EMS) organizations, and state fire training academies (SFTAs) for the purpose of enhancing the abilities of first responders to protect the health and safety of the public, as well as first-responder personnel facing fire and fire-related hazards.

Applications for the FY 2016 AFG Program will be submitted and processed online at *https://portal.fema.gov.* Before the application period starts, the *FY 2016 AFG Notice of Funding Opportunity* (NOFO) will be published on the AFG Web site *www.fema.gov/firegrants.* The AFG Web site will also provide additional information and materials useful to applicants including: (1) *Frequently Asked Questions;* (2) *Get Ready Guide;* and (3) *Quick Reference Guide.* Based on past AFG application periods, it is expected that 10,000 to 15,000 applications will be submitted for FY 2016 AFG Program grant funds. FEMA anticipates that it will be able to award approximately 3,000 grants with the available grant funding.

Appropriations

For the FY 2016 Assistance to Firefighters Grant Program, Congress appropriated $345,000,000 (see: the *Department of Homeland Security Appropriations Act, 2016,* Public Law 114–1130. From this amount, $310,500,000 will be made available for AFG awards. In addition, the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229), requires that a minimum of 10 percent of available funds be expended for Fire Prevention and Safety Grants (FP&S), to be made directly to local fire departments and to local, regional, state, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development. Funds appropriated for

FY 2016 will be available for obligation and award until September 30, 2017.

The Federal Fire Prevention and Control Act of 1974 further directs FEMA to administer the appropriations according to the following requirements:

- *Career (fire department):* Not less than 25 percent of available grant funds.
- *Volunteer (fire department):* Not less than 25 percent of available grant funds.
- Combination (fire department) and departments using paid-on-call firefighting personnel—not less than 25 percent of available grant funds.
- *Open Competition:* Career, volunteer, and combination fire departments and fire departments using paid-on-call firefighting personnel—not less than 10 percent of available grant funds awarded.
- *Emergency Medical Services Providers:* Fire departments and nonaffiliated EMS organizations; not less than 3.5 percent of available grants funds awarded, with nonaffiliated EMS providers receiving no more than 2 percent of the total available grant funds.
- *State Fire Training Academies (SFTAs):* No more than 3 percent of available grant funds shall be collectively awarded to state fire training academy applicants, with a maximum of $500,000 to be awarded per applicant.
- *Vehicles:* Not more than 25 percent of available grant funds may be used for the purchase of vehicles; 10 percent of the total vehicle funds will be dedicated to funding ambulances. The allocation of funding will be distributed as equally as possible among urban, suburban, and rural community applicants. The remaining Vehicle Acquisition funds will be awarded competitively without regard to community classification.
- *Micro Grants:* This is a voluntary funding limitation choice made by the applicant for requests submitted for Operations and Safety Grant Component Program; it is not an additional funding opportunity. Micro Grants are awards that have a federal participation (share) that does not exceed $25,000. Only fire departments and nonaffiliated EMS organizations are eligible to choose Micro Grants, and the only eligible Micro Grants activities are Training, Equipment, Personal Protective Equipment (PPE), and Wellness and Fitness. Applicants that select Micro Grants as a funding opportunity may receive additional consideration for award. If an applicant selects Micro Grants in their application, they will be limited in the total amount of funding their organization can be awarded; if they are requesting funding in excess of $25,000 federal participation, they should not select Micro Grants.

Background of the AFG Program

Since 2001, AFG has helped firefighters and other first responders to obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and related hazards. FEMA awards the grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address the Program's priorities will be reviewed by a panel composed of fire service personnel.

Application Evaluation Criteria

Prior to making a grant award, FEMA is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 to review information available through any Office of Management and Budget (OMB)-designated repositories of government-wide eligibility qualification or financial integrity information. Therefore, application evaluation criteria may include the following risk based considerations of the applicant: (1) Financial stability; (2) quality of management systems and ability to meet management standards; (3) history of performance in managing federal award; (4) reports and findings from audits; and (5) ability to effectively implement statutory, regulatory, or other requirements.

FEMA will rank all complete and submitted applications based on how well they match program priorities for the type of jurisdiction(s) served. Answers to activity-specific questions provide information used to determine each application's ranking relative to the stated program priorities.

Funding priorities and criteria for evaluating AFG applications are established by FEMA based on the recommendations from the Criteria Development Panel (CDP). The CDP is comprised of fire service professionals that make recommendations to FEMA regarding the creation of new or the modification of previously established funding priorities, as well as developing criteria for awarding grants. The content of the NOFO reflects implementation of the CDP's recommendations with respect to the priorities and evaluation criteria for awards.

The nine major fire service organizations represented on the CDP are:

- International Association of Fire Chiefs
- International Association of Fire Fighters
- National Volunteer Fire Council
- National Fire Protection Association
- National Association of State Fire Marshals
- International Association of Arson Investigators
- International Society of Fire Service Instructors
- North American Fire Training Directors
- Congressional Fire Service Institute

Review and Selection Process

AFG applications are reviewed through a multi-phase process. First, applications are electronically pre-scored and ranked; then scored competitively by (no less than three) members of the Peer Review Panel. Applications are also evaluated through a series of internal FEMA review processes for completeness, adherence to programmatic guidelines, technical feasibility, and anticipated effectiveness of the proposed project(s). The review process is outlined below:

1. Pre-Scoring Process

The application undergoes an electronic pre-scoring process based on established program priorities listed within the NOFO. Application narratives are not reviewed during pre-scoring. Request details and budget information should comply with program guidance and statutory funding limitations. The pre-score is 50 percent of the total application score.

2. Peer Review Panel Process

Applications with the highest pre-score will be evaluated by a peer review process. The peer review is comprised of fire service representatives recommended by CDP national organizations. The panelists assess the merits of each application with respect to the detail provided in the narrative section of the application, including the evaluation elements listed in the Narrative Evaluation Criteria below. The panel will independently score each project within the application, discuss the merits and/or shortcomings of the application, and document its findings. A consensus is not required. The panel score is 50 percent of the total application score.

3. Technical Evaluation Process

The highest ranked applications are deemed within the fundable range. Applications that are in the fundable range undergo both a technical review by a subject matter expert (SME), as well as a FEMA AFG Branch review prior to being recommended for award. The

FEMA AFG Branch will assess the request with respect to costs, quantities, feasibility, eligibility, and recipient responsibility prior to recommending an application for award.

Once the technical evaluation process is complete, the cumulative score for each application will be determined and a final ranking of applications will be generated. FEMA will award grants based on this final ranking and the required funding limitations in statute.

Narrative Evaluation Criteria

1. Financial Need (25%)

Applicants should describe their financial need and how consistent it is with the intent of the AFG Program. This statement should include details describing the applicant's financial distress, summarizing budget constraints, unsuccessful attempts to secure other funding, and proving the financial distress is out of their control.

2. Project Description and Budget (25%)

This statement should clearly explain the applicant's project objectives and the relationship between those objectives and the applicant's budget and risk analysis. The applicant should describe the various activities applied for with respect to any program priority or facility modifications, ensuring they are consistent with project objectives, the applicant's mission, and any national, state, and/or local requirements. Applicants should link the proposed expenses to operations and safety, as well as the completion of the project goals.

3. Operations and Safety/Cost Benefit (25%)

Applicants should describe how they plan to address the operations and personal safety needs of their organization, including cost effectiveness and sharing assets. This statement should also include details about gaining the maximum benefits from grant funding by citing reasonable or required costs, such as specific overhead and administrative costs. The applicant's request should also be consistent with their mission and identify how funding will benefit their organization and personnel.

4. Statement of Effect/Impact on Daily Operations (25%)

This statement should explain how this funding request will enhance the organization's overall effectiveness. It should address how this request will improve daily operations and reduce the organization's common risk(s). Applicants should include how frequently the requested item(s) will be used and in what capacity. Applicants should also indicate how the requested item(s) will help the community and increase the organization's ability to save additional lives and property.

Eligible Applicants

Fire Departments: Fire departments operating in any of the 56 states, which include any state of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico; or, any federally recognized Indian tribe or tribal organization, are eligible applicants. A fire department is an agency or organization having a formally recognized arrangement with a state, territory, local, or tribal authority (city, county, parish, fire district, township, town, or other governing body) to provide fire suppression to a population within a geographically fixed primary first due response area.

Nonaffiliated EMS organizations: Nonaffiliated EMS organizations operating in any of the 56 states, which include any state of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico; or, any federally recognized Indian tribe or tribal organization, are eligible applicants. A nonaffiliated EMS organization is an agency or organization that is a public or private nonprofit emergency medical services entity providing medical transport that is not affiliated with a hospital and does not serve a geographic area in which emergency medical services are adequately provided by a fire department.

FEMA considers the following as hospitals under the AFG Program:

- Clinics
- Medical centers
- Medical college or university
- Infirmary
- Surgery centers
- Any other institution, association, or foundation providing medical, surgical, or psychiatric care and/or treatment for the sick or injured.

State Fire Training Academies: A State Fire Training Academy (SFTA) operating in any of the 56 states, which includes any state of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Puerto Rico is an eligible applicant. Applicants must be designated either by legislation or by a Governor's declaration as the sole state fire service training agency within a state. The designated SFTA shall be the only State agency/bureau/division, or entity within that State, to be an eligible AFG SFTA applicant.

Ineligibility

- FEMA considers two or more separate fire departments or nonaffiliated EMS organizations sharing facilities as being one organization. If two or more organizations share facilities, and each organization submits an application in the same program area, FEMA may deem all of those program area applications to be ineligible to avoid any duplication of benefits.
- Fire-based EMS organizations are *not* eligible to apply as nonaffiliated EMS organizations. Fire-based EMS training and equipment must be requested by a fire department under the AFG component program Operations and Safety.

Statutory Limits to Funding

Congress has enacted statutory limits to the amount of funding that a grant recipient may receive from the AFG Program in any single fiscal year (15 U.S.C. 2229(c)(2)) based on the population served. Awards will be limited based on the size of the population protected by the applicant, as indicated below. Notwithstanding the annual limits stated below, the FEMA Administrator may not award a grant in an amount that exceeds one percent of the available grants funds in such fiscal year, except where it is determined that such recipient has an extraordinary need for a grant in an amount that exceeds the one percent aggregate limit.

- In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of available grant funds awarded to such recipient shall not exceed $1 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 100,000 people but not more than 500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $2 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 500,000 but not more than 1 million people, the amount of available grant funds awarded to such recipient shall not exceed $3 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 1 million people but not more than 2,500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $6 million for any fiscal year, but is subject to the one percent aggregate cap of $3,450,000 for FY 2016.

• In the case of a recipient that serves a jurisdiction with more than 2,500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $9 million in any fiscal year, but is subject to the one percent aggregate cap of $3,450,000 for FY 2016.

• FEMA may not waive the caps on the maximum amount of available grant funds awarded based upon population.

The cumulative total of the federal share of awards in Operations and Safety, Regional and Vehicle Acquisition activities will be considered when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications.

For example, an applicant that serves a jurisdiction with more than 100,000 people but not more than 500,000 people may request up to $2 million on their Operations and Safety Application and up to $2 million on their Vehicle Acquisition Request. However, should both grants be awarded, the applicant would have to choose which award to accept if the cumulative value of both applications exceeds the statutory limits.

Cost Sharing and Maintenance of Effort

Grant recipients must share in the costs of the projects funded under this grant program as required by 15 U.S.C. 2229(k)(1) and in accordance with applicable federal regulations governing grants in effect at the time a grant is awarded to a grant recipient, but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA will contact potential awardees to determine whether the grant recipient has the funding in hand or if the grant recipient has a viable plan to obtain the funding necessary to fulfill the cost-sharing requirement.

In general, an eligible applicant seeking a grant shall agree to make available non-federal funds equal to not less than 15 percent of the grant awarded. However, the cost share will vary as follows based on the size of the population served by the organization:

• Applicants serving areas with populations above 20,000 but not more than 1 million shall agree to make available non-federal funds equal to not less than 10 percent of the total project cost.

• Applicants that serve populations of 20,000 or less must match the federal grant funds with an amount of non-federal funds equal to 5 percent of the total project cost.

The cost share of state fire training academies and joint/regional projects will be based on the entire state or region, not the population of the host organization.

On a case by case basis, FEMA may allow grant recipient that already own assets (equipment or vehicles) to use the trade-in allowance/credit value of those assets as ''cash'' for the purpose of meeting the cost-share obligation of their AFG award. In-kind cost-share matches are not allowed.

Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by 15 U.S.C. 2229(k)(3) (referred to as a ''maintenance of expenditure'' requirement in that statute). A grant recipient shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the activities allowable under the NOFO at not less than 80 percent of the average amount of such expenditures in the two fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and on the application of the grant recipient, the Administrator of FEMA may waive or reduce a grant recipient's cost share requirement or maintenance of expenditure requirement. As required by statute, the Administrator of FEMA has established guidelines for determining what constitutes economic hardship and published these guidelines at FEMA's Web site *www.fema.gov/grants.*

Prior to the start of the FY 2016 AFG application period, FEMA will conduct applicant workshops and/or Internet webinars to inform potential applicants about the AFG Program. In addition, FEMA will provide applicants with information at the AFG Web site *www.fema.gov/firegrants* to help them prepare quality grant applications. The AFG Help Desk will be staffed throughout the application period to assist applicants with the automated application process as well as assistance with any questions they have. Applicants can reach the AFG Help Desk through a toll-free telephone number (1–866–274–0960) or electronic mail *firegrants@dhs.gov.*

Application Process

Organizations may submit one application per application period in each of the three AFG Program areas, *e.g.,* one application for Operations and Safety, one for Vehicle Acquisition, and/or a separate application to be a Joint/Regional Project host. If an organization submits more than one application for any single AFG Program area, *e.g.,* two applications for Operations and Safety, two for Vehicles, etc.; either intentionally or unintentionally, FEMA will deem all applications submitted by that organization for the particular program to be ineligible for funding.

Applicants will be advised to access the application electronically at *https://portal.fema.gov.* The application will also be accessible from the U.S. Fire Administration's Web site *http://www.usfa.fema.gov* and *http://www.grants.gov.* New applicants will be required to register and establish a username and password for secure access to their application. Applicants that applied for any previous AFG funding opportunities will be required to use their previously established usernames and passwords.

In completing the application, applicants will be asked to provide relevant information on their organization's characteristics, call volume, and existing capabilities. Applicants will be asked to answer questions about their grant request that reflect the AFG funding priorities, which are described below. In addition, each applicant must complete four separate narratives for each project or grant activity requested.

System for Award Management (SAM)

In 2012, the SAM replaced the Central Contractor Registry (CCR). Per 2 CFR 25.200, all grant applicants and recipients are now required to register in *https://SAM.gov,* which is available free of charge. They must maintain validated information in SAM that is consistent with the data provided in their AFG grant application and in the Dun & Bradstreet (DUNS) database. FEMA will not accept any application, process any awards, consider any payment or amendment requests, or consider any amendment until the applicant or grant recipient has complied with the requirements to provide a valid DUNS number and an active SAM registration with current information. The banking information, employer identification number (EIN), organization/entity name, address, and DUNS number provided in the application must match the information that provided in SAM.

Criteria Development Panel (CDP) Recommendations

FEMA must explain any differences between the published guidelines and the recommendations made by the CDP and publish this information in the **Federal Register** prior to making any grants under the AFG Program. For FY 2016, FEMA accepted and is implementing all of the CDP's recommendations for the prioritization of eligible activities. The CDP discussed

the current funding available for the Fire Prevention and Safety grants and recommended to increase the available funding from 10% to 15% of the overall appropriated amount. FEMA was unable to accept that recommendation due to existing statutory language that outlines the eligible use of funds for AFG awards.

Adopted Recommendations for FY 2016

Wellness and Fitness Micro Grants

Priority 1 Wellness and Fitness activities are now eligible when applying for a Micro Grant.

Change to Complete Set of PPE Definition

AFG will now consider a complete set of PPE to include two sets of gloves and two hoods.

Equipment Product Lifecycles

Equipment will now be scored using an additional variable of ''Age Category.'' Equipment is assigned an age category of Short (5–7 years), Medium (8–14 years), or Long (15–20 years). These age categories are used to compare like types of equipment. Under this system, an item that should have a useful life of 10 years is only competing against other items that have a similar lifecycle. An application does not score higher or lower based on the product lifecycle of an item. It only serves to ensure a more even scoring of equipment based on type.

Tow Vehicles

Tow vehicles are now listed under a separate chart in the equipment section to clarify the priority levels between application types.

Dated: October 6, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–25801 Filed 10–25–16; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0108]

RIN 1601–ZA11

Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H–2A and H–2B nonimmigrant status on behalf of nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 85 countries whose nationals are eligible to participate in the H–2A program and 84 countries whose nationals are eligible to participate in the H–2B program for the coming year.

DATES: *Effective Date:* The designation of these countries is effective January 18, 2017, and shall be without effect at the end of one year after January 18, 2017.

FOR FURTHER INFORMATION CONTACT: Timothy Simmons, Office of Policy, Department of Homeland Security, Washington, DC 20528, (202) 447–4216.

SUPPLEMENTARY INFORMATION:

Background: Generally, USCIS may approve H–2A and H–2B petitions filed on behalf of nationals of only those countries [1] that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries. Such designation must be published as a notice in the **Federal Register** and expires after one year. USCIS, however, may allow a national from a country not on the list to be named as a beneficiary of an H–2A or H–2B petition based on a determination that such participation is in the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of factors serving the U.S. interest that could result in the non-inclusion of a country or the removal of a country from the list include, but are not limited to, fraud, abuse, and non-compliance with the terms and conditions of the H–2 programs by nationals of that country.

In December 2008, DHS published in the **Federal Register** two notices, ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2A Visa Program,'' and ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2B Visa Program,'' which designated 28 countries whose nationals are eligible to participate in the H–2A and H–2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2915 (Jan. 18, 2011) (removing Indonesia and adding 15 countries); 77 FR 2558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4154 (Jan. 18, 2013) (adding 1 country); 79 FR 3214 (Jan.17, 2014) (adding 4 countries); 79 FR 74735 (Dec. 16, 2014) (adding 5 countries); 80 FR 72079 (Nov. 18, 2015) (removing Moldova from the H–2B program and adding 16 countries).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 84 countries previously designated in the November 18, 2015 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 83 countries previously designated in the November 18, 2015 notice continue to meet the standards identified in that notice for eligible countries and therefore should

[1] With respect to all references to ''country'' or ''countries'' in this document, it should be noted that the Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that ''[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.'' 22 U.S.C. 3303(b)(1). Accordingly, all references to ''country'' or ''countries'' in the regulations governing whether nationals of a country are eligible for H–2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

remain designated as countries whose nationals are eligible to participate in the H–2B program.

Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined that it is now appropriate to add one country whose nationals are eligible to participate in the H–2A and H–2B programs. This determination is made taking into account the four regulatory factors identified above. The Secretary of Homeland Security also considered other pertinent factors including, but not limited to, evidence of past usage of the H–2A and H–2B programs by nationals of the country to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries. In consideration of all of the above, this notice designates for the first time St. Vincent and the Grenadines as a country whose nationals are eligible to participate in the H–2A and H–2B programs.

Designation of Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2A nonimmigrant worker program:

Andorra
Argentina
Australia
Austria
Barbados
Belgium
Belize
Brazil
Brunei
Bulgaria
Canada
Chile
Colombia
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Germany
Greece
Grenada
Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Kiribati
Latvia
Lichtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malta
Mexico
Moldova
Monaco
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway
Panama
Papua New Guinea
Peru
The Philippines
Poland
Portugal
Romania
Samoa
San Marino
Serbia
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
St. Vincent and the Grenadines
Sweden
Switzerland
Taiwan
Thailand
Timor-Leste
Tonga
Turkey
Tuvalu
Ukraine
United Kingdom
Uruguay
Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2B nonimmigrant worker program:

Andorra
Argentina
Australia
Austria
Barbados
Belgium
Belize
Brazil
Brunei
Bulgaria
Canada
Chile
Colombia
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Germany
Greece
Grenada
Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Kiribati
Latvia
Lichtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malta
Mexico
Monaco
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway
Panama
Papua New Guinea
Peru
The Philippines
Poland
Portugal
Romania
Samoa
San Marino
Serbia
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa

South Korea
Spain
St. Vincent and the Grenadines
Sweden
Switzerland
Taiwan
Thailand
Timor-Leste
Tonga
Turkey
Tuvalu
Ukraine
United Kingdom
Uruguay
Vanuatu

This notice does not affect the status of aliens who currently hold valid H–2A or H–2B nonimmigrant status. Persons currently holding such status, however, will be affected by this notice should they seek an extension of stay in H–2 classification, or a change of status from one H–2 status to another. Similarly, persons holding nonimmigrant status other than H–2 status are not affected by this notice unless they seek a change of status to H–2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–25872 Filed 10–25–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2590–16; DHS Docket No. USCIS–2015–0003]

RIN 1615–ZB60

Extension of the Designation of Nepal for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Nepal for Temporary Protected Status (TPS) for a period of 18 months, effective December 25, 2016, through June 24, 2018.

This extension allows eligible Nepalese nationals (and aliens having no nationality who last habitually resided in Nepal) to retain TPS through June 24, 2018, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because conditions in Nepal supporting its designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for nationals of Nepal (or aliens having no nationality who last habitually resided in Nepal) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EAD) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Nepal and whose applications have been granted. Certain nationals of Nepal (or aliens having no nationality who last habitually resided in Nepal) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility criteria (including continuous residence in the United States since June 24, 2015, and continuous physical presence in the United States since June 24, 2015).

For individuals who have already been granted TPS under Nepal's designation, the 60-day re-registration period runs from October 26, 2016 through December 27, 2016. USCIS will issue new EADs with a June 24, 2018 expiration date to eligible Nepal TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on December 24, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Nepal for 6 months, through June 24, 2017, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the Employment Eligibility Verification (Form I–9) and E-Verify processes.

DATES: The 18-month extension of the TPS designation of Nepal is effective December 25, 2016, and will remain in effect through June 24, 2018. The 60-day re-registration period runs from October 26, 2016 through December 27, 2016. (Note: It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

You can find specific information about the extension of Nepal's designation for TPS by selecting ''Nepal'' from the menu on the left side of the TPS Web page.

- You can also contact Guillermo Roman-Riefkohl, TPS Program Manager at the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at 202–272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be

removed, and are authorized to work and obtain EADs, so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- When the Secretary terminates a country's TPS designation through a separate **Federal Register** notice, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When and why was Nepal designated for TPS?

On June 24, 2015, the Secretary designated Nepal for TPS on environmental disaster grounds for a period of 18 months due to the conditions caused by a severe earthquake that occurred on April 25, 2015. *See Designation of Nepal for Temporary Protected Status,* 80 FR 36346 (Jun. 24, 2015).

What authority does the Secretary have to extend the designation of Nepal for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government (Government) agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.[1] The Secretary can designate a foreign state for TPS based on one of three circumstances. One circumstance is if the Secretary finds that ''. . . (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph . . .'' INA section 244(b)(1)(B), 8 U.S.C. 1254a(b)(1)(B).

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

Following the designation of a foreign state for TPS, the Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A). Applicants must demonstrate that they satisfy all eligibility criteria, including that they have been ''continuously physically present'' in the United States since the effective date of the designation, which is either the date of the **Federal Register** notice announcing the designation or such later date as the Secretary may determine, and that they have ''continuously resided'' in the United States since such date as the Secretary may designate. *See* INA sections 244(a)(1)(A), (b)(2)(A), (c)(1)(A)(i–ii); 8 U.S.C. 1254a(a)(1)(A), (b)(2)(A), (c)(1)(A)(i–ii).

Why is the Secretary extending the TPS designation for Nepal through June 24, 2018?

The magnitude 7.8 earthquake that struck Nepal on April 25, 2015 affected more than 8 million people—roughly 25 to 33 percent of Nepal's population—in 39 of Nepal's 75 districts. Approximately 9,000 people died and 22,000 were injured. More than 755,000 homes were significantly damaged or destroyed. Although the Government of Nepal's central ministries and agencies are back to functioning at pre-earthquake levels, reconstruction efforts have proceeded slowly. From late September 2015 until February 2016, earthquake relief and recovery efforts were impeded by civil unrest and the related obstruction of key crossings at the Nepal-India border. The border blockages created difficulties in the delivery of humanitarian relief and reconstruction supplies to earthquake-affected areas.

Life in the 14 districts most affected by the earthquake continues to be disrupted, as most damaged or destroyed homes, schools, health facilities, and other buildings have not yet been repaired or rebuilt. According to the International Organization for Migration, as of August 2, 2016, 18,200 earthquake-affected people remain displaced in camps, representing 15 percent of those who were displaced in the immediate aftermath of the earthquake. The Global Report on Internal Displacement 2016 found that Nepal had the third highest level of new displacement related to natural disasters worldwide. The Government of Nepal has committed to using some of the $4.1 billion pledged by international donors to subsidize the rebuilding of 770,000 homes. However, distribution of grants for rebuilding only began in April 2016, 1 year after the earthquake. Because construction is difficult in monsoon season and winter, large-scale reconstruction is unlikely to begin before 2017. In May 2016, Nepal's Prime Minister estimated that it would take 2 years to complete the reconstruction of private homes.

Sanitation was a challenge even before the earthquake in Nepal, and the earthquake significantly set back progress that had been made, destroying 75 percent of latrines in some affected villages. The earthquake's impact on safe sanitation continues to be felt, especially in urban areas like the Kathmandu valley, where there are land constraints and higher population densities.

Hospitals, roads, and schools all suffered significant damage in the earthquake and are slated to be rebuilt over the next 5 years, according to the $8.3 billion reconstruction plan from Nepal's Reconstruction Authority. One year after the earthquake, 35,000 classrooms were estimated to have been destroyed or severely damaged. The U.N. Development Program is still working to clear debris from damaged sites so that education services can be restored. In May 2016, the Prime Minister of Nepal estimated that the reconstruction of schools would take 3 years.

In summary, although conditions in Nepal have improved following the April 2015 earthquake that led to Nepal's designation for TPS, the recovery and reconstruction process was delayed for several months due to civil unrest and the prolonged obstruction of Nepal's border with India. Some progress in rebuilding has been made, but Nepal continues to experience large numbers of persons without permanent or safe housing and a strained infrastructure that negatively impacts housing, food, medicine, and education.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- There has been an earthquake, flood, drought, epidemic, or other environmental disaster in Nepal resulting in a substantial, but temporary, disruption of living conditions in the area affected. *See* INA section 244(b)(1)(B)(i), 8 U.S.C. 1254a(b)(1)(B)(i);
- Nepal is unable, temporarily, to handle adequately the return of aliens who are nationals of Nepal. *See* INA section 244(b)(1)(B)(ii), 8 U.S.C. 1254a(b)(1)(B)(ii); and

• There are approximately 8,950 beneficiaries under Nepal's TPS designation.

Notice of the Extension of the TPS Designation of Nepal

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that conditions supporting Nepal's June 24, 2015 designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of Nepal for TPS for 18 months from December 25, 2016 through June 24, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1245a(b)(3)(C).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Nepal, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821).

• If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

• If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17. and

2. Application for Employment Authorization (Form I–765).

• If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or are 66 and older and applying for late initial registration.

• If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you want an EAD, regardless of age.

• You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the Application for Employment Authorization (Form I–765) and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver, and provide satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Note: As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you:	Then mail your application to:
Would like to send your application by U.S. Postal Service	USCIS, P.O. Box 7555, Chicago, IL 60680.
Would like to send your application by non-U.S. Postal Service courier	Attn: Nepal TPS, 131 S. Dearborn 3rd Floor, Chicago, IL 60603.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD, please mail your application to the address in Table 1. After you submit your EAD application and receive a USCIS receipt number, please send an email to the Service Center handling your application. The email should include the receipt number and state that you submitted a request for an EAD based on an IJ/BIA grant of TPS. This will aid in the verification of your grant of TPS and processing of your EAD application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA. To obtain additional information,

including the email address of the appropriate Service Center, you may go to the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

You cannot electronically file your application packet when applying for initial registration for TPS. Please mail your application packet to the mailing address listed in Table 1.

Supporting Documents

What type of basic supporting documentation must I submit?

To meet the basic eligibility requirements for TPS, you must submit evidence that you:

- Are a national of Nepal or an alien having no nationality who last habitually resided in Nepal. Such documents may include a copy of your passport if available, other documentation issued by the Government of Nepal showing your nationality (*e.g.,* national identity card, official travel documentation issued by the Government of Nepal), and/or your birth certificate with English translation accompanied by photo identification. USCIS will also consider certain forms of secondary evidence supporting your Nepalese nationality. If the evidence presented is insufficient for USCIS to make a determination as to your nationality, USCIS may request additional evidence. If you cannot provide a passport, birth certificate with photo identification, or a national identity document with your photo or fingerprint, you must submit an affidavit showing proof of your unsuccessful efforts to obtain such documents and affirming that you are a national of Nepal. However, please be aware that an interview with an immigration officer will be required if you do not present any documentary proof of identity or nationality or if USCIS otherwise requests a personal appearance. *See* 8 CFR 103.2(b)(9), 244.9(a)(1);
- Have continuously resided in the United States since June 24, 2015. *See* INA section 244(c)(1)(A)(ii); 8 U.S.C. 1254a(c)(1)(A)(ii); 8 CFR 244.9(a)(2); and
- Have been continuously physically present in the United States since June 24, 2015. *See* INA sections 244(b)(2)(A), (c)(1)(A)(i); 8 U.S.C. 1254a(b)(2)(A), (c)(1)(A)(i).

You must also present two color passport-style photographs of yourself. The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''TPS Designated Country: Nepal.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation. Depending on the nature of the question(s) you are addressing, additional documentation alone may suffice, but usually a written explanation will also be needed.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through June 24, 2017?

Provided that you currently have TPS under the designation of Nepal, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Nepal (or an alien having no nationality who last habitually resided in Nepal);
- Received an EAD under the initial designation of TPS for Nepal; and
- Have an EAD with a marked expiration date of December 24, 2016, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through June 24, 2017, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Form I–9?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Form I–9. You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). Or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of December 24, 2016, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Form I–9 through June 24, 2017 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through June 24, 2017. You may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through June 24, 2017. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of December 24, 2016, that state ''A–12'' or ''C–19'' under ''Category''

have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once December 24, 2016, is reached to meet its responsibilities for Form I–9 compliance. Your employer may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Form I–9 if he or she did not keep a copy of this EAD when you initially presented it. However, your employer does not need a new document to reverify your employment authorization until June 24, 2017, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Form I–9 if my EAD has been automatically extended?''* for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Form I–9.

By June 24, 2017, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Form I–9 to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I–9 Instructions. Your employer should complete either Section 3 of the Form I–9 originally completed for you or, if this Section has already been completed or if the version of Form I–9 has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Form I–9 of the most current version. Note that employers may not specify which List A or List C document employees must present and cannot reject an acceptable receipt.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Nepalese citizenship?

No. When completing Employment Form I–9, including re-verifying employment authorization, employers must accept any documentation that appears on the Lists of Acceptable Documents for Form I–9 that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the Lists of Acceptable Documents for Form I–9. Therefore, employers may not request proof of Nepalese citizenship or proof of re-registration for TPS when completing Form I–9 for new hires, making corrections, or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the *Note to Employees* section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after June 24, 2017, for purposes of employment authorization?

After June 24, 2017, employers may no longer accept the EADs that were issued under the initial TPS designation of Nepal and that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of June 24, 2018, and can be presented to your employer for completion of Form I–9. Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Lists of Acceptable Documents for Form I–9.

How do my employer and I complete Form I–9 using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job prior to June 24, 2017, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix); and

c. Write the automatically extended EAD expiration date (June 24, 2017) in the second space.

2. For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (June 24, 2017).

By June 24, 2017, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my current employer and I make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, your employer may need to reinspect your automatically extended EAD if your employer does not have a copy of the EAD on file, and you and your employer should correct your previously completed Form I–9 as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''June 24, 2017,'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''June 24, 2017,'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By June 24, 2017, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify automated the verification process for employees whose TPS status was automatically extended in a **Federal Register** notice. If you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. By June 24, 2017, you must reverify employment authorization in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment

verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. Employees or applicants may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, including information regarding discrimination related to Form I–9 and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents for Form I–9 if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly and privately inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). An employee that believes he or she was discriminated against by an employer in the E-Verify process based on citizenship or immigration status, or based on national origin, may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state, and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD that has been automatically extended or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit granting agencies within seconds but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free and fast service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If a benefit-granting agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''For Benefit Applicants'' from the menu on the left and selecting ''Questions about your Records?''

[FR Doc. 2016–25907 Filed 10–25–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–74]

30-Day Notice of Proposed Information Collection: Section 8 Management Assessment Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: November 25, 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:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 19, 2016 at 81 FR 55472.

A. Overview of Information Collection

Title of Information Collection: Section 8 Management Assessment Program (SEMAP).

OMB Approval Number: 2577–0215.

Type of Request: Revision of currently approved collection.

Form Number: HUD–52658.

Description of the need for the information and proposed use: On an annual basis (or every two years for small agencies) PHAs are required to submit a SEMAP certification (form HUD–52648) electronically into the Information Management System/Public and Indian Housing Information Center (IMS/PIC). There is a maximum of 15 indicators that are either verified through PIC data or an on-site or off-site confirmatory review. HUD uses the PHA's SEMAP certification, together with other available data, to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to each PHA administering a HCV program. HUD rates a PHA on each SEMAP indicator, completes a PHA SEMAP profile identifying any program management deficiencies and assigns an overall performance rating. A PHA's written report of correction of a SEMAP deficiency is used as documentation that the PHA has taken action to address identified program weaknesses. Where HUD assigns an overall performance rating of troubled, the PHA's corrective action plan is used to monitor the PHA's progress on program improvements.

Respondents (i.e. affected public): Public Housing Agencies.

Estimated Annual Reporting and Recordkeeping Burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
SEMAP Certification	2,167	1	2,167	12	26,004	985.101
Corrective Action Plan	80	1	80	10	800	985.107(c)
Report on Correction of SEMAP Deficiency	542	1	542	2	1,084	985.106
Total annual burden					27,888	

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: October 18, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–25899 Filed 10–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2015–N085: 1265–0000–10137–S3]

Grays Harbor National Wildlife Refuge and Black River Unit of Billy Frank Jr. Nisqually National Wildlife Refuge, Grays Harbor and Thurston Counties, WA; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft comprehensive conservation plan and environmental assessment (draft CCP/EA) for Grays Harbor National Wildlife Refuge (Refuge) and the Black River Unit (Unit) of Billy Frank Jr. Nisqually National Wildlife Refuge (collectively, Refuges) for public review and comment. The draft CCP/EA describes our proposal for managing the Refuges for a period of 15 years following approval of the final CCP.

DATES: To ensure consideration, please send your written comments by November 25, 2016.

ADDRESSES: You may review the draft CCP/EA on the following agency Web sites, and in person at the following mail address—please call 360–753–9467 to make an appointment during regular business hours. The draft CCP/EA is also available at the libraries listed under **SUPPLEMENTARY INFORMATION**. You may submit comments, requests for more information, or requests for CD–ROM copies of the draft CCP/EA, by one of the following methods.

Email: FW1PlanningComments@fws.gov. Include ''Grays Harbor/Black River CCP'' in the subject line of the message.

Agency Web sites: https://www.fws.gov/refuge/Billy_Frank_Jr_Nisqually/ and *https://www.fws.gov/refuge/grays_harbor/*.

Fax: Attn: Glynnis Nakai, 360–534–9302.

Mail: Billy Frank Jr. Nisqually National Wildlife Refuge Complex, 100 Brown Farm Road, Olympia, WA 98516.

Hand Delivery/Courier: You may drop off comments during regular business hours at the above mail address.

FOR FURTHER INFORMATION CONTACT: Glynnis Nakai, Project Leader, 360–753–9467 (phone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Refuges. We started this process by publishing a notice in the **Federal Register** on June 8, 2011 (76 FR 33339). For more information about the Refuges, see that notice.

Background

The National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd–668ee (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Draft CCP/EA

The draft CCP/EA includes detailed information about our planning process, the Refuges' resources and issues, and our proposed management alternatives. Find the draft CCP/EA on our Web sites: *www.fws.gov/refuge/Billy_Frank_Jr_Nisqually/* and *www.fws.gov/refuge/grays_harbor/*.

Public Involvement

Public comments are requested, considered, and incorporated throughout the planning process. Comments on the draft CCP/EA will be analyzed by the Service and addressed in the final planning documents.

Public Availability of Documents

The draft CCP/EA is available at the following libraries, and through the sources identified under **ADDRESSES**.

- Hoquiam Timberland Library, 420 7th Street, Hoquiam, WA 98550
- Aberdeen Timberland Library, 121 East Market Street, Aberdeen, WA 98520
- Tumwater Timberland Library, 7023 New Market Street, Tumwater, WA 98501

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Robyn Thorson,

Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2016–25367 Filed 10–25–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–WM–PSB–21886; PPWOWMADH2, PPMPSAS1Y.YH0000 (177)]

Proposed Information Collection; National Park Service Background Clearance Initiation Request

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 25, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192; or *madonna_baucum@nps.gov* (email). Please include ''1024–Background Clearance Initiation Request'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Shean Rheams, National Park Service, 1201 Eye Street NW., Washington, DC 20005(mail); or *shean_rheames@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS), as delegated by the U.S. Office of Personnel Management (OPM), is authorized to request information to determine suitability of applicants for Federal employment and non-Federal personnel proposed to work under contractor and/or agreement who require access to NPS property and/or receive a DOIAccess (personal identity verification (PIV)) badges. The conduct of suitability determinations is authorizations under Executive Orders 10450, ''Security requirements for Government employment'' and 10577, ''Amending the Civil Service Rules and authorizing a new appointment system for the competitive service''; sections 3301, 3302, and 9101 of Title 5, United States Code (U.S.C.); and parts 2, 5, 731, and 736 of Title 5, Code of Federal Regulations (CFR), and Federal information processing standards. Section 1104 of Title 5 allows OPM to delegate personnel management functions to other Federal agencies.

In line with new regulations mandated by the OPM and the Department of the Interior (DOI), the NPS Personnel Security Branch is utilizing the Electronic Questionnaires for Investigations Processing (E–QIP) System. As a result, electronic submission of the Standard Form 85, for suitability background investigations (NACI), or the Standard Form 85P, for Public Trust, is now required. The DOI and NPS requires all applicants for Federal employment and non-Federal personnel (contractors, partners, etc.) requiring access to NPS property and/or receive a DOIAccess PIV badge to be processed for a suitability background investigation, in accordance with Executive Order 10450 and the Homeland Security Presidential Directive (HSPD–12). The information is protected in accordance with the Privacy Act, and we will maintain the

information in a secure system of records (Interior–DOI–45, ''Personnel Security Files—Interior'', 47 FR 11036).

The National Park Service will utilize Form 10–152, ''Background Clearance Initiation Request'' to create E–QIP accounts necessary to initiate background investigations for all individuals requiring access to NPS property and/or receive a DOIAccess (personal identity verification (PIV)) badge. The OPM and DOI programs initiating background investigations have published notices in the **Federal Register** describing the systems of records (SORN) in which the records will be maintained.

The information collected via NPS Form 10–152 includes detailed information for each proposed candidate requiring a background clearance, to include:

- Full legal name;
- Social Security Number;
- Date and place of birth;
- Country of citizenship;
- Contact phone number;
- Email address;
- Home address;
- Whether proposed candidate has ever been investigated by another Federal agency; and
- If the candidate was investigated by another Federal agency, they must provide the name of that agency and the date of the investigation.

Additional information required on Form 10–152 for non-Federal personnel includes:

- Name of proposed candidate's company;
- Contract/agreement number; and
- Contract/agreement periods of performance.

II. Data

OMB Control Number: 1024—New.

Title: National Park Service Background Clearance Initiation Request.

Service Form Number(s): NPS Form 10–152, ''Background Clearance Initiation Request''.

Type of Request: Existing collection in use without an OMB Control Number.

Description of Respondents: Candidates for Federal employment, as well as contractors, partners, and other non-Federal candidates proposed to work for the NPS under a Federal contract or agreement who require access to NPS property and/or a DOIAccess (PIV) badge.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

Estimated Number of Responses: 6,500.

Estimated Completion Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 758.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

On April 1, 2016, we published in the **Federal Register** (81 FR 18881) a Notice of our intent to request that OMB approve this collection of collection. In that notice, we solicited comments for 60 days, ending on May 31, 2016. No comments were received.

We again 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. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 21, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–25845 Filed 10–25–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–ADIR–PMSP–22235; PPWOIRADC1, PPMPSAS1Y.YP0000 (177)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Certification of Identity and Consent Form

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 25, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number ''1024-New Case Incident Report Request'' in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Charis Wilson, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287 (mail); (303) 969–2959 (phone), or *charis_wilson@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The NPS maintains law enforcement incident reports in the Department of the Interior's Incident and Management Reporting System (IMARS), which is a Privacy Act System of Records (DOI–10). In accordance with the Privacy Act (5 U.S.C. 552a(b)), the NPS is barred from releasing copies of records contained within IMARS, including but not limited to motor vehicle accident reports, without the prior written request and/or consent of the individual to whom the record pertains unless authorized under appropriate routine-use exceptions. The purpose of the collection is to enable the NPS to respond to requests made under the Freedom of Information Act and the Privacy Act of 1974 and to locate applicable law enforcement case incident reports responsive to the request. Information includes sufficient personally identifiable information and/or source documents as applicable. The detailed personal information, to include the date/place of birth, as well

as the requestor's Social Security Number, is needed to identify records unique to the requestor. Failure to provide the required information may result in the NPS being unable to take any action on the request.

The NPS plans to implement the use of Form 10–945, ''Certification of Identity and Consent'' to collect the minimal information necessary to verify the identity of first-party requesters request information about themselves and document if and when they authorized the NPS to release their information to a third party. NPS Form 10–945 requires for the following information to verify the identity of the requester:

- Full name of Requester;
- Case Number;
- Social Security Number;
- Current Address;
- Date of Birth; and
- Place of birth.

II. Data

OMB Control Number: 1024—New.

Title: Certification of Identity and Consent Form.

Service Form Numbers: NPS Form 10–945, ''Certification of Identity and Consent''.

Type of Request: Existing collection in use without OMB approval.

Description of Respondents: Individuals requesting copies of law enforcement case incident reports maintained within the Department of Interior's Incident Management and Reporting System (IMARS).

Frequency of Collection: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

Estimated Number of Annual Responses: 2,000.

Estimated Completion Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Annual Nonhour Cost Burden: None.

III. Comments

On January 15, 2016, we published in the **Federal Register** (81 FR 2233) a Notice of our intent to request that OMB approval of this information collection. In that Notice, we solicited comments for 60 days, ending on March 15, 2016. No comments were received in response to that Notice.

We again 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. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 21, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–25847 Filed 10–25–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–963]

Certain Activity Tracking Devices, Systems, and Components Thereof; Commission Determination Not To Review a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on August 23, 2016, finding no violation of section 337 of the Tariff Act of 1930, as amended, in connection with alleged misappropriation of certain trade secrets.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–963 on August 21, 2015, based on a complaint filed by AliphCom d/b/a Jawbone of San Francisco, California and BodyMedia, Inc. of Pittsburgh, Pennsylvania (collectively, ''Jawbone''). 80 *FR* 50870–71 (Aug. 21, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,529,811 (''the '811 patent); U.S. Patent No. 8,398,546 (''the '546 patent); U.S. Patent No. 8,793,522 (''the '522 patent); U.S. Patent No. 8,446,275 (''the '275 patent); U.S. Patent No. 8,961,413 (''the '413 patent); and U.S. Patent No. 8,073,707 (''the '707 patent''). The complaint further alleges misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named the following respondents: Fitbit, Inc. of San Francisco, California (''Fitbit''); Flextronics International Ltd. of San Jose, California; and Flextronics Sales & Marketing (A–P) Ltd. of Port Louis, Mauritius (collectively, ''Flextronics''); Fitbit and Flextronics are collectively referred to as ''Respondents.'' The Office of Unfair Import Investigations (''OUII'') is a party to the investigation.

On February 22, 2016, the ALJ granted Jawbone's unopposed motion to terminate the investigation as to the '522 patent; claims 8–10, 13, 14, and 18 of the '275 patent; claim 6 of the '811 patent; and claims 5 and 8 of the '413 patent. *See* Order No. 32. The Commission determined not to review the ID. *See* Comm'n Notice of Non-review (Mar. 21, 2016).

On March 3, 2016, the ALJ granted Fitbit's motion for summary determination that the asserted claims of the '546 and '275 patents are directed to ineligible subject matter under 35 U.S.C. 101. *See* Order No. 40. The Commission determined to review the

ID, and on review to affirm the ID with certain modifications. *See* Comm'n Notice affirming the ID with modification (Apr. 4, 2016).

On March 11, 2016, the ALJ granted Jawbone's unopposed motion to terminate the investigation as to the remaining claims of the '811 patent. *See* Order No. 42. The Commission determined not to review the ID. *See* Comm'n Notice of Non-review (Apr. 4, 2016).

On April 27, 2016, the ALJ granted Fitbit's motion for summary determination that the asserted claims of the '413 and '707 patents (the two patents remaining in the investigation), are directed to ineligible subject matter under 35 U.S.C. 101. *See* Order No. 54. The Commission determined not to review the ID. *See* Comm'n Notice of Non-review (Jun. 2, 2016). Thus, all the patent infringement allegations were terminated from the investigation. Only the allegations of trade secret misappropriation remain at issue in the investigation.

The ALJ held an evidentiary hearing from May 9, 2016 through May 17, 2016, and thereafter received post-hearing briefing from the parties. During discovery, Jawbone identified 154 trade secrets allegedly misappropriated by Respondents (Trade Secret Nos. 1–144, including Nos. 1.A–1.G, 92–A, 139–A, and 141–A.). ID at 3. Yet at the hearing, Jawbone presented evidence and argument on only 38 of the alleged trade secrets (Trade Secret Nos. 1, 1A–G, 2–4, 12–14, 17, 18, 33, 52, 53, 55, 58, 91, 92, 92–A, 93–102, 128, 129, 141, 141–A). Jawbone's post-hearing briefs addressed only five of the alleged trade secrets (Trade Secret Nos. 92, 92–A, 98, 128, and 129). Specifically, Jawbone argued that Fitbit misappropriated alleged Trade Secret Nos. 98 and 128, and Flextronics misappropriated alleged Trade Secret Nos. 92, 92–A, and 129. ID at 3–4.

On June 15, 2016, Jawbone moved to terminate the investigation as to all of the trade secrets except for the five alleged trade secrets addressed in its post-hearing briefing. ID at 4 (citing Mot. Docket No. 963–072). Respondents opposed the motion, arguing that they are ''entitled to a determination that Jawbone failed to present sufficient evidence showing *actual* misappropriation as to all of the trade secrets that Jawbone now seeks to abandon. . . .'' *See id.* at 23 (quoting Mot. 072 Rsp. at 8) (emphasis in original). The ALJ denied Jawbone's motion as outside the scope of Commission Rule 210.21(a). She also denied Fitbit's request for a determination on whether the withdrawn trade secrets were misappropriated. *Id.* at 20, 23–24. The ALJ stated that ''[p]arties are free to waive arguments'' and that Fitbit failed to provide ''any support for the proposition that arguments that have been waived and abandoned should be considered on their merits.'' *Id.* The ALJ also granted Jawbone's June 30, 2016 motion to strike Section V.A. of Fitbit's post-hearing reply brief for improperly raising a new argument based on news articles that are not in the record of the investigation. *Id.* at 25. No party petitioned for review of the ALJ's determinations as to these motions.

On August 23, 2016, the ALJ issued her final ID finding no violation of section 337 by Respondents in connection with the alleged trade secrets misappropriation. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Respondents. ID at 15–16. The ALJ further found that Jawbone satisfied the importation requirement of section 337, noting that Respondents have stipulated that the accused products have been imported into the United States. *Id.* at 16. The ALJ, however, found that Jawbone failed to show that the alleged trade secrets constitute actual trade secrets, and that Respondents did not misappropriate any of Jawbone's alleged trade secrets. ID at 28, 38, 45–46. Finally, the ALJ found that Jawbone failed to prove a threat of substantial injury to a domestic industry as required by 19 U.S.C. 1337(a)(1)(A)(i). *See* ID at 79–80. In that regard, the ALJ referenced her finding of no misappropriation of trade secrets and added that ''even if Jawbone had proven misappropriation of the five asserted trade secrets, there is no way to decide on this record what specific injury is attributable to these trade secrets, and whether the injury is substantial.'' *Id.* at 80.

On September 6, 2016, Jawbone filed a petition for review of the ID, challenging only the ALJ's findings as to alleged Trade Secret Nos. 92, 92–A, and 98. On September 14, 2016, Respondents and the Commission investigative attorney filed responses to the petition for review. Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined not to review the final ID. This investigation is therefore terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–25829 Filed 10–25–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 21, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NHK (Japan Broadcasting Corporation), Tokyo, Japan; STORDIS GmbH, Stuttgart, Germany; The Telos Alliance, Cleveland, OH; and Mark Franken (individual member), Winston Hills, Australia, have been added as parties to this venture.

Also, Encompass Digital Media, Stanford, CT; Malooba, Launceston, United Kingdom; Tektronix, Beaverton, OR; and Yangaroo, Inc., Toronto, Ontario, Canada, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 22, 2016. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48449).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–25915 Filed 10–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on September 28, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, European Broadcasting Union (EBU), Geneva, Switzerland; Analogix Semiconductor, Inc., Santa Clara, CA; and Pixelworks, Inc., San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on July 19, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 18, 2016 (81 FR 55233).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–25914 Filed 10–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1727]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Tuesday, November 15, 2016, from 3:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *www.juvenilecouncil.gov* or contact Jeff Slowikowski, Designated Federal Official (DFO), OJJDP, by telephone at (202) 616–3646 (not a toll-free number) or via email: *jeff.slowikowski@usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206 (a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *www.juvenilecouncil.gov* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership consists of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor (DOL), the Secretary of Education (DOE), the Secretary of Housing and Urban Development (HUD), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities, including the Departments of Agriculture, Defense, Interior, and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda: The agenda will include: (a) Opening remarks and introductions; (b) Presentations and discussion of agency sustainability plans; and (c) Council member announcements.

Registration: For security purposes, members of the public who wish to attend the meeting must pre-register online at *www.juvenilecouncil.gov* no later than Tuesday, November 8, 2016. Should problems arise with web registration, contact Melissa Kanaya, Senior Program Manager/Federal Contractor, at (202) 532–0121 or send a request to register to Ms. Kanaya. Please include name, title, organization or other affiliation, full address and phone, fax and email information and send to her attention either by fax to (866) 854–6619, or by email to Melissa.Kanaya@*usdoj.gov.* Note that these are not toll-free telephone numbers. Additional identification documents may be required. Meeting space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments: Interested parties may submit written comments and questions in advance by Tuesday, November 8, 2016, to Jeff Slowikowski, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *jeff.slowikowski@usdoj.gov.* Alternatively, fax your comments to (202) 353–9093 and contact Melissa Kanaya, Senior Program Manager/Federal Contractor, at (202) 532–0121 to ensure that they are received. These are not toll-free numbers.

The Council expects that the public statements submitted will not repeat previously submitted statements. Written questions from the public are also invited at the meeting.

Robert L. Listenbee,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2016–25870 Filed 10–25–16; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–078)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering (TI&E) Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Friday, November 18, 2016, 8:00 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room MIC 6A, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person must call the USA toll-free conference number 1–844–467–6272, and the numeric passcode: 102421 followed by the # sign. If dialing in, please ''mute'' your phone. The WebEx link is *https://nasa.webex.com/*, the meeting number is 992 192 538, and the password is Technology16^.

The agenda for the meeting includes the following topics:

—Space Technology Mission Directorate Update
—Cryogenic Fluid Management Investments Overview
—Mars Architecture Technology Drivers Overview
—Chief Technologist Update
—Update on In-Space Manufacturing and Assembly
—Small Spacecraft Technology Study Update
—Chief Engineer Update

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Minnesota, Missouri, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee to Ms. Anyah Dembling via email at *anyah.dembling@nasa.gov* or by telephone at (202) 358–5195. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide full name and citizenship status no less than 3 working days in advance by contacting Ms. Anyah Dembling via email at *anyah.dembling@nasa.gov* or by telephone at (202) 358–5195.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–25798 Filed 10–25–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Notice of Appointments of Individuals To Serve as Members of Performance Review Boards

AGENCY: National Labor Relations Board.

ACTION: The National Labor Relations Board is issuing this notice that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 2015 and ending September 30, 2016.

Authority: 5 U.S.C. 4314(c)(4).

Name and Title

Elizabeth Tursell—Associate to the General Counsel, Division of Operations Management
John Ferguson—Associate General Counsel, Division of Enforce Litigation
Barbara O'Neill—Associate General Counsel, Division of Legal Counsel
Kathleen A. Nixon—Deputy Chief Counsel to the Chairman
Andrew Krafts—Deputy Chief Counsel to the Chairman
Robert F. Schiff—Chief of Staff for the Chairman
Gary W. Shinners (Alternate)—Executive Secretary
Barry J. Kearney—(Alternate)—Associate General Counsel, Division of Advice

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, National Labor Relations Board, 1015 Half Street, SE., Washington, DC 20570, (202) 273–3737 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

By Direction of the Board.

William B. Cowen,

Solicitor.

[FR Doc. 2016–25830 Filed 10–25–16; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Date/Time: November 16, 2016; 10:00 a.m.–12:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open Teleconference.

Contact Person: Dr. Stephen Meacham, Senior Staff Associate, Office of Integrative Activities/Office of Director/National Science Foundation (Email: *smeacham@nsf.gov*/Telephone: (703) 292–8040).

Minutes: May be obtained from *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: To receive and discuss subcommittee work. Updated agenda and teleconference link will be available at *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Dated: October 21, 2016.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2016–25917 Filed 10–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 25, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant:* Wendell J. Long, Jr., 1401 Preston Avenue, Austin, TX 78703.

Permit Application: 2017–024.

Activity for Which Permit is Requested: Waste management permit. The applicant proposes to fly to King George Island and over the Antarctic Peninsula aboard a 2004 Pilatus PC–12 aircraft. The plane and crew will depart Punta Arenas, Chile and stop at the King George Island airfield prior to and following a non-stop flight over the Antarctic Peninsula, with a turnaround point at approximately 75 degrees South, 71 degrees West. The applicant proposes to overnight at King George Island before returning to Punta Arenas, Chile. The crew may camp unless other accommodations are arranged. All camping gear; emergency equipment and supplies; foodstuffs; garbage; and human waste will be stored in the aircraft removed from Antarctica upon departure. Gear will be new and/or decontaminated before use in Antarctica. Emissions from the aircraft are minimized through proper engine maintenance.

Location: King George Island; West Antarctic Peninsula.

Dates: January 1–February 15, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–25862 Filed 10–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 25, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–025

1. *Applicant:* Andrew G. Fountain, Department of Geology, Portland State University, Portland, OR 97201

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area. The applicant proposes to enter ASPA 131, Canada Glacier, to photograph the landscape and to document human disturbance and current conditions. The photographs will be compared to historical photos to assess changing patterns of human activity.

Location

ASPA 131, Canada Glacier, Lake Fryxell. Taylor Valley, Victoria Land

Dates

January 1–31, 2017

Permit Application: 2017–026

2. *Applicant:* Donald Fortescue, 1764 10th Street, Oakland, CA 94607

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area. The applicant is a recipient of an Antarctic Artists & Writers award. The applicant proposes to visit three historic huts in the Ross Sea region for inspiration and to gather audio and video recordings for a mixed media art exhibit. Equipment will include a camera tripod and contact microphones that may be attached to the exterior of the buildings without drilling, clamping, or employing any other damaging methods. The results of this work are expected to be useful for outreach and education about Antarctica and the scientific research conducted there.

Location

ASPA 155, Cape Evans, Ross Island; ASPA 157, Backdoor Bay, Cape Royds, Ross Island; ASPA 158, Hut Point, Ross Island

Dates

December 1, 2016–February 1, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–25861 Filed 10–25–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0214]

Independent Assessment of Nuclear Material Control and Accounting Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory Guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.51, ''Independent Assessment of Nuclear Material Control and Accounting Systems.'' Revision 1 is based on experience gained since RG 5.51 was initially published in June 1975, and reflects revisions to the NRC's material control & accounting (MC&A) regulations that have been made since 1975. Updates include use of the term ''independent assessment'' to replace ''management review,'' and use of the term ''inventory difference'' to replace ''material unaccounted for.''

DATES: Revision 1 to RG 5.51 is available on October 26, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0214 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0214. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 to RG 5.51 may be found in ADAMS under Accession No. ML16223A915. The regulatory analysis supporting Revision 1 may be found in ADAMS under Accession No. ML16223A917.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Glenn Tuttle, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7230, email: *Glenn.Tuttle@nrc.gov,* or Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301–415–1699, email: *Mekonen.Bayssie@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

The proposed Revision 1 of RG 5.51 was published for comment in September 2015, and carried the temporary identification of Draft Regulatory Guide, DG–5049, ''Independent Assessment of Nuclear Material Control and Accounting Systems.'' This guidance reflects the post 1975 revisions made to the NRC's MC&A regulations, that are now in title 10 of the *Code of Federal Regulations* (10 CFR) part 74, ''Material Control and Accounting of Special Nuclear Material [SNM].'' The MC&A provisions requiring independent assessments that this guidance applies to are:

(1) 10 CFR 74.31(c)(8) established in 1985 and applicable to licensees of facilities authorized to hold SNM of low strategic significance (such facilities are often referred to as ''Category III fuel cycle facilities'');

(2) 10 CFR 74.33(c)(8), established in 1991 and applicable to licensees authorized to operate uranium enrichment facilities;

(3) 10 CFR 74.43(b)(8), established in 2002 and applicable to licensees of facilities authorized to hold SNM of moderate strategic significance (such facilities are often referred to as ''Category II fuel cycle facilities''); and

(4) 10 CFR 74.59(h)(4), established in 1987 and applicable to licensees of facilities authorized to possess five of more formula kilograms of strategic SNM (such facilities are often referred to as ''Category I fuel cycle facilities'').

The updated guidance also incorporates experience gained since RG 5.51 was initially published in June 1975. For example, the guidance for performing independent assessments has been expanded to include process monitoring and item monitoring for Category I fuel cycle facilities, and to include guidance for uranium enrichment facilities. In addition, this revision addresses changes in MC&A terminology since the RG was published in 1975; for example, the term ''management review'' has been replaced by ''independent assessment,'' and ''material unaccounted for'' by ''inventory difference.''

II. Additional Information

The NRC published a notice of the availability of DG–5049 in the **Federal Register** on September 17, 2015 (80 FR 55880) for a 60-day public comment period. The public comment period closed on November 16, 2015. Public comments on DG–5049 and the staff responses to the public comments are available under ADAMS under Accession No. ML16223A913.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 70.76, 72.62, or 76.76. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current licenses. This regulatory guide may be applied to applications for special nuclear material subject to 10 CFR part 74 docketed by the NRC as of the date

of issuance of the final regulatory guide, as well as future applications after the issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 70.76, 72.62, or 76.76, inasmuch as such applicants or potential applicants are not within the scope of entities protected by these backfit provisions. This RG provides guidance on recordkeeping and reporting requirements with respect to material control and accounting, as set forth in 10 CFR part 74. The regulatory position stated in this guidance demonstrates a method that the NRC staff finds acceptable for an applicant or licensee to meet the requirements of the underlying NRC regulations. This guidance imposes no new requirements on licensees, and information collection and reporting requirements with respect to material control and accounting are not included within the scope of the NRC's backfitting protections.

Dated at Rockville, Maryland, this 21st day of October, 2016.

For the Nuclear Regulatory Commission.

Stanley Gardocki,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–25904 Filed 10–25–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2017–20; Order No. 3574]

Competitive Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service notice of rate adjustments affecting competitive domestic and international products and services, along with numerous proposed classification changes. The adjustments and other changes are scheduled to take effect January 22, 2017. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 2, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Overview
II. Initial Administrative Actions
III. Ordering Paragraphs

I. Introduction and Overview

On October 19, 2016, the Postal Service filed notice with the Commission concerning changes in rates of general applicability for competitive products.[1] The Notice also includes related classification changes. The Postal Service represents that, as required by Commission rule 39 CFR 3015.2(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. Notice at 1. The changes are scheduled to become effective on January 22, 2017. *Id.*

Attached to the Notice is Governors' Decision No. 16–7, which states the new prices and classification changes are in accordance with 39 U.S.C. 3632, 3633, and 39 CFR 3015.2.[2] Governors' Decision No. 16–7 provides an analysis of the competitive products' price and classification changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3015. Governors' Decision No. 16–7 at 1. The attachment to Governors' Decision No. 16–7 sets forth the price changes and includes draft Mail Classification Schedule (MCS) language for competitive products of general applicability.

Governors' Decision No. 16–7 includes two additional attachments:

- A partially redacted table showing FY 2017 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming implementation of the new prices on January 22, 2017.
- A partially redacted table showing FY 2017 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming a hypothetical implementation of the new prices on October 1, 2016.

The Notice also includes an application for non-public treatment of the attributable costs, contribution, and cost coverage data in the unredacted version of the annex to Governors' Decision No. 16–7, as well as the supporting materials for the data.

Planned price adjustments. Governors' Decision No. 16–7 includes an overview of the Postal Service's planned percentage changes, which is summarized in the table below.

TABLE I–1

Product name	Average price increase (percent)
Domestic Competitive Products	
Priority Mail Express	3.4
Retail	3.7
Commercial Base	2.4
Commercial Plus	2.3
Priority Mail	3.9
Retail	3.3
Commercial Base	4.1
Commercial Plus	4.5
Parcel Select	.....
Destination-Entered	4.9
Lightweight	8.0
Parcel Select Ground	2.7
Parcel Return Service	5.5
Return Sectional Center Facility	5.8
Return Delivery Unit	5.2
First-Class Package Service	4.1
Retail Ground	3.8
Domestic Extra Services	
Premium Forwarding Service Enrollment Fee	3.8
Adult Signature Service	.....
Basic	3.5
Person-Specific	3.4
Address Enhancement Service	1.9–7.9
Competitive Post Office Box	6.5
Package Intercept Service	3.2
Pickup On Demand	10
International Competitive Products	
Global Express Guaranteed	4.9
Priority Mail Express International	0.0
Priority Mail International	0.0
International Priority Airmail	3.8
International Priority Airmail M-Bags	3.9
International Surface Air Lift	3.8
International Surface Air Lift M-Bags	3.9
Airmail M-Bags	4.9
First-Class Package International Service	0.0
International Ancillary Services and Special Services	
International Ancillary Services	10.6
International Postal Money Orders	73.7
Outbound International Registered Mail	7.2

[1] Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 16–7, October 19, 2016 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates or classes.

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 16–7), October 11, 2016 (Governors' Decision No. 16–7).

Governors' Decision No. 16–7 at 2–5; *see* Mail Classification Schedule sections 2105.6, 2110.6, 2115.6, 2125.6, 2135.6, 2305.6, 2315.6, 2335.6, 2510.9.6.

Proposed classification changes. The Postal Service proposes several classification changes in its Notice and attaches proposed revisions to the MCS to Governors' Decision No. 16–7. *Id.* at 1; *see id.* Attachment Part B.

II. Initial Administrative Actions

The Commission establishes Docket No. CP2017–20 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, 3642, 39 CFR part 3015, and 39 CFR 3020 subparts B and E. Comments are due no later than November 2, 2016. For specific details of the planned price and classification changes, interested persons are encouraged to review the Notice, which is available on the Commission's Web site, *www.prc.gov.*

Pursuant to 39 U.S.C. 505, James Waclawski is appointed to serve as Public Representative to represent the interests of the general public in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2017–20 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, 3642, 39 CFR part 3015, and 39 CFR 3020 subparts B and E.

2. Comments are due no later than November 2, 2016.

3. The Commission appoints James Waclawski to serve as Public Representative to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–25824 Filed 10–25–16; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF STATE

[Public Notice: 9771]

Meetings of the United States-Peru Environmental Affairs Council, Environmental Cooperation Commission, and Sub-Committee on Forest Sector Governance

ACTION: Notice of meetings.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that on November 3–4, 2016, the United States and Peru will hold the eighth meeting of the Sub-Committee on Forest Sector Governance (the ''Sub-Committee''), the sixth meeting of the Environmental Affairs Council (the ''Council''), and the fourth meeting of the Environmental Cooperation Commission (the ''Commission''). The public sessions for the Council, Commission and Sub-Committee will be held on November 4, 2016 at 3:00 p.m. All meetings will take place in Lima, Peru at the Ministry of International Trade and Tourism.

The purpose of the meetings is to review implementation of: Chapter 18 (Environment) of the United States-Peru Trade Promotion Agreement (PTPA); the PTPA Annex on Forest Sector Governance (Annex 18.3.4); and the United States-Peru Environmental Cooperation Agreement (ECA).

The Department of State and USTR invite interested organizations and members of the public to attend the public session, and to submit written comments or suggestions regarding implementation of Chapter 18, Annex 18.3.4, and the ECA, and any issues that should be discussed at the meetings. If you would like to attend the public sessions, please notify Rachel Kastenberg and Laura Buffo at the email addresses listed below under the heading **ADDRESSES**. Please include your full name and any organization or group you represent.

In preparing comments, submitters are encouraged to refer to:

- Chapter 18 of the PTPA, including Annex 18.3.4, *https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text,*
- the Final Environmental Review of the PTPA, *https://ustr.gov/sites/default/files/uploads/factsheets/Trade%20Topics/environment/Environmental%20Review%20FINAL%2020071101.pdf,* and
- the ECA, *http://www.state.gov/e/oes/eqt/trade/peru/81638.htm.*

These and other useful documents are available at: *http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa* and at *http://www.state.gov/e/oes/eqt/trade/peru/index.htm.*

DATES: The public sessions of the Council, Sub-Committee and Commission meetings will be held on November 4, 2016 at 3:00 p.m. Comments and suggestions are requested in writing no later than November 1, 2016. Comments submitted via *regulations.gov* will be accepted until 11:59 p.m. eastern time on November 1.

ADDRESSES:

All meetings will be held at Peru's Ministry of International Trade and Tourism (Mincetur), Calle Uno Oeste N 050 Urb. Corpac, San Isidro.

Written comments and suggestions should be submitted to both:

(1) Rachel Kastenberg, Office of Environmental Quality and Transboundary Issues, U.S. Department of State, by electronic mail at *KastenbergRL@state.gov* with the subject line ''U.S.-Peru EAC/ECC/Sub-Committee Meetings''; and

(2) Laura Buffo, Office of Environment and Natural Resources, Office of the United States Trade Representative, by electronic mail at *Laura_Buffo@ustr.eop.gov* with the subject line ''U.S.-Peru EAC/ECC/Sub-Committee Meetings.''

If you have access to the Internet, you can view and comment on this notice by visiting *http://www.regulations.gov* and searching by its docket number, DOS–2016–0072.

FOR FURTHER INFORMATION CONTACT: Rachel Kastenberg, Telephone (202) 736–7111 or Laura Buffo, Telephone (202) 395–9424.

SUPPLEMENTARY INFORMATION: The PTPA entered into force on February 1, 2009. Article 18.6 of the PTPA establishes an Environmental Affairs Council, which is required to meet at least once a year or as otherwise agreed by the Parties to discuss the implementation of Chapter 18. Annex 18.3.4 of the PTPA establishes a Sub-Committee on Forest Sector Governance. The Sub-Committee is a specific forum for the Parties to exchange views and share information on any matter arising under the PTPA Annex on Forest Sector Governance. The ECA entered into force on August 23, 2009. Article III of the ECA establishes an Environmental Cooperation Commission and makes the Commission responsible for developing a Work Program. Article 18.6 of the PTPA and Article VI of the ECA require that meetings of the Council and Commission respectively include a public session, unless the Parties otherwise agree. At its first meeting, the Sub-Committee on Forest Sector Governance committed to hold a public session after each Sub-Committee meeting.

Dated: October 21, 2016.

Barton J. Putney,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–25895 Filed 10–25–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9774]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Insolvency-Related Judgments and Enterprise Group Insolvency Issues

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss ongoing work in the United Nations Commission on International Trade Law (UNCITRAL) related to the recognition and enforcement of insolvency-derived judgments and the insolvency of cross-border enterprise groups. The public meeting will take place on Tuesday, November 22, 2016 from 9:30 a.m. until 12:00 p.m. EST. This is not a meeting of the full Advisory Committee.

For its last several sessions, UNCITRAL's Working Group V has been focused on two projects: A model law on the recognition and enforcement of insolvency-related judgments, and model legislative provisions that would assist courts in addressing the cross-border insolvency of enterprise groups. In December 2016, Working Group V will continue to discuss the draft texts for both projects. Along with documents from past sessions, the Secretariat papers for the December session will be made available at *http://www.uncitral.org/uncitral/en/commission/working_groups/5Insolvency.html*.

The purpose of the public meeting is to obtain the views of concerned stakeholders on updated drafts prepared by the UNCITRAL Secretariat on both topics: The recognition and enforcement of insolvency-related judgments and the insolvency of cross-border enterprise groups.

Time and Place: The meeting will take place on November 22, 2016, from 9:30 a.m. until 12:00 p.m. via a teleconference. Those who cannot participate but wish to comment are welcome to do so by email to Tim Schnabel at *SchnabelTR@state.gov.*

Public Participation: This meeting is open to the public. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Dated: October 17, 2016.

Timothy R. Schnabel,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2016–25890 Filed 10–25–16; 8:45 am]

BILLING CODE 7410–08–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from a professor of Political Economy at the University of Texas at Austin (WB16–48—10/19/16) for permission to use certain unmasked data from the Board's 2000–2014 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–25898 Filed 10–25–16; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2016–0020]

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CV'') proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. The Office of the United States Trade Representative (USTR) invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2017, through March 31, 2018.

DATES: USTR must receive your application by November 17, 2016.

ADDRESSES: You should submit your application through the Federal eRulemaking Portal: *http://www.regulations.gov,* docket number USTR–2016–0020. Follow the instructions for submitting comments below. While USTR strongly prefers electronic submissions, you also may submit your application by fax, to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Katherine Wang, Assistant General Counsel, *Katherine_E_Wang@ustr.eop.gov,* (202) 395–6214.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party using the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of 15 current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties must consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth

panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved NAFTA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (Section 402) provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The ''Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20'' (*see https://www.nafta-sec-alena.org/Default.aspx?tabid=99&language=en-US*), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.'' The Code of Conduct also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 1901.2 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by USTR of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1st of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the United States Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2017, through March 31, 2018, are invited to submit applications. In order to be assured of consideration, USTR must receive your application November 17, 2016. Applications may be submitted electronically to *www.regulations.gov,* docket number USTR–2016–0020, or by fax to Sandy McKinzy at 202–395–3640.

In order to ensure the timely receipt and consideration of applications, USTR strongly encourages applicants to make on-line submissions, using the *www.regulations.gov* Web site. To submit an application via regulations.gov, enter docket number USTR–2016–0020 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!''. For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''How to Use Regulations.gov'' on the bottom of the page.

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that applications be provided in an attached document. If a document is attached, please type ''Application for Inclusion on NAFTA Chapter 19 Roster'' in the ''Upload File'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

Applications must be typewritten, and should be headed ''Application for Inclusion on NAFTA Chapter 19 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any

U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.

13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.

14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster only need to indicate that they are reapplying and submit updates (if any) to their applications on file. Current members do not need to resubmit their applications. Individuals who have previously applied but have not been selected must submit new applications to reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on *www.regulations.gov.* They may be referred to other federal agencies and Congressional Committees in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Juan Millán,

Acting Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2016–25882 Filed 10–25–16; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–104]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 15, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2016–6518 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 6, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–6518.

Petitioner: Lockheed Martin Aeronautics Company.

Section of 14 CFR Affected: §§ 25.335(e)(3) and 25.473(a)(2).

Description of Relief Sought: Lockheed Martin Aeronautics Company is requesting that the FAA allow the same airplane load derivation equations and methods consistent with previous Model 382 airplane design criteria for the current type design update of the Model 382J Series airplane instead of strict compliance with §§ 25.335(e)(3) and 25.473(a)(2).

[FR Doc. 2016–25826 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Sixth RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary

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

ACTION: Twenty Sixth RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of

Twenty Sixth RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary.

DATES: The meeting will be held November 29 to December 01, 2016, 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION, CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Sixth RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary. The agenda will include the following:

Tuesday, November 29, 2016 9:00 a.m. to 5:00 p.m.

1. Introductions and administrative items (including DFO & RTCA Statement) (15 min)
2. Review agenda (5 min)
3. Review and approve summary from the last Plenary (10 min)
4. Review and approve Working Group FRAC disposition (0.5 hours)
5. Adjourn to Working Group; disposition of comments (2 hours)
6. Lunch (12:00 p.m. EDT—1 hour)
7. Adjourn to Working Group; disposition of comments (4 hours)
8. Adjourn

Wednesday, November 30, 2016 9:00 a.m. to 5:00 p.m.

1. Convene Plenary to approve previous Working Group efforts
2. Adjourn to Working Group; disposition of comments
3. Lunch (12:00 p.m. EDT—1 hour)
4. Working Group disposition of comments
5. Adjourn

Thursday, December 1, 2016 9:00 a.m. to 5:00 p.m.

1. Convene Plenary to approve previous Working Group efforts
2. Adjourn to Working Group; disposition of comments
3. Lunch (12:00 p.m. EDT—1 hour)
4. Convene Plenary
5. Delegate any remaining actions to Working Group as applicable
6. Schedule additional Plenary if required
7. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–25874 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–107]

Petition for Exemption; Summary of Petition Received; B/E Aerospace, Inc.—FSI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before November 15, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2016–9004 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynette Mitterer, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *Lynette.Mitterer@faa.gov,* phone (425) 227–1047. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 20, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9004.

Petitioner: B/E Aerospace, Inc.—FSI.

Section of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: The petitioner is seeking relief to install up to 24 doors in any zone for mini-suites of a Boeing 777.

[FR Doc. 2016–25825 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No: FHWA–2016–0030]

Local Empowerment for Accelerating Projects (LEAP) Pilot Program

AGENCY: Federal Highway Administration, U.S. Department of Transportation.

ACTION: Notice. Solicitation of interest and participation in Direct Aid Pilot Program.

SUMMARY: The Federal Highway Administration (FHWA) is announcing a pilot program to permit, on an experimental basis, direct delivery of Federal-aid funding of up to five Local Public Agencies (LPAs). These LPAs will be subject to Federal oversight, and the State DOT will be relieved of direct oversight and accountability for projects funded under the LEAP pilot program. The pilot program will be carried out for a period of 5 years (unless extended). It will be implemented in accordance with FHWA's experimental authority provided by the project flexibility authority granted under section 1420 of the Fixing America's Surface Transportation Act.

DATES: Applications must be received by November 25, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting applications.
- *Electronic mail: LEAPFRN@Sharepointmail.dot.gov.*
- *Mail:* U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

All applications must include the docket number DOT–FHWA–2016–0030 at the beginning of the submission.

FOR FURTHER INFORMATION CONTACT: Mr. Robert (Bob) Wright, Local Public Agencies Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–4630, *Robert.Wright@dot.gov.,* or Mr. Steve Rochlis, Office of Chief Counsel, 202–366–1395, *Steve.Rochlis@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of this notice and the related *Attachment A: Sequencing of Certain Key Direct Recipient Requirements* is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *https://www.federalregister.gov/* and the Government Publishing Office's Web page at: *https://www.gpo.gov/fdsys/.*

Background

The Federal-aid highway program is a federally funded, State-administered program, under which State DOTs are responsible for determining which projects are federally funded, including highway projects within the boundaries of the LPAs.

The American Public Works Association (APWA), National Association of County Engineers (NACE), and other local entities have advocated for improvements to the Federal-aid Highway Program delivery to LPAs. The FHWA is aware of concerns expressed by LPAs related to cost and time delays in delivery of projects, inadequate communication and collaboration among transportation partners, accessibility to Federal funding, and the need for improved statewide consistency in project administration and oversight, including the need for clarity and consistency as to direction and interpretation.

The FHWA has long supported innovative approaches to project delivery and is constantly searching for new and better ways to oversee, accelerate, and reduce the cost of the delivery of highway projects. FHWA's goals in launching the LEAP pilot program are twofold. The first is to evaluate the impact of direct Federal-aid funding on the effectiveness, efficiency, and expediency of projects delivered by LPAs utilizing innovative approaches to project delivery. The second is to assess the cost and benefit of direct Federal-aid funding of LPAs as well as FHWA's ability, administrative costs, and resources needed to oversee an expanded base of direct aid recipients by using various approaches to oversight.

Objective of the Leap Pilot Program

The objectives of the LEAP pilot program are as follows:

1. To determine whether qualified LPAs can deliver Federal-aid highway projects more expeditiously and at a lower cost via innovative approaches to project delivery when the LPA is a direct Federal-aid recipient and employs its own project delivery processes, in compliance with Federal and State requirements.

2. To assess the additional costs and other impacts to FHWA associated with providing effective and efficient stewardship and oversight to an expanded number of direct Federal-aid recipients, and to explore various approaches to stewardship and oversight.

Leap Pilot Program Description

The Federal-aid highway program (FAHP), under which the LEAP pilot program is being administered, is a Federally-assisted, State administered program. The FAHP supports States and localities by providing financial assistance for the design, construction, preventive maintenance, and other Federal eligible costs associated with about 25 percent of the 3.9 million mile highway network of the United States, including the Interstate Highway System and the National Highway System, as well as primary highways and other major collector roads. Federal funds and obligation authority are distributed to the State DOTs, which act on behalf of the States in accordance with 23 U.S.C. 145, 302, and 23 CFR 1.3. State DOTs, in turn, make subawards of Federal-aid highway funds to LPAs. These subrecipient LPAs are jointly responsible with the State DOTs for meeting Federal and State requirements. The LEAP pilot program, carried out pursuant to authority in 23 U.S.C. 502(b)(1)(B), 502(b)(5) and 23 U.S.C. 104(f)(3)(A), will rely upon a cooperative partnership among State DOTs, participating LPAs, and FHWA to fund and administer the program and to assess its impact on project delivery and on FHWA's ability to carry out the additional responsibilities that the direct aid to the LPAs would require.

The LPAs (primarily counties, cities, and towns) own and operate about 43 percent of the roughly 1.0 million miles of the Nation's Federal-aid highways. These LPAs build and maintain this network using a variety of funding sources, including FAHP funding. An estimated 7,000 LPAs deliver about $7 billion annually in Federal-aid projects, or roughly 15 percent of the total Federal-aid program. As noted in the Background Section above, LPAs have requested direct accessibility to Federal funding. At the same time, some States are experiencing budgetary constraints that result in oversight challenges and project delivery delays associated with LPA administered projects. The LEAP pilot program will reduce State DOTs' oversight responsibility of their LPAs for projects delivered under the LEAP pilot program. The pilot program will also test the impact of direct LPA funding on project delivery efficiency and effectiveness.

FHWA believes this pilot program is in alignment with the findings of the draft report Beyond Traffic: Trends and

Choices 2045. Beyond Traffic was released by the Department in February 2015. It examines the long-term and emerging trends affecting our Nation's transportation system and the implications of those trends. It describes how demographic and economic trends, as well as changes in technology, governance, and our climate, will increase the importance of our metropolitan regions in making decisions that cross State, political, socioeconomic, and often transportation planning lines. By 2045, the population is anticipated to increase by 70 million people, with most of that growth occurring in metropolitan areas. Providing LPAs with direct funding is consistent with these trends.

Application and Submission Information for the Leap Pilot Program

Applications must include all of the information below. Incomplete applications will not be considered. The FHWA may ask any applicant to supplement data in its application, but expects the applications to be complete upon submission. The FHWA will expect finalist LPAs to provide additional information described in the participant selection section, if requested.

Applications must include all of the following information for it to be considered for the LEAP pilot program:

Title page: The title page must include the name, location, and population of the LPA, Federal program funding size, total program funding size (Federal plus other), and primary point of contact for the LEAP pilot program.

Structure: The LPA must show its organizational structure and clearly articulate that it is adequately staffed and suitably equipped to administer the Federal-aid program and deliver Federal-aid projects in compliance with Federal requirements.

Narrative: The narrative should include and address the following:

(1) Describe and quantify how participation in the LEAP pilot program will accelerate project delivery and improve efficiency and accessibility to the benefits derived from the Federal-aid highway program, generally and specifically, with regard to LPA program administration in the applicant's State. The benefits discussion must address the anticipated overall program and project delivery cost and schedule savings. The LPAs should compare the anticipated savings between current and proposed delivery and oversight approaches utilizing innovations, streamlined processes and procedures, and technology. The LPAs should identify administrative impediments or delays associated with the current project delivery and oversight process that would be modified or eliminated under the LEAP pilot program.

(2) Describe and quantify how participation in the LEAP pilot program will provide added value to the LPA, FHWA, community, and project delivery (*e.g.,* creates jobs and paves the way for business, particularly small and disadvantaged business enterprises; provides Americans with safe, reliable, and affordable connections to employment, education, healthcare, and other essential services; lifts up neighborhoods and regions by attracting new opportunities, jobs, and housing; ensures intellectual opportunity to improve the LPA staffing abilities and/or strategic delivery capability; fosters effective and efficient stewardship and oversight as well as integrity of the FAHP funds; promotes sustainability; captures higher impact opportunities; and includes technological or collaborative processes and procedures).

(3) Describe how the LPA will evaluate the effects of applicable Federal-aid project delivery requirements on the LPA's project delivery capacity under the LEAP pilot program. In doing so, the LPA should consider comparing the costs and efficiency of project delivery as a subrecipient of the State DOT with delivery as a direct recipient under the LEAP pilot program.

(4) Describe how the LPA currently administers State funded (State only and Federal-aid funds subawarded by the State) capital improvement projects and the level of State administration and oversight associated with these projects.

Application Review and Selection

This section outlines the process and factors that FHWA will use to evaluate and select applicants to participate in the LEAP pilot program. The FHWA will use a two-step process for the selection of LEAP pilot program participants.

Step 1—Selection of Finalists

The FHWA will provide an initial evaluation of applicants by reviewing the application information with particular consideration of the rating factors listed below.

Rating Factors

1. Anticipated project delivery cost savings;

2. Anticipated project delivery time savings;

3. The added value of the proposed approaches to the LPA, FHWA, community, and project delivery (*e.g.,* creates jobs and paves the way for business, particularly small and disadvantaged business enterprises; provides Americans with safe, reliable, and affordable connections to employment, education, healthcare, and other essential services; lifts up neighborhoods and regions by attracting new opportunities, jobs, and housing; ensures intellectual opportunity to improve the LPA staffing abilities and/or strategic delivery capability; fosters effective and efficient stewardship and oversight as well as integrity of the FAHP funds; promotes sustainability; captures higher impact opportunities; and includes technological or collaborative processes and procedures); and

4. The population affected by the projects included in the pilot.

Step 2—Selection of Leap Pilot Program Participants

FHWA intends to ask specific LPAs, based on the initial evaluation in Step 1 above, to provide the following supplemental information for further evaluation of their applications:

(1) A certification verifying that:

a. The applicant LPA has legal authority under State law to act independently or on behalf of the State to fulfill the State's responsibilities under title 23 of the United States Code.

b. The State has agreed or will agree to transfer to FHWA (i) formula funds and obligation authority in accordance with 23 U.S.C. 104(f)(3)(A) for purposes of the LEAP pilot program and (ii) a schedule of the annual amount of such funds and obligation authority to be transferred.

c. The LPA and/or partnering State has agreed or will agree to a voluntary contribution from non-Federal funds (LPA, State, or other) in an amount equal to one percent (for the first year) of the funds transferred to FHWA. The FHWA will use these non-Federal funds to administer the pilot program and provide direct stewardship and oversight of the LPA's delivery of Federal-aid projects that would have otherwise been provided by the State. The amount is to be deposited into a special account, as authorized by 23 U.S.C. 502(b)(5). The LPA must identify the source of the funds and certify that those funds can and will be used for this purpose. The LPA and/or State will need to acknowledge that FHWA may adjust this amount annually to ensure that adequate funds are allocated for the proper administration and associated experimental activities of the pilot program.

(2) Input from the State DOT as to whether the applicant LPA:

a. Has an adequate project delivery system as required in 23 U.S.C. 106(g); and

b. has in place the necessary financial management systems and processes to carry out government requirements outlined in 23 U.S.C. 106(g) and 2 CFR 200.302–303.

(3) The auditor's reports of the LPA's last 5 years of Federal and/or State required audits, including those conducted in accordance with 2 CFR 200 Subpart F.

(4) A description of the funding categories and annual amounts the State DOT agrees to transfer to FHWA under 23 U.S.C. 104(f)(3)(A) for purposes of the LEAP pilot program.

(5) A description of the state of the LPA's Federal-aid obligation and expenditure history over the last 5 years, with a particular emphasis on inactive obligations (see 23 CFR 630.106(a)(4)–(6)). If the LPA has a high rate of inactive obligations, the LPA should explain the circumstances associated with that high inactive obligation rate and quantify how the LEAP pilot program would increase the effectiveness and efficiency associated with use of Federal funds and project delivery.

The FHWA will use the supplemental information above to assess the LPA's likelihood of success, readiness, and capability to successfully deliver Federal-aid projects effectively, efficiently, and in compliance with Federal and State requirements. Based upon this evaluation, the FHWA will select up to five LPA applicants as LEAP pilot program participants, pending further verification as described below.

Verification of Leap Pilot Program Participants

Before FHWA can grant authority for direct administration of Federal Funds, LPAs selected as LEAP pilot program participants must fulfill key Federal-aid requirements as shown in Attachment A. As deemed necessary by FHWA, participating LPAs must verify their capability to comply with requirements applicable to State DOTs under 23 U.S.C. 302. In particular, eligible LPAs, including cities and counties that apply with a State DOT partner, must be adequately staffed and suitably equipped and have (or able to quickly integrate) requisite project delivery, financial, accounting, recordkeeping, and internal controls to carry out the FAHP as a direct recipient of FAHP funding. The LPAs must match direct aid in accordance with 23 U.S.C. 120 and other applicable cost sharing requirements. Finally, LPAs must contribute funds at the beginning of each pilot year from non-Federal (State, local, or other) resources to cover FHWA's administration, oversight, and other pilot costs. This amount will be equal to one percent of the LPA's annual Federal-aid allotment and may be adjusted annually by FHWA as needed, based upon administrative costs.

The verification required may include, but is not limited to, the following:

- Evaluation of the LPA's financial management and project delivery systems in accordance with 23 U.S.C. 106 (g)(2)(A) and (g)(3);
- compliance assessment of the LPA's financial controls and project delivery program in accordance with government-wide requirements in 2 CFR 200.302–303; and
- review and assessment of critical core program areas.

Based upon the verification above and the associated documentation, FHWA will confirm, or adjust as necessary, the selected LPAs as LEAP pilot program participants.

The amount of direct aid funding, the formula fund categories, and obligation authority that a selected LPA will ultimately receive depends upon the cooperative relationship between the LPA and the State DOT. A State DOT and LPA that desire to participate in the LEAP pilot program should assess current annual and out-year program needs at the State and local levels. Collaboratively, they should develop a budget that addresses current and projected required budgetary resources to be made available by the State DOT to FHWA, and then in turn by FHWA to the LPA throughout the term of the pilot. This budget should be based upon the formula (apportioned) contract authority, program funding, and obligation authority the State DOT agrees to transfer. For any LPA that is selected for the pilot, the State DOT must submit a request to transfer formula program funding and obligation authority to FHWA in accordance with 23 U.S.C 104(f)(3)(A). After receipt and processing of the transfer request and the receipt of FHWA's anticipated administrative expenses from non-Federal funds, FHWA will directly award the transferred funding and obligation authority to the participating LPA. Under the LEAP pilot program, the State DOT is not accountable for the funding transferred by the State to FHWA and directly awarded by FHWA to the LPA.

Other Pertinent Requirements

The FHWA will establish a special account under 23 U.S.C. 502(b)(5) to which a selected participating LPA (or State) will contribute from non-Federal resources an amount equal to one percent (for the first year) from the LPA's Federal-aid allotment that a State transfers to FHWA. The FHWA will use these funds to administer the pilot and provide direct stewardship and oversight of LPAs that the LPA's State DOT would have provided otherwise under the FAHP. The LPA agrees to deposit such amount on an annual basis within 30 days of acceptance into the LEAP pilot program and annually thereafter, no later than October 15 of each succeeding year. The FHWA may adjust this amount annually to ensure that adequate funds are allocated for the proper administration and associated experimental activities of the pilot program. When adjusted, FHWA will provide the LPAs and/or States with a 60-day advance notice.

The FHWA will carry out the LEAP pilot program for a period of five years, unless FHWA elects to extend the program.

Performance of Leap Pilot Program Participants

An LPA selected to participate in the LEAP pilot program will assume responsibility under this section for compliance with all procedural and substantive requirements as would apply if that responsibility were carried out by the State DOT. These requirements include LEAP pilot program specific reporting, regular Federal-aid reporting, right-of-way acquisition, environmental compliance, engineering, civil rights, design and inspection, procurement, construction administration, financial administration, performance management, and all other applicable Federal requirements, unless FHWA determines that such assumption of responsibility for one or more of the procedural or substantive requirements is not appropriate. Each applicant selected for the LEAP pilot program must work with FHWA to develop and implement a plan to collect information and report on the LPA's performance with respect to the relevant objectives outlined in the LEAP pilot program.

Each recipient will enter into a Memorandum of Agreement (MOA) with FHWA and its respective State DOT. The MOA will have a term of no more than 5 years, with the option to extend if approved by FHWA. The MOA will also require the LPA to provide to FHWA any information that FHWA considers necessary to ensure that the LPA carries out the requirements of the LEAP pilot program, the Federal-aid Highway Program, and project related

requirements. To ensure compliance with the LEAP pilot program by participating LPAs, FHWA will conduct audits, reviews, and/or assessments during the pilot program. Such audits will be in addition to any of FHWA's other stewardship and oversight responsibilities relating to the LEAP pilot program, as well as any other projects and/or other activities carried out under the LEAP pilot program.

The FHWA will assess the partnership developed under this pilot program in accordance with existing requirements. The FHWA may terminate the agreement and/or pilot program at any time or for any reason consistent with 2 CFR 200.339, including, but not limited to, inadequate LPA performance or inadequate FHWA resources to administer the LEAP pilot program. The participating LPA may also terminate the pilot program upon FHWA's receipt of a 90-day notice from both the LPA and State DOT.

Authority: 23 U.S.C. 502; Sec. 1420, Pub. L. 114–94, 129 Stat.1423; 49 CFR 1.85.

Issued on: October 21, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–25894 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0033]

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 18 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 29, 2016. The exemptions expire on September 29, 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 29, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 59266). That notice listed 18 applicants' case histories. The 18 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 18 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 18 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, prosthetic eye, cataract, complete loss of vision, congenital coloboma, macular scar, and retinal detachment. In most cases, their eye conditions were not recently developed. Fifteen of the applicants were either born with their vision impairments or have had them since childhood.

The 3 individuals that sustained their vision conditions as adults have had them for a range of 9 to 27 years.

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 18 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 40 years. In the past three years, 3 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 29, 2016, notice (81 FR 59266).

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 18 applicants, 3 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 18 applicants listed in the notice of August 29, 2016 (81 FR 59266.

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 18 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 3 comments in this proceeding. Patrick Strupp stated, ''Philip Clements is a safe driver with great vision and depth perception.'' Tishara Price stated that she believes the general public and the companies that employ drivers who hold vision exemptions are put at risk due to drivers' visual limitations. FMCSA monitors the driving records of all drivers who hold vision exemptions to ensure they are meeting safety standards. For additional information

on the basis for exemption determination, please refer to section IV of the August 29, 2016 notice (81 FR 59266). Deb Carlson stated that the state of Minnesota has no concerns with issuing George R. Morehouse an exemption. Additionally, Ms. Carlson noted that Curtis L. Shannon has held a CDL since April 25, 2015. FMCSA does not require drivers to hold a CDL and instead looks at each individual's experience driving CMVs, as defined in part FR 390.5 in the Federal Motor Carrier Safety Regulations, and any crashes and moving violations in their driving history. For additional information on the basis for exemption determination, please refer to section II, section III, and section IV of the August 29, 2016, notice (81 FR 59266).

IV. Conclusion

Based upon its evaluation of the 18 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):

Gregory M. Anderson (NY)
Richard D. Auger (CA)
Theodore N. Belcher (VA)
Darrin E. Bogert (NY)
Michael S. Buck (IN)
Jose D. Chavez (MD)
Philip J. Clements (WI)
Alfonso P. Echevarria (GA)
Samuel R. Graziano (PA)
Zagar E. Melvin (GA)
George R. Morehouse (MN)
Robert H. Nelson, III (VA)
Salvador Sanchez (CA)
Randal J. Shabloski (PA)
Curtis L. Shannon (MN)
Ricardo N. Vargas (CA)
Johnny Watson (GA)
Harold F. White, Jr. (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: October 18, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–25859 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0002–N–24]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of proposed information collection activities listed below. Before submitting these information collection requests (ICRs) to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities, which are identified in this notice.

DATES: Comments must be received no later than December 27, 2016.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, RRS–21, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130—New.'' Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at *Robert.Brogan@dot.gov,* or Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval to implement them. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques and other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv).

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The collection of information is due to the railroad

accident reporting regulations in 49 CFR part 225 that require railroads to submit monthly reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

Form Number(s): FRA F 6180.39i; 54; 55; 55A; 56; 57; 78; 81; 97; 98; 99;107; 150.

Affected Public: Businesses.

Respondent Universe: 790 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
225.6—Consolidated Reporting—Request to FRA by parent corporation to treat its commonly controlled carriers as a single railroad carrier for purposes of this part.	790 railroads	1 request	40 hours	40
—Written agreement by parent corporation with FRA on specific subsidiaries included in its railroad system.	790 railroads	1 agreement	2 hours	2
—Notification by parent corporation regarding any change in the subsidiaries making up its railroad system and amended written agreement with FRA.	790 railroads	1 notification + 1 amended agreement.	60 minutes	2
225.9—Telephonic Reports of Certain Accidents/Incidents and Other Events.	790 railroads	2,400 phone reports	15 minutes	600
225.11—Reporting of Rail Equipment Accidents/Incidents—Form FRA F 6180.54.	790 railroads	2,500 forms	2 hours/1 hour/123 minutes.	4,530
225.12—Rail Equipment Accident/Incident Reports Alleging Human Factor as Cause—Form FRA F 6180.81.	790 railroads	1,200 forms	15 minutes	300
—Part I Form FRA F 6180.78 (Notices)	790 railroads	800 notices + 4,000 copies.	10 minutes + 3 minutes	334
—Joint operations	790 railroads	100 requests	20 minutes	33
—Late identification	790 railroads	20 attachments + 20 notices.	15 minutes	10
—Employee statement supplementing Railroad Accident Report (Part II Form FRA F 6180.78).	Railroad employees	60 statements	1.5 hours	90
—Employee confidential letter	Railroad employees	10 letters	2 hours	20
225.13—Late Reports—Railroad discovery of improperly omitted Report of Accident/Incident.	790 railroads	25 late reports	1 hour	25
—Railroad late/amended Report of Accident/Incident based on employee statement supplementing Railroad Accident Report.	790 railroads	25 amended reports + 40 copies.	1 hour + 3 minutes	27
225.18—Railroad narrative report of possible alcohol/drug involvement in accident/incident.	790 railroads	12 reports	30 minutes	6
—Reports required by section 219.209(b) appended to rail equipment accident/incident report.	790 railroads	5 reports	30 minutes	3
225.19—Rail-Highway Grade Crossing Accident/Incident Report—Form FRA F 6180.57.	790 railroads	2,100 forms	2 hours/1 hour	4,000
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	790 railroads	3,243 forms	60 min./60 min 195 min	3,700
225.21—Railroad Injury and Illness Summary: Form FRA F 6180.55.	790 railroads	9,480 forms	10 minutes	1,580
225.21—Annual Railroad Report of Employee Hours and Casualties, By State—Form FRA F 6180.56.	790 railroads	790 forms	15 minutes	198
225.21/25—Railroad Employee Injury and/or Illness Record—Form FRA F 6180.98.	790 railroads	13,700 forms	60 minutes	13,700
—Copies of forms to employees	790 railroads	411 form copies	2 minutes	14
225.21—Initial Rail Equipment Accident/Incident Record—Form FRA F 6180.97.	790 railroads	11,800 forms	30 minutes	5,900
—Completion of Form FRA F 6180.97 because of rail equipment involvement.	790 railroads	1 form	30 minutes	1
225.21—Alternative Record for Illnesses Claimed to Be Work Related—Form FRA F 6180.107.	790 railroads	300 forms	75 minutes	375
225.21—Highway User Statement—Railroad cover letter and Form FRA F 6180.150 sent out to potentially injured travelers involved in a highway-rail grade crossing accident/incident.	790 railroads	950 letters/forms	50 minutes	792

REPORTING BURDEN—Continued

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Form FRA F 6180.150 completed by highway user and sent back to railroad.	950 Injured Individuals	660 forms	45 minutes	495
225.25 (h)—Posting of Monthly Summary	790 railroads	9,480 lists	5 minutes	790
225.27—Retention of Records	790 railroads	13,700 records	2 minutes	457
—Record of Form FRA F 6180.107	790 railroads	300 records	2 minutes	10
—Record of Monthly Lists	790 railroads	9,480 records	2 minutes	316
—Record of Form FRA F 6180.97	790 railroads	11,800 records	2 minutes	393
—Record of Employee Human Factor Attachments.	790 railroads	1,740 records	2 minutes	58
225.33—Internal Control Plans—Amendments	790 railroads	10 amendments	6 hours	60
225.35—Access to Records and Reports	15 railroads	200 lists	20 minutes	67
225.37—Optical Media Transfer of Reports, Updates, and Amendments.	8 railroads	200 transfers	3 minutes	10
—Electronic Submission of Reports, Updates, and Amendments.	790 railroads	2,400 submissions	3 minutes	120

Total Responses: 103,976.

Estimated Total Annual Burden: 39,058 hours.

Status: Extension of a Currently Approved Collection.

Title: Railroad Communications.

OMB Control Number: 2130–0524.

Abstract: FRA amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to retitle this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule establishes safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 725 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
220.8—Waivers Petitions	725 railroads	6 petition letters	60 minutes	6
220.25—Instruction of Employees	725 railroads	91,000 instructed employees.	30 minutes	45,500
—Subsequent Years	725 railroads	12,5400 instructed employees.	10 minutes	2,090
—Operational Testing of Employees	725 railroads	100,000 tests/record	5 minutes	8,333
220.37—Testing Radio and Wireless Communication Equipment.	725 railroads	780,000 tests	30 seconds	6,500
220.61—Transmission of Mandatory Directives	725 railroads	7,200,000 directives	1.5 minutes	180,000
—Marking Mandatory Directives	725 railroads	624,000 marks	15 seconds	2,600
220.307—Railroad Written Document Stating Authorized Business Purpose for Taking Video/Photo with Railroad-Supplied Electronic Device.	725 railroads	10 written documents	60 minutes	10
—Safety Briefing for Use of Railroad-Supplied Electronic Device in Cab of Controlling Locomotive.	725 railroads	5,460,000 briefings	1 minute	91,000
220.313—Railroad Written Program of Instruction and Examination on Part 220 Requirements.	5 new railroads	5 amended written Instruction Programs.	60 minutes	5
—Training of Railroad Employees on Part 220 Requirements.	730 railroads	5,000 Trained Employees.	15 minutes	1,250
—Employee Training Records	730 railroads	5,000 records	5 minutes	417

Total Responses: 14,277,567.

Estimated Total Annual Burden: 337,717 hours.

Status: Extension of a Currently Approved Collection.

Title: Safety Integration Plans.

OMB Control Number: 2130–0557.

Abstract: FRA and the Surface Transportation Board, working in conjunction with each other, have issued joint final rules establishing procedures for the development and implementation of safety integration plans (SIPs) by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected (the required SIPs), to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues

unique to the amalgamation of large, complex railroad operations.

Form Number(s): N/A.

Affected Public: Railroads.

Respondent Universe: Class I railroads.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
244.13—Safety Integration Plans: Amalgamation of Operations.				
—SIP Development & Quarterly Meetings	8 railroads	1 plan	340 hours	340
244.17—Procedures—Reports to FRA	8 railroads	25 reports	40 hours + 2 hours	88
—Responses to FRA Inquiries Re: SIP data	8 railroads	6 responses	8 hours	48
—Coordination in Implementing Approved SIP	8 railroads	25 phone calls	10 minutes	4
—Request for Confidential Treatment	8 railroads	1 request	16 hours	16
244.19—Disposition—Comments on Proposed SIP Amendments.	8 railroads	2 reports	16 hours	32

Total Responses: 60.

Estimated Total Annual Burden: 528 hours.

Status: Extension of a Currently Approved Collection.

Title: Passenger Train Emergency Systems.

OMB Control Number: 2130–0576.

Abstract: The collection of information is due to passenger train emergency regulations in 49 CFR part 238 to further the safety of passenger train occupants through both enhancements and additions to FRA's existing regulations. In its final rule issued on November 29, 2013 (*see* 78 FR 71785), FRA added requirements for emergency passage through vestibule and other interior passageway doors and enhanced emergency egress and rescue signage requirements. FRA also established requirements for low-location emergency exit path markings to assist occupants in reaching and operating emergency exits, particularly under conditions of limited visibility. Moreover, FRA added standards to ensure emergency lighting systems are provided in all passenger cars and enhanced requirements for the survivability of emergency lighting systems in new passenger cars. The purpose of this part is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public and to mitigate the consequences of such occurrences to the extent they cannot be prevented.

Form Number(s): N/A.

Affected Public: Railroads/businesses.

Respondent Universe: 30 railroads.

Frequency of Submission: On occasion.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
238.112—Door Emergency Egress and Rescue Access Systems—markings, signage, instructions.	30 railroads	45,804 markings/signs/instructions.	15 minutes	11,451
—Passenger car exterior doors intended for emergency access by responders marked with retro-reflective material and instructions provided for their use.	30 railroads	30,536 exterior door markings.	15 minutes	7,634
—Markings and instructions—interior door panels/windows.	30 railroads	1,340 marked panels/windows.	15 minutes	335
—Testing of car door removable panels, removable windows, manual override devices, & door retention mechanisms as part of periodic mechanical inspection—Record.	30 railroads	17 tested cars/records	90 minutes	26
238.113—Emergency Window Exits—markings/and instructions.	30 railroads	662 window markings	60 min./90 min./120 minutes.	964
—Periodic testing of representative sample of car emergency exit windows as part of periodic mechanical inspection—Record.	30 railroads	17 tested cars/records	30 minutes	9
238.114—Rescue Access Windows—Markings with retro-reflective material on each exterior car.	30 railroads	1,092 access window markings.	45 minutes	819
238.121—Emergency Communication—Marking of each intercom intended for passenger use on new Tier I & Tier II passenger cars.	30 railroads	116 marked intercom locations (58 new cars with two locations per car).	5 minutes	10
238.303—Exterior calendar day mechanical inspection of passenger equipment: Replacement of missing, illegible, or inconspicuous markings, signage, & instructions.	30 railroads	150 replacement required markings.	20 minutes	50
—Record of noncomplying marking, signage, or instruction.	30 railroads	150 noncompliance records.	2 minutes	5
238.305—Interior calendar day mechanical inspection of passenger cars: Written notification to train crew of noncomplying condition and posting notice on door of defective condition.	30 railroads	260 notifications + 260 notices.	1 minute	9

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Written notification to train crew of car with non-functioning PA or intercom system.	30 railroads	300 written notifications	1 minute	5
—Record of noncomplying condition	30 railroads	300 records	2 minutes	10
—Railroad written procedures for mitigating hazards of noncomplying condition.	30 railroads	30 written procedures	40 hours	1,200
—Written notification to train crew of noncomplying condition.	30 railroads	458 written notifications	2 minutes	15
238.307—Records of inspection, testing, and maintenance of passenger car emergency window exits.	30 railroads	7,634 inspection and testing records.	5 minutes	636
—Replacement of missing, illegible, or inconspicuous emergency roof access markings/instructions on cars.	30 railroads	32 required markings	20 minutes	11
238.311—Single Car Test: Railroad copy of APTA Standard (SS–M–005–98) for railroad head trainer.	30 railroads	30 APTA copies	15 minutes	8
—Other railroad copies of APTA Standard	30 railroads	360 copies (12 copies per railroad).	2 minutes	12

Total Responses: 89,780.

Estimated Annual Burden: 23,325 hours.

Status: Extension of a Currently Approved Collection.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

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

Patrick Warren,

Acting Executive Director.

[FR Doc. 2016–25893 Filed 10–25–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0102; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America , Inc. (Volkswagen), has determined that certain model year (MY) 2016 Volkswagen eGolf motor vehicles do not fully comply with paragraph S6.5.3.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices and associated equipment.* Volkswagen filed a report dated September 16, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen then petitioned NHTSA under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is November 25, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to 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 Deliver:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov*, including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and their implementing regulations at 49 CFR part 556, Volkswagen submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C.

30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Affected are 1,967 MY 2016 Volkswagen eGolf motor vehicles manufactured between June 25, 2015, and September 14, 2016.

III. Noncompliance

Volkswagen explains that the noncompliance is due to a labeling error. The affected vehicles are equipped with halogen headlamps that are missing the required operation voltage label on the headlamp assembly and therefore do not meet the requirements specified in paragraph S6.5.3.2 of FMVSS No. 108.

IV. Rule Text

Paragraph S6 .5.3.2 of FMVSS No. 108 states:

S6.5.3.2 *Voltage and trade number.* Each original and replacement equipment headlamp , and each original and replacement equipment beam contributor must be marked with its voltage and with its part or trade number.

V. Summary of Volkswagen's Petition

Volkswagen described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Volkswagen stated that the correct halogen bulb specification is denoted on the headlamp glass lens, as required, as well as on the headlamp label and in service literature, etc. The halogen light bulb type implicitly carries the voltage specification, as the designated H7 bulb is always a 12V halogen light bulb. Additionally, the halogen light bulb socket is mechanically coded and will not accept the fitment of a replacement light bulb of incorrect specification. As such, no safety risk is present, even though there is a noncompliance with FMVSS No. 108 regulatory requirements.

Volkswagen concluded by expressing the belief that the subject noncompliance presents no risk and is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–25802 Filed 10–25–16; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 52, 78, and 97
Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 78, and 97

[EPA–HQ–OAR–2015–0500; FRL–9950–30–OAR]

RIN 2060–AS05

Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) published the original Cross-State Air Pollution Rule (original CSAPR) on August 8, 2011, to address interstate transport of ozone pollution under the 1997 ozone National Ambient Air Quality Standards (NAAQS) and interstate transport of fine particulate matter ($PM_{2.5}$) pollution under the 1997 and 2006 $PM_{2.5}$ NAAQS. The EPA is finalizing this Cross-State Air Pollution Rule Update (CSAPR Update) to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS. This final rule will benefit human health and welfare by reducing ground-level ozone pollution. In particular, it will reduce ozone season emissions of oxides of nitrogen (NO_X) in 22 eastern states that can be transported downwind as NO_X or, after transformation in the atmosphere, as ozone, and can negatively affect air quality and public health in downwind areas.

For these 22 eastern states, the EPA is issuing Federal Implementation Plans (FIPs) that generally provide updated CSAPR NO_X ozone season emission budgets for the electric generating units (EGUs) within these states, and that implement these budgets via modifications to the CSAPR NO_X ozone season allowance trading program that was established under the original CSAPR. The EPA is finalizing these new or revised FIP requirements only for certain states that have failed to submit an approvable State Implementation Plan (SIP) addressing interstate emission transport for the 2008 ozone NAAQS. The FIPs require affected EGUs in each covered state to reduce emissions to comply with program requirements beginning with the 2017 ozone season (May 1 through September 30). This final rule partially addresses the EPA's obligation under the Clean Air Act to promulgate FIPs to address interstate emission transport for the 2008 ozone NAAQS. In conjunction with other federal and state actions to reduce ozone pollution, these requirements will assist downwind states in the eastern United States with attaining and maintaining the 2008 ozone NAAQS.

This CSAPR Update also is intended to address the July 28, 2015 remand by the United States Court of Appeals for the District of Columbia Circuit of certain states' original CSAPR phase 2 ozone season NO_X emission budgets. In addition, this rule updates the status of certain states' outstanding interstate ozone transport obligations with respect to the 1997 ozone NAAQS, for which the original CSAPR provided a partial remedy.

DATES: This final rule is effective on December 27, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2015–0500. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. David Risley, Clean Air Markets Division, Office of Atmospheric Programs (Mail Code 6204M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9177; email address: *Risley.David@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Glossary of Terms and Abbreviations

The following are abbreviations of terms used in the preamble.

CAA or Act Clean Air Act
CAIR Clean Air Interstate Rule
CAMx Comprehensive Air Quality Model With Extensions
CBI Confidential Business Information
CEMS Continuous Emission Monitoring Systems
CFR Code of Federal Regulations
CSAPR Cross-State Air Pollution Rule
EGU Electric Generating Unit
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GWh Gigawatt Hours
ICR Information Collection Request
IPM Integrated Planning Model
Km Kilometer
lb/mmBtu Pounds per Million British Thermal Unit
LNB Low-NO_X Burners
mmBtu Million British Thermal Unit
MOVES Motor Vehicle Emission Simulator
NAAQS National Ambient Air Quality Standard
NBP NO_X Budget Trading Program
NEI National Emission Inventory
NO_X Nitrogen Oxides
NODA Notice of Data Availability
NSPS New Source Performance Standard
OFA Overfire Air
$PM_{2.5}$ Fine Particulate Matter
PPB Parts Per Billion
RIA Regulatory Impact Analysis
SC–CO_2 Social Cost of Carbon
SCR Selective Catalytic Reduction
SIP State Implementation Plan
SMOKE Sparse Matrix Operator Kernel Emissions
SNCR Selective Non-Catalytic Reduction
SO_2 Sulfur Dioxide
TSD Technical Support Document

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L. Judicial Review and Determinations Under Section 307(b)(1) and (d)

I. Executive Summary

The EPA published the original Cross-State Air Pollution Rule (original CSAPR) [1] on August 8, 2011 to address the interstate transport of emissions with respect to the 1997 ozone National Ambient Air Quality Standards (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.[2] The EPA is finalizing this Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update) to address the interstate transport of emissions with respect to the 2008 ozone NAAQS. The 2008 ozone NAAQS is an 8-hour standard that was set at 75 parts per billion (ppb).[3] The EPA proposed the CSAPR Update with respect to the 2008 ozone NAAQS on December 3, 2015 (80 FR 75706), and solicited comment on that action. The EPA provided an additional opportunity to comment on the air quality modeling platform and air quality modeling results that were used for the proposed CSAPR Update, through an August 4, 2015 Notice of Data Availability (NODA) (80 FR 46271) requesting comment on these data. This final rule is informed by comments received on the NODA and proposed CSAPR Update. This CSAPR Update also is intended to address the remand by the United States Court of Appeals for the District of Columbia Circuit of certain states' original CSAPR NO_X ozone season phase 2 emission budgets. Additionally, this rule updates the status of outstanding interstate ozone transport obligations for states that the original CSAPR provided a partial remedy with respect to the 1997 ozone NAAQS.

A. Purpose of Regulatory Action

The purpose of this rulemaking is to protect public health and welfare by reducing interstate emission transport that significantly contributes to nonattainment, or interferes with maintenance, of the 2008 ozone NAAQS in the eastern U.S. Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems, for example, by limiting tree growth.

Studies have established that ozone occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.[4] [5] To reduce this regional-scale ozone transport, assessments of ozone control approaches have concluded that NO_X control strategies are effective. Further, studies have found that EGU NO_X emission reductions can be effective in reducing ozone pollution—specifically 8-hour peak concentrations, which is the form of the 2008 ozone standard. For example, studies have shown EGU NO_X reductions achieved under one of the EPA's prior interstate transport rulemakings known as the NO_X SIP Call [6] were effective in reducing 8-hour peak ozone concentrations during the ozone season.[7]

Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(I), sometimes called the ''good neighbor provision,''

[1] *See* 76 FR 48208 (August 8, 2011).

[2] The original CSAPR did not evaluate the 2008 ozone standard because the 2008 ozone NAAQS was under reconsideration during the analytic work for the rule.

[3] *See* 73 FR 16436 (March 27, 2008).

[4] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[5] Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[6] 63 FR 57356 (October 27, 1998).

[7] Gégo et al. (2007) Observation-based assessment of the impact of nitrogen oxides emissions reductions on O_3 air quality over the eastern United States. J. of Applied Meteorology and Climatology 46: 994–1008.

requires states [8] to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with respect to any primary or secondary NAAQS. The statute vests states with the primary responsibility to address interstate emission transport through the development of good neighbor State Implementation Plans (SIPs). The EPA supports state efforts to submit good neighbor SIPs for the 2008 ozone NAAQS and has shared information with states to facilitate such SIP submittals. However, the CAA also requires the EPA to fill a backstop role by issuing Federal Implementation Plans (FIPs) where states fail to submit good neighbor SIPs or the EPA disapproves a submitted good neighbor SIP.

On July 13, 2015, the EPA published a rule finding that 24 states [9] failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (July 13, 2015) (effective August 12, 2015). This CSAPR Update finalizes FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia). On June 15, 2016 and July 20, 2016, the EPA published additional rules finding that New Jersey and Maryland, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). This final CSAPR Update also finalizes FIPs addressing the good neighbor provision for these two states. Additionally, the EPA is finalizing FIPs for seven states for which it finalized disapproval of the states' good neighbor SIPs for the 2008 ozone NAAQS: Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin. The FIPs being promulgated partially address the EPA's outstanding CAA obligations to prohibit interstate transport of air pollution which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. The EPA also determines that it has fully satisfied its FIP obligation as to 9 states (Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont), which the EPA has determined do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS.

The EPA is finalizing a FIP for each of the 22 states subject to this rule, having found that they failed to submit a complete good neighbor SIP (15 states) or having issued a final rule disapproving their good neighbor SIP (7 states). However, even after these FIPs take effect, any state included in this rule can submit a good neighbor SIP at any time that, if approved by the EPA, could replace the FIP for that state. Additionally, CSAPR provides states with the option to submit abbreviated SIPs to customize the methodology for allocating CSAPR NO_X ozone season allowances while participating in the ozone season trading program and the EPA is extending that approach in this rule.

The 22 states for which the EPA is promulgating FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS are listed in Table I.A–1.

TABLE I.A–1—LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS

State name
Alabama
Arkansas
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Michigan
Mississippi
Missouri
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Tennessee
Texas
Virginia
West Virginia
Wisconsin

The final CSAPR Update addresses collective contributions of ozone pollution from states in the eastern U.S. and builds on previous eastern-focused efforts to address collective contributions to interstate transport, including the NO_X SIP Call, the Clean Air Interstate Rule,[10] and the original CSAPR rules. The EPA is not finalizing FIPs to address interstate emission transport for western states, where there may be additional factors to consider in the EPA's and state's evaluations.

The EPA finds, in the final air quality modeling on which this rule is based, one state for which the EPA proposed a FIP in the proposed CSAPR Update rule, North Carolina, is not linked to any downwind nonattainment or maintenance receptors. Therefore, the EPA is not finalizing a FIP for North Carolina.

For 14 of the eastern states evaluated in this rule (Connecticut, Florida, Georgia, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and Vermont), the EPA has determined that emissions from those states do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, the EPA has determined that it need not require further emission reductions from sources in these states to address the good neighbor provision as to the 2008 ozone NAAQS.

Of the 22 states covered in this CSAPR Update, 21 states [11] have original CSAPR NO_X ozone season FIP requirements with respect to the 1997 ozone NAAQS. One state, Kansas, has newly added CSAPR NO_X ozone season FIP requirements in this action. For the 22 states affected by one of the FIPs finalized in this action, the EPA is promulgating new FIPs with EGU NO_X ozone season emission budgets to reduce interstate transport for the 2008 ozone NAAQS.

One state, Georgia, has an ongoing original CSAPR NO_X ozone season FIP requirement with respect to the 1997 ozone NAAQS, but the EPA has found that is does not contribute to interstate transport with respect to the 2008 ozone NAAQS. The EPA did not reopen comment on Georgia's interstate transport obligation with respect to the 1997 ozone NAAQS in this rulemaking, so Georgia's original CSAPR NO_X ozone season requirements (including its emission budget) continue unchanged.

In addition to reducing interstate ozone transport with respect to the 2008 ozone NAAQS, this rule also addresses the status of outstanding interstate ozone transport obligations with respect

[8] The term ''state'' has the same meaning as provided in CAA section 302(d) which specifically includes the District of Columbia.

[9] The states included in this finding of failure to submit are: Alabama, Arkansas, California, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

[10] 70 FR 25162 (May 12, 2005).

[11] Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

to the 1997 ozone NAAQS. In the original CSAPR, the EPA promulgated FIPs for 25 states to address ozone transport with respect to the 1997 NAAQS. For 11 of these states,[12] the original CSAPR rulemakings quantified ozone season NO_X emission reductions that were not necessarily sufficient to eliminate all significant contribution to downwind nonattainment or interference with downwind maintenance of the 1997 ozone NAAQS. Relying on modeling completed for this final rule, this action finds that, with implementation of the original CSAPR NO_X ozone season emission budgets, emissions from ten of these states no longer significantly contribute to downwind nonattainment or interference with maintenance for the 1997 ozone NAAQS. The EPA further finds that, with implementation of the CSAPR Update NO_X ozone season emission budgets, emissions from these ten states also no longer significantly contribute to downwind nonattainment or interference with maintenance for the 1997 ozone NAAQS. With respect to Texas, the modeling shows that emissions from within the state no longer significantly contribute to downwind nonattainment or interference with maintenance for the 1997 ozone NAAQS even without implementation of the original CSAPR NO_X ozone season emission budget. Accordingly, sources in Texas will no longer be subject to the emissions budget calculated to address the 1997 ozone NAAQS. However, as described earlier, this rule finalizes a new emissions budget for Texas designed to address interstate transport with respect to the 2008 ozone NAAQS.

This action is also intended to address the portion of the July 28, 2015 opinion of the United States Court of Appeals for the District of Columbia (D.C. Circuit) remanding without vacatur 11 states' CSAPR phase 2 NO_X ozone season emission budgets. *EME Homer City Generation, L.P.,* v. *EPA,* No. 795 F.3d 118, 129–30, 138 (*EME Homer City II*). This action promulgates new NO_X ozone season budgets addressing interstate transport with respect to the 2008 ozone NAAQS that take effect in 2017, which replace the invalidated phase 2 budgets for 8 states, and also removes the remaining three states from the CSAPR NO_X ozone season trading program as a result of the EPA's finding that these three states do not significantly contribute to downwind nonattainment or interference with maintenance for the 2008 standard.[13]

The EPA acknowledges that, in *EME Homer City II,* the D.C. Circuit also remanded without vacatur the CSAPR phase 2 SO_2 emission budgets as to four states. 795 F.3d at 129, 138. This final rule does not address the remand of these CSAPR phase 2 SO_2 annual emission budgets. On June 27, 2016, the EPA released a memorandum outlining the agency's approach for responding to the D.C. Circuit's July 2015 remand of the CSAPR phase 2 SO_2 annual emission budgets for Alabama, Georgia, South Carolina and Texas. The memorandum can be found at *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO2_Remand_Memo.pdf*.

On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare.[14] While reductions achieved by this final rule will aid in attainment and maintenance of the 2015 standard, the CSAPR Update rule to reduce interstate emission transport with respect to the 2008 ozone NAAQS is a separate and distinct regulatory action and is not meant to address the CAA's good neighbor provision with respect to the 2015 ozone NAAQS final rule.

The EPA notes that the level of the annual $PM_{2.5}$ NAAQS was also revised after CSAPR was promulgated (78 FR 3086, January 15, 2013). However, this final rule does not address the 2012 $PM_{2.5}$ standard.[15]

B. Major Provisions

To reduce interstate emission transport under the authority provided in CAA section 110(a)(2)(D)(i)(I), this rule further limits ozone season (May 1 through September 30) NO_X emissions from electric generating units (EGUs) in 22 eastern states using the same framework used by the EPA in developing the original CSAPR. The CSAPR framework provides a 4-step process to address the requirements of the good neighbor provision for ambient ozone or $PM_{2.5}$ standards: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining clean air standards (*i.e.,* NAAQS); (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of a standard; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions via regional emission allowance trading programs. Each time the relevant NAAQS are revised, this process can be applied for the new NAAQS. In this final action, the EPA applies this 4-step CSAPR framework to update CSAPR with respect to the 2008 ozone NAAQS.

The EPA is aligning implementation of this rule with relevant attainment dates for the 2008 ozone NAAQS, as required by the D.C. Circuit's decision in *North Carolina* v. *EPA.*[16] The EPA's final 2008 Ozone NAAQS SIP Requirements Rule[17] established the attainment deadline of July 20, 2018 for ozone nonattainment areas currently designated as Moderate. Because the attainment date falls during the 2018 ozone season, the 2017 ozone season will be the last full season from which data can be used to determine attainment of the NAAQS by the July 20, 2018 attainment date. Therefore, consistent with the court's instruction in *North Carolina,* the EPA establishes emission budgets and implementation of these emission budgets starting with the 2017 ozone season.

In order to apply the first and second steps of the CSAPR 4-step framework to interstate transport for the 2008 ozone NAAQS, the EPA used air quality modeling to project ozone concentrations at air quality monitoring sites to 2017. The EPA updated this modeling for the final rule, using the most current complete dataset available, taking into account comments submitted on the August 2015 Air Quality Modeling NODA and on the CSAPR Update rule proposal. For the final rule, the EPA evaluated modeling

[12] Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Texas. (*See* CSAPR Final Rule, 76 FR at 48220, and the CSAPR Supplemental Rule, 76 FR at 80760, December 27, 2011).

[13] The EPA is promulgating new emission budgets that would replace the invalidated CSAPR phase 2 NO_X ozone season budgets for Iowa, Maryland, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia, and Wisconsin. The EPA is removing Florida, North Carolina, and South Carolina from the CSAPR ozone season NO_X trading program.

[14] 80 FR 65291 (October 26, 2015).

[15] The EPA issued a memo addressing CAA section 110(a)(2)(D)(i)(I) requirements for the 2012 $PM_{2.5}$ NAAQS, see ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I),'' March 17, 2016.

[16] 531 F.3d 896, 911–12 (D.C. Cir. 2008) (holding that the EPA must coordinate interstate transport compliance deadlines with downwind attainment deadlines).

[17] 80 FR 12264, 12268; 40 CFR 51.1103.

projections for air quality monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2008 ozone NAAQS. The EPA then uses air quality modeling to assess contributions from upwind states to these downwind receptors and evaluates these contributions relative to a screening threshold of 1 percent of the NAAQS. States with contributions that equal or exceed 1 percent of the NAAQS are identified as warranting further analysis for significant contribution to nonattainment or interference with maintenance. States with contributions below 1 percent of the NAAQS are considered to not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states.[18]

To apply the third step of the 4-step CSAPR framework, the EPA quantified emission budgets that limit allowable emissions and represent the emission levels that remain after each state makes EGU NO_X emission reductions that are necessary to reduce interstate ozone transport for the 2008 NAAQS. To establish the CSAPR Update emission budgets, the EPA evaluated levels of uniform NO_X control stringency, represented by an estimated marginal cost per ton of NO_X reduced. The EPA applied the CSAPR multi-factor test to evaluate cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. The EPA used this multi-factor assessment to gauge the extent to which emission reductions are needed, and to ensure those reductions do not represent over-control.

The multi-factor test generates a ''knee in the curve'' at a point where emission budgets reflect a control stringency with an estimated marginal cost of $1,400 per ton. This level of stringency in emission budgets represents the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other emission budget levels evaluated. The EPA finds that very cost-effective EGU NO_X reductions can make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. Further, this evaluation shows that emission budgets reflecting the $1,400 per ton cost threshold do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked or the 1 percent contribution threshold that triggered further evaluation. As a result, the EPA is finalizing EGU NO_X ozone season emission budgets developed using uniform control stringency represented by $1,400 per ton. The emission budgets that the EPA is finalizing in FIPs for the CSAPR Update rule are summarized in table I.B–1.

TABLE I.B–1—FINAL 2017 EGU NO_X OZONE SEASON EMISSION BUDGETS FOR THE CSAPR UPDATE RULE

[Ozone season NO_X tons]

State	CSAPR update rule 2017* emission budgets
Alabama	13,211
Arkansas	12,048/9,210
Illinois	14,601
Indiana	23,303
Iowa	11,272
Kansas	8,027
Kentucky	21,115
Louisiana	18,639
Maryland	3,828
Michigan	17,023
Mississippi	6,315
Missouri	15,780
New Jersey	2,062
New York	5,135
Ohio	19,522
Oklahoma	11,641
Pennsylvania	17,952
Tennessee	7,736
Texas	52,301
Virginia	9,223
West Virginia	17,815
Wisconsin	7,915
22 State Region	316,464/313,626

*The EPA is finalizing CSAPR EGU NO_X ozone season emission budgets for Arkansas of 12,048 tons for 2017 and 9,210 tons for 2018 and subsequent control periods.

Our analysis shows that there is uncertainty regarding whether or not meaningful, cost-effective non-EGU emission reductions are achievable for the 2017 ozone season. Therefore, non-EGU reductions are not included in the final rule.

For most states, the EGU NO_X ozone season emission budgets finalized in this action represent a partial remedy to address interstate emission transport for the 2008 ozone NAAQS.[19] However, as stated in the proposal, the EPA believes that it is beneficial to implement, without further delay, EGU NO_X reductions that are achievable in the near term, particularly before the Moderate area attainment date of 2018. Generally, notwithstanding that additional reductions may be required to fully address the states' interstate transport obligations, the EGU NO_X emission reductions implemented by this final rule are needed for upwind states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS and for downwind states with ozone nonattainment areas that are required to attain the standard by July 20, 2018.

To meet the fourth step of the four-step CSAPR framework (*i.e.,* implementation), the FIPs contain enforceable measures necessary to achieve the emission reductions in each state. The FIPs contained in this CSAPR Update require power plants in covered states (*i.e.,* states that significantly contribute to ozone nonattainment or interfere with maintenance of the ozone standard in the east) to participate in a CSAPR NO_X ozone season Group 2 allowance trading program. CSAPR's trading programs and the EPA's prior emission trading programs (*e.g.,* CAIR and the NO_X SIP Call) provide a proven implementation framework for achieving emission reductions. In addition to providing environmental certainty (*i.e.,* a cap on emissions), these programs also provide regulated sources with flexibility in choosing compliance strategies. By using the CSAPR allowance trading programs, the EPA is applying an implementation framework that was shaped by notice and comment in previous rulemakings and reflects the evolution of these programs in response to court decisions and practical experience gained by states, industry and the EPA. Further, this program is familiar to the EGUs that will be regulated under this rule, which means that monitoring, reporting, and compliance will continue as they are already conducted under CSAPR's current ozone season and annual programs.[20]

[18] As discussed further in section V, EPA's modeling showed that the following eastern states contribute below the 1 percent contribution threshold to downwind nonattainment or maintenance receptors: Connecticut, Florida, Georgia, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and Vermont.

[19] The requirements for one state, Tennessee, will fully eliminate that state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS.

[20] One state, Kansas, will have a new CSAPR ozone season requirement. EGUs located in Kansas currently participate in the CSAPR NO_X and SO_2 annual programs. The remaining 22 states were

The CSAPR Update establishes two trading groups within the CSAPR NO_X ozone season allowance trading program—Group 1 for Georgia and Group 2 for the 22 CSAPR Update states. At this time, Georgia is the only state included in the CSAPR NO_X ozone season Group 1 trading program. The EPA will issue distinct allowances for these trading groups; CSAPR NO_X ozone season Group 1 allowances and CSAPR NO_X ozone season Group 2 allowances. Covered entities demonstrate compliance by holding and surrendering one allowance for each ton of NO_X emitted during the ozone season. In order to ensure that the CSAPR NO_X ozone season trading program implements emission reductions needed to meet the Clean Air Act's good neighbor requirements for the CSAPR Update states, the EPA finalizes a prohibition on allowance usage between Georgia and the CSAPR Update states. However, the EPA provides an option for Georgia to voluntarily adopt via SIP an emission budget that is commensurate with CSAPR Update emission budgets that could include Georgia in the Group 2 trading program with the CSAPR Update states. Implementation of Group 1 and Group 2 trading programs is substantially the same as the original CSAPR NO_X ozone season trading program. For states with continuing obligations to address interstate transport with respect to the 1997 ozone NAAQS as well as obligations under this rule with respect to the 2008 ozone NAAQS,[21] the EPA is coordinating the FIP requirements for the two NAAQS by providing that compliance with the 2008 ozone NAAQS FIP requirements simultaneously satisfies the state's transport obligations with respect to the less stringent 1997 ozone NAAQS. These states will therefore only be required to comply with the CSAPR NO_X ozone season Group 2 requirements.

For this CSAPR Update, the EPA considered whether, and to what extent, banked[22] 2015 and 2016 CSAPR NO_X ozone season allowances should be eligible for compliance in the CSAPR Update rule states. As proposed, the CSAPR Update finalizes a limit on the number of banked allowances carried over based on the need to assure that the CAA objective of the CSAPR Update is achieved. This approach transitions some allowances for compliance to further ensure feasibility of implementing the CSAPR Update rule. The EPA proposed to use turn-in ratios calculated using a formula—essentially the same formula that the EPA is finalizing in this rule. Specifically, the final rule establishes a one-time allowance conversion that transitions a limited number of banked vintage 2015 and 2016 allowances for compliance use in CSAPR Update states. This allowance conversion limits the number of banked allowances to 1.5 years of states' aggregated CSAPR variability limits (approximately 99,700 allowances) in order to ensure that implementation of the trading program will result in NO_X emission reductions sufficient to address significant contribution to nonattainment or interference with maintenance of downwind pollution with respect to the 2008 ozone NAAQS.

The compliance requirements of this final rule are in addition to existing, on-the-books EPA and state environmental regulations. To the extent that new, unplanned actions may also reduce EGU NO_X emissions within a state included in the CSAPR Update, whether for compliance with other environmental requirements or for other reasons, such actions would help the state comply with its good neighbor requirements. The final FIP compliance requirements begin with the 2017 ozone season and will continue for subsequent ozone seasons to ensure that upwind states included in this rule meet their Clean Air Act obligation to address interstate emission transport with respect to the 2008 ozone NAAQS for 2017 and future years. Even after the attainment deadline has passed, areas are required to continue to attain and maintain the NAAQS, and these good neighbor emission limits will ensure that future emissions are consistent with states' ongoing good neighbor obligations.

The EPA is finalizing revisions to the Code of Federal Regulations (CFR), specifically: 40 CFR part 97, subparts BBBBB and EEEEE (federal CSAPR NO_X ozone season trading programs); 40 CFR 52.38(b) (CSAPR NO_X ozone season FIP requirements and rules on replacing or modifying the FIP requirements through a SIP revision); state-specific subparts of 40 CFR part 52 for 25 states (descriptions for these states of FIP requirements and consequences of SIP revisions related to ozone season NO_X emissions); and 40 CFR part 78 (provisions addressing the scope of coverage of the administrative appeal procedures) to address interstate transport for the 2008 ozone NAAQS. In addition, as proposed, various minor corrections are being finalized to these CFR sections and other sections of parts 52, 78, and 97 relating to the CSAPR ozone season and annual trading programs.

The remainder of this preamble is organized as follows: Section III describes the EPA's legal authority for this action; section IV describes the human health and environmental context, the EPA's overall approach for addressing interstate transport through use of the CSAPR framework, and the EPA's response to the remand of certain CSAPR NO_X ozone season emission budgets; section V describes the air quality modeling platform and emission inventories that the EPA used in its assessment of downwind receptors of concern and upwind state ozone contributions to those receptors for the final rule; section VI describes the EPA's approach to quantify upwind state obligations in the form of final EGU NO_X emission budgets; section VII details the implementation requirements including key elements of the CSAPR allowance trading program and deadlines for compliance; section VIII describes the expected costs, benefits, and other impacts of this rule; section IX discusses changes to the existing regulatory text for the CSAPR FIPs and the CSAPR trading programs; and section X discusses the statutes and executive orders affecting this rulemaking. The preamble sections include certain significant comments and responses to comments as they pertain to the topic covered in each section.

C. Benefits and Costs

The rule will achieve near-term emission reductions from the power sector, lowering ozone season NO_X in 2017 by 61,000 tons, compared to 2017 projections without the rule.

Consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' the EPA has estimated the costs and benefits of the rule. Estimates here are subject to uncertainties discussed further in the Regulatory Impact Analysis (RIA) in the docket. The estimated net benefits of the rule at 3 percent and 7 percent discount rates are $460 million to $810 million and $450 million to $790 million (2011$), respectively. The non-monetized benefits include reduced ecosystem impacts and improved visibility. Discussion of the rule's costs and benefits is provided in preamble section VIII and in the RIA, which is found in the docket for this final rule. The EPA's estimate of the rule's costs

included in the original CSAPR ozone season program as to the 1997 ozone NAAQS.

[21] Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee.

[22] Allowances that were not used for compliance and were saved for use in a later compliance period.

and quantified benefits is summarized in Table I.C–1.

TABLE I.C–1—SUMMARY OF COMPLIANCE COSTS, MONETIZED BENEFITS, AND MONETIZED NET BENEFITS OF THE FINAL RULE FOR 2017

[2011$]

Description	Impacts (benefits at 3% discount rate) ($ millions)	Impacts (benefits at 7% discount rate) ($ millions)
Annualized Compliance Costs [a]	68	68
Monetized benefits [b]	530 to 880	520 to 860
Monetized Net benefits (benefits-costs)	460 to 810	450 to 790

[a] The annualized compliance costs estimate is used as a proxy for the total annualized social costs. These costs are determined using the 4.77% percent discount rate from the electricity sector model used for this analysis and are rounded to two significant figures. The annualized compliance costs presented here reflect the cost to the electricity sector of complying with the FIPs. These costs do not include monitoring, recordkeeping, and reporting costs, which are reported separately. See Chapter 4 of the RIA for this final rule for details and explanation.

[b] Total monetized health benefits are estimated at 3 percent and 7 percent discount rates and are rounded to two significant figures. The total monetized benefits reflect the human health benefits associated with reducing exposure to ozone and $PM_{2.5}$. It is important to note that the monetized benefits and co-benefits include many but not all health effects associated with pollution exposure. Benefits are shown as a range reflecting studies from Krewski et al. (2009) with Smith et al. (2009) to Lepeule et al. (2012) with Zanobetti and Schwartz (2008).

II. General Information

A. To whom does this final action apply?

This rule affects EGUs, and regulates the following groups:

Industry group	NAICS *
Fossil fuel-fired electric power generation	221112

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware will be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 97.504 and 97.804. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Legal Authority

A. The EPA's Statutory Authority for the Final Rule

The statutory authority for this final action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this rule. The most relevant portions of section 110 are subsections 110(a)(1), 110(a)(2), and 110(a)(2)(D)(i)(I), and 110(c)(1).

Section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS.[23] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS.[24]

The EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required content of these submissions. It includes a list of specific elements that ''[e]ach such plan'' submission must address.[25] All states, regardless of whether the state includes areas designated as nonattainment for the relevant NAAQS, must have SIPs that meet the applicable requirements of section 110(a)(2), including provisions of section 110(a)(2)(D)(i)(I) described later and that are the focus of this rule.

Section 110(c)(1) requires the Administrator to promulgate a FIP at any time within 2 years after the Administrator: (1) Finds that a state has failed to make a required SIP submission, (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C), or (3) disapproves a SIP submission, unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[26]

Section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' provides the basis for this action. It requires that each state SIP shall include provisions sufficient to ''prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [27]

The EPA has previously issued three rules interpreting and clarifying the requirements of section 110(a)(2)(D)(i)(I) for states in the eastern half of the United States. These rules, and the associated court decisions addressing these rules, provide important guidance regarding the requirements of section 110(a)(2)(D)(i)(I).

The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS.[28] The rule required 22 states and the District of Columbia to amend their SIPs and limit NO_X emissions that contribute to ozone nonattainment. The EPA set a NO_X ozone season budget for each covered state, essentially a cap on ozone season NO_X emissions in the state. Sources in the covered states were given the option to participate in a regional cap-and-trade program, known as the NO_X Budget Trading Program (NBP). The NO_X SIP Call was largely upheld by the D.C. Circuit in *Michigan*

[23] 42 U.S.C. 7410(a)(1).

[24] *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1601 (2014).

[25] The EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 2013).

[26] 42 U.S.C. 7410(c)(1).

[27] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[28] 63 FR 57356 (Oct. 27, 1998).

v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

The Clean Air Interstate Rule (CAIR), promulgated in 2005, addressed both the 1997 $PM_{2.5}$ and the 1997 ozone standards under the good neighbor provision.[29] CAIR required SIP revisions in 28 states and the District of Columbia to ensure that certain emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and NO_X) and ozone (NO_X)—were prohibited. Like the NO_X SIP Call, states were given the option to participate in a regional cap-and-trade program to satisfy their SIP obligations. When the EPA promulgated the final CAIR in May 2005, the EPA also issued a national rule finding that states had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and the 1997 ozone NAAQS. Those states were required by the CAA to have submitted good neighbor SIPs for those standards by July 2000.[30] These findings of failure to submit triggered a 2-year clock for the EPA to issue FIPs to address interstate transport, and on March 15, 2006, the EPA promulgated FIPs to ensure that the emission reductions required by CAIR would be achieved on schedule.[31] CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal considerations of CAIR and the D.C. Circuit holding in *North Carolina,* refer to the preamble of the original CSAPR rule.[32]

In 2011, the EPA promulgated the original CSAPR to address the issues raised by the remand of CAIR and additionally to address the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[33] CSAPR requires 28 states to reduce SO_2 emissions, annual NO_X emissions, and/or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards. To accomplish implementation aligned with the applicable attainment deadlines, the EPA promulgated FIPs for each of the 28 states covered by CSAPR. The FIPs implement regional cap-and-trade programs to achieve the necessary emission reductions. States can submit good neighbor SIPs at any time that, if approved by the EPA, would replace the CSAPR FIP for that state.[34] As discussed later, CSAPR was the subject of decisions by both the D.C. Circuit and the Supreme Court, which largely upheld the rule.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR and holding, among other things, that states had no obligation to submit good neighbor SIPs until the EPA had first quantified each state's good neighbor obligation.[35] The implication of this decision was that the EPA did not have authority to promulgate the CSAPR FIPs as a result of states' failure to submit or the EPA's disapproval of good neighbor SIPs. The D.C. Circuit also held that the EPA erred in apportioning upwind emission reduction obligations using uniform cost thresholds, and that such approach may result in unnecessary over-control.[36] The EPA sought review, first with the D.C. Circuit *en banc* and then with the Supreme Court. While the D.C. Circuit declined to consider the EPA's appeal *en banc,*[37] on January 23, 2013, the Supreme Court granted the EPA's petition for certiorari.[38]

On April 29, 2014, the Supreme Court issued a decision reversing the D.C. Circuit's *EME Homer City* opinion on CSAPR and held, among other things, that under the plain language of the CAA, states must submit SIPs addressing the good neighbor provision within 3 years of promulgation of a new or revised NAAQS, regardless of whether the EPA first provides guidance, technical data or rulemaking to quantify the state's obligation.[39] Thus, the Supreme Court affirmed that states have an obligation in the first instance to address the good neighbor provision after promulgation of a new or revised NAAQS, a holding that also applies to states' obligation to address interstate transport for the 2008 ozone NAAQS. The Court also reversed the D.C. Circuit's holding that the EPA's use of cost to apportion upwind states' emission reduction obligations was impermissible, finding that the EPA's approach was a ''permissible construction of the statute.'' [40] The Supreme Court remanded the litigation to the D.C. Circuit for further proceedings.

Finally, on July 28, 2015, the D.C. Circuit issued its opinion on CSAPR regarding the remaining legal issues raised by the petitioners on remand from the Supreme Court, *EME Homer City II,* 795 F.3d 118. This decision largely upheld the EPA's approach to addressing interstate transport in CSAPR, leaving the rule in place and affirming the EPA's interpretation of various statutory provisions and the EPA's technical decisions. The decision also remanded the rule without vacatur for reconsideration of the EPA's emission budgets for certain states. In particular and as discussed in section IV, the court declared invalid the CSAPR phase 2 NO_X ozone season emission budgets of 11 states, holding that those budgets over-control with respect to the downwind air quality problems to which those states were linked for the 1997 ozone NAAQS. The court's decision explicitly applies to 11 states: Florida, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and West Virginia. *Id.* at 129–30, 138. The court also remanded without vacatur the CSAPR phase 2 SO_2 annual emission budgets for four states (Alabama, Georgia, South Carolina, and Texas) for reconsideration. *Id.* at 129, 138. The court instructed the EPA to act ''promptly'' in addressing these issues on remand. *Id.* at 132.[41]

Section 301(a)(1) of the CAA also gives the Administrator of the EPA general authority to prescribe such regulations as are necessary to carry out her functions under the Act.[42] Pursuant to this section, the EPA has authority to clarify the applicability of CAA requirements. In this action, among other things, the EPA is clarifying the applicability of section 110(a)(2)(D)(i)(I) by identifying NO_X emissions in certain states that must be prohibited pursuant

[29] 70 FR 25162 (May 12, 2005).

[30] 70 FR 21147 (May 12, 2005).

[31] 71 FR 25328 (April 28, 2006).

[32] 76 FR 48208, 48217 (Aug. 8, 2011).

[33] 76 FR 48208.

[34] Alabama has submitted, and EPA has approved, a SIP revision that replaces the CSAPR FIPs for the annual trading programs in Alabama. 81 FR 59869 (Aug. 31, 2016).

[35] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012) (*EME Homer City I*).

[36] *Id.* at 23–27.

[37] *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying the EPA's motion for rehearing en banc).

[38] *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013) (granting the EPA's and other parties' petitions for certiorari).

[39] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1600–01 (2014).

[40] *Id.* at 1606–07.

[41] In 2011, EPA finalized a supplemental rule that added five states to the CSAPR NO_X ozone season trading program, 76 FR 80760 (Dec. 27, 2011). In 2012, the EPA also finalized two rules making certain revisions to CSAPR. 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012). Various petitioners filed legal challenges to these rules in the D.C. Circuit. *See Public Service Company of Oklahoma* v. *EPA,* No. 12–1023 (D.C. Cir., filed Jan. 13, 2012); *Wisconsin Public Service Corp.* v. *EPA,* No. 12–1163 (D.C. Cir., filed Apr. 6, 2012); *Utility Air Regulatory Group* v. *EPA,* No. 12–1346 (D.C. Cir., filed Aug. 9, 2012). These cases were held in abeyance during the pendency of the litigation in *EME Homer City,* and remain pending in the D.C. Circuit as of the date of signature of this rule.

[42] 42 U.S.C. 7601(a)(1).

to this section with respect to the 2008 ozone NAAQS.

In particular, the EPA is using its authority under sections 110 and 301 to promulgate FIPs that establish or revise EGU NO_X ozone season emission budgets for 22 eastern states to mitigate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in another state.[43] The EPA is also responding to the court's remand in *EME Homer City II* with respect to the remanded NO_X ozone season emission budgets.

B. FIP Authority for Each State Covered by the Final Rule

As discussed previously, all states have an obligation to submit SIPs that address the applicable requirements of CAA section 110(a)(2) within 3 years of promulgation of a new or revised NAAQS. With respect to the 2008 ozone NAAQS, states were required to submit SIPs addressing the good neighbor provision by March 12, 2011. If the EPA finds that a state has failed to submit a SIP to meet its statutory obligation to address section 110(a)(2)(D)(i)(I) or if the EPA disapproves a good neighbor SIP, then the EPA has not only the authority but the obligation, pursuant to section 110(c)(1), to promulgate a FIP to address the CAA requirement no later than 2 years after the finding or disapproval.

On July 13, 2015, the EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (July 13, 2015) (effective August 12, 2015). The finding action triggered a 2-year deadline for the EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The states included in this finding of failure to submit are: Alabama, Arkansas, California, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

Several additional eastern states—Connecticut, Delaware, Indiana, Kentucky, Louisiana, Maryland, Nebraska, New Jersey, New York, North Dakota, Ohio, Rhode Island, South Dakota, Texas, Wisconsin, and the District of Columbia—had previously submitted SIPs to address the requirements of section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Since the EPA issued the findings notice, the agency has also received a SIP submission addressing the good neighbor provision for the 2008 ozone NAAQS from the states of Maine, New Hampshire, North Carolina, and Vermont. Maryland and New Jersey subsequently withdrew their good neighbor SIP submittals addressing the 2008 ozone standard. The EPA issued separate notices finding that Maryland and New Jersey failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016); 81 FR 38963 (June 15, 2016) (New Jersey, effective July 15, 2016). The finding actions triggered a 2-year deadline for the EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018 and New Jersey by July 15, 2018.

To the extent that the EPA had not finalized action on these SIPs at proposal, the states were encouraged to evaluate their submissions in light of the information provided in the proposal with respect to interstate ozone transport for the 2008 ozone NAAQS. The EPA has finalized disapproval or partial disapproval of the good neighbor SIPs from Indiana, Kentucky, Louisiana, New York, Ohio, Texas and Wisconsin,[44] triggering the EPA's authority and obligation to promulgate FIPs that implement the requirements of the good neighbor provision for those states. The EPA has approved good neighbor SIPs addressing the 2008 ozone standard submitted by Nebraska, North Dakota, and South Dakota. The EPA has not yet taken final action to approve or disapprove the SIPs submitted by Connecticut, Delaware, the District of Columbia, Maine, New Hampshire, North Carolina, Rhode Island, and Vermont. However, the EPA is not finalizing FIPs as to these states in this action. The EPA will review and act upon these states' SIPs in separate, future actions.

Comment: Some commenters have questioned the EPA's authority to propose FIPs for certain states before the EPA has either issued findings of failure to submit good neighbor SIPs or taken final action to approve or disapprove pending good neighbor SIPs submitted by those states. Commenters state that the EPA's development of FIPs prior to taking those actions upsets the balance of state and federal authority. Some commenters state that this approach is inconsistent with the sequencing of events envisioned by Congress in CAA section 110(c). Another commenter contends that the CAA contemplates that states should have an opportunity to correct any problems with its SIP in a timely fashion and avoid imposition of a FIP. The commenter states that, until the EPA proposes to disapprove a state's SIP, the state does not know what corrections would be necessary.

One commenter states that the Supreme Court's decision in *EPA* v. *EME Homer City Generation* means that the EPA may issue a FIP if more than two years have elapsed since the EPA found the state's SIP was inadequate. The commenter suggests that states should be given the opportunity to submit a SIP after the EPA establishes a state budget before a FIP is implemented. The commenter states that the EPA adhered to the CAA in prior transport rulemakings like the NO_X SIP Call and CAIR by allowing states to decide how to meet budgets quantified by the EPA.

Response: The EPA disagrees with commenters' contention that we cannot propose a FIP for a state prior to taking final action on the state's SIP. CAA section 110(c) provides that the EPA ''shall promulgate a [FIP] *at any time* within two years after'' the EPA either finds that a state has failed to make a required submission or disapproves a SIP, in whole or in part. As the Supreme Court confirmed in *EPA* v. *EME Homer City Generation,* ''EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit.'' 134 S. Ct. at 1601.

The EPA's proposal was not the ''promulgation'' of a FIP. Rather, the EPA is only finalizing FIPs for those states for which the EPA has either made a finding of failure to submit a SIP addressing the state's good neighbor obligation as to the 2008 ozone NAAQS or for which the EPA disapproved the state's good neighbor SIP. Accordingly, consistent with section 110(c), the EPA is only promulgating FIPs for those states that the EPA found have failed to address the statutory SIP obligation.

The EPA also disagrees that it was required to provide states with an opportunity to submit a SIP addressing the budgets calculated in this rule

[43] One state, Kansas, will have a new CSAPR ozone season requirement under this final rule. The remaining 21 states were included in the original CSAPR ozone season program as to the 1997 ozone NAAQS.

[44] The EPA has finalized a partial disapproval of the good neighbor SIP from the state of Wisconsin. The EPA partially approved Wisconsin's SIP as to the state's significant contribution to nonattainment and partially disapproved as to the state's interference with maintenance of the 2008 ozone NAAQS. *See* 81 FR 53309 (August 12, 2013).

before promulgating a FIP. The Supreme Court clearly held that the Act does not ''condition the duty to promulgate a FIP on EPA's having first quantified an upwind State's good neighbor obligations.'' 134 S. Ct. at 1601. Nor does the Act ''require EPA to furnish upwind States with information of any kind about their good neighbor obligations before a FIP issues.'' *Id.* While the EPA has taken a different approach in some prior rulemakings by providing states with an opportunity to submit a SIP after the EPA quantified the states' budgets, the circumstances of this rule require a different approach. As discussed in more detail earlier, it is important for the EPA to assure that emission reductions are achieved, to the extent feasible, by the 2017 ozone season in order to assist downwind areas with meeting the July 20, 2018 attainment deadline for Moderate nonattainment areas. If the EPA were to permit states an opportunity to develop and submit state plans to address the emission reductions required by this rule before imposing a federal plan, the EPA could not ensure that these emission reductions would be achieved in a timely manner. However, states may submit SIPs to replace the FIPs promulgated in this final rule at any time. Some types of SIPs that a state might consider are outlined in more detail later in section VII.

In addition to the agency's general FIP authority and the comments received on that issue, there is a unique issue related to the EPA's FIP obligation for Kentucky. On March 7, 2013, the EPA finalized action on the State of Kentucky's SIP submission addressing, among other things, the good neighbor provision requirements for the 2008 ozone NAAQS.[45] The EPA disapproved the submission as to the good neighbor requirements. In the notice, the EPA explained that the disapproval of the good neighbor portion of the state's infrastructure SIP submission did not trigger a mandatory duty for the EPA to promulgate a FIP to address these requirements.[46] Citing the D.C. Circuit's decision *EME Homer City I,* the EPA explained that the court concluded states have no obligation to make a SIP submission to address the good neighbor provision for a new or revised NAAQS until the EPA first defines a state's obligations pursuant to that section.[47] Therefore, because a good neighbor SIP addressing the 2008 ozone standard was not at that time required, the EPA indicated that its disapproval action would not trigger an obligation for the EPA to promulgate a FIP to address the interstate transport requirements.[48]

On April 30, 2013, the Sierra Club filed a petition for review of the EPA's action in the United States Court of Appeals for the Sixth Circuit based on the agency's conclusion that the FIP clock was not triggered by the disapproval of Kentucky's good neighbor SIP.[49] Subsequently, on April 29, 2014, the Supreme Court issued a decision reversing and vacating the D.C. Circuit's decision in *EME Homer City.* Following the Supreme Court decision, the EPA requested, and the Sixth Circuit granted, vacatur and remand of the portion of the EPA's final action on Kentucky's good neighbor SIP that determined that the FIP obligation was not triggered by the disapproval.[50]

In this document, the EPA is correcting the portion of the Kentucky disapproval notice indicating that the FIP clock would not be triggered by the SIP disapproval. The EPA believes that the EPA's obligation to develop a FIP was triggered on the date of the judgment issued by the Supreme Court in *EPA* v. *EME Homer City Generation,* June 2, 2014, and the EPA is obligated to issue a FIP at any time within two years of that date. The EPA does not believe that the FIP obligation was triggered as of the date of the SIP disapproval because the controlling law as of that date was the D.C. Circuit decision in *EME Homer City I,* which held that states had no obligation to submit a SIP and the EPA had no authority to issue a FIP until the EPA first quantified each state's emission reduction obligation under the good neighbor provision. Accordingly, the most reasonable conclusion is that the EPA's FIP obligation was triggered when the Supreme Court clarified the state and federal obligations with respect to the good neighbor provision. Thus, the EPA finds that the FIP obligation was triggered as of June 2, 2014, and that the EPA was obligated to promulgate a FIP that corrects the deficiency by June 2, 2016.

IV. Air Quality Issues Addressed and Overall Approach for the Final Rule

A. The Interstate Transport Challenge Under the 2008 Ozone Standard

1. Background on the Nature of the Interstate Ozone Transport Problem

Interstate transport of NO_X emissions poses significant challenges with respect to attaining the 2008 ozone NAAQS in the eastern U.S. and thus presents a threat to public health and welfare. The following sections discuss the nature and sources of ozone, how ozone is transported in the atmosphere and across state boundaries, and ozone's impacts on human health and the environment.

a. *Nature of ozone and the Ozone NAAQS.* Ground-level ozone is not emitted directly into the air, but is a secondary air pollutant created by chemical reactions between oxides of nitrogen (NO_X), carbon monoxide (CO), methane (CH_4), and non-methane volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities, industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. The potential for ground-level ozone formation increases during periods with warmer temperatures and stagnant air masses; therefore ozone levels are generally higher during the summer months.[51] Ground-level ozone concentrations and temperature are highly correlated in the eastern U.S. with observed ozone increases of 2–3 ppb per degree Celsius reported.[52] Increased temperatures may also increase emissions of volatile man-made and biogenic organics and can indirectly increase anthropogenic NO_X emissions as well (*e.g.,* increased electricity generation to power air conditioning).

The 2008 primary and secondary ozone standards are both 75 ppb as an 8-hour maximum level. Specifically, the standards require that an area may not exceed 75 ppb using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration.

b. *Ozone transport.* Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. Studies have

[45] 78 FR 14681 (March 7, 2013).

[46] *Id.* at 14683.

[47] *Id.*

[48] *Id.*

[49] *Sierra Club* v. *EPA,* Case No. 13–3546 (6th Cir., filed Apr. 30, 2013).

[50] Order, *Sierra Club* v. *EPA,* Case No. 13–3546, Document No. 74–1 (Mar. 13, 2015).

[51] Rasmussen, D.J. *et al.* (2011) Ground-level ozone-temperature relationships in the eastern US: A monthly climatology for evaluating chemistry-climate models. Atmospheric Environment 47: 142–153.

[52] Bloomer, B.J., J.W. Stehr, C.A. Piety, R.J. Salawitch, *and* R.R. Dickerson (2009), Observed relationships of ozone air pollution with temperature and emissions, Geophys. Res. Lett., 36, *L09803.*

established that ozone formation, atmospheric residence, and transport occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone pollution across state borders compounds the difficulty for downwind states in meeting health-based air quality standards (*i.e.,* NAAQS). Numerous observational studies have demonstrated the transport of ozone and its precursors and the impact of upwind emissions on high concentrations of ozone pollution. Bergin et al., for example, examined the impacts of statewide emissions of NO_X, SO_2, and VOCs on concentrations of ozone and fine particulate matter in the eastern U.S. They found on average 77 percent of each state's ground-level ozone is produced by precursor emissions from upwind states.[53] Liao et al., showed the impacts of interstate transport of anthropogenic NO_X and VOC emissions on peak ozone formation in 2007 in the Mid-Atlantic U.S. Results suggest reductions in anthropogenic NO_X emissions from EGU and non-EGU sources from the Great Lakes region as well as northeastern and southeastern U.S. would be effective for decreasing area-mean peak ozone concentrations in the Mid-Atlantic.[54]

The EPA has previously concluded in the NO_X SIP Call, CAIR, and CSAPR that, for reducing regional-scale ozone transport, a NO_X control strategy is effective. While substantial progress has been made in reducing ozone in many urban areas, regional-scale ozone transport is still an important component of peak ozone concentrations during the summer ozone season. Model assessments have looked at impacts on peak ozone concentrations after potential emission reduction scenarios for NO_X and VOCs for NO_X-limited and VOC-limited areas. For example, Jiang and Fast concluded that NO_X emission reductions strategies would be effective in lowering ozone mixing ratios in urban areas and Liao et al. showed NO_X reductions would reduce peak ozone concentrations in non-attainment areas in the Mid-Atlantic (*i.e.* a 10 percent reduction in EGU and non-EGU NO_X emissions would result in approximately a 6 ppb reduction in peak ozone concentrations in Washington, DC).[55] Assessments of ozone conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) also show the importance of NO_X emissions on ozone transport. This analysis is in the docket for this rule and also can be found in the docket for the 2015 ozone NAAQS, Docket No. EPA–HQ–OAR–2013–0169–0057.

Further, studies have found that EGU NO_X emission reductions, particularly, can be effective in reducing ozone pollution as quantified by the form of the 2008 ozone standard, 8-hour peak concentrations. Specifically, studies have found that EGU NO_X emission reductions can be effective in reducing the upper end of the cumulative ozone distribution in the summer on a regional scale.[56] Analysis of air quality monitoring data trends shows reductions in summertime ozone concurrent with implementation of EGU NO_X reduction programs.[57] Gilliland et al. presented reductions in observed versus modeled ozone concentrations in the eastern U.S. downwind from major NO_X sources. The results showed significant reductions in ozone concentrations (10–25 percent) from observed measurements (CASTNET and AQS) [58] between 2002 and 2005, linking reductions in EGU NO_X emissions from upwind states with ozone reductions downwind of the major source areas.[59] Another study shows that EGU NO_X emissions can contribute between 5 ppb and 25 ppb to average 8-hour peak ozone concentrations in Mid-Atlantic metropolitan statistical areas.[60] Additionally, Gégo et al. showed that ground-level ozone concentrations were significantly reduced after the NO_X SIP Call in regions downwind of major EGUs in the Ohio River Valley.[61]

Previous regional ozone transport efforts, including the NO_X SIP Call, CAIR, and CSAPR, required ozone season NO_X reductions from EGUs to address interstate transport of ozone. The EPA has taken comment on regulating EGU NO_X emissions to address interstate ozone transport in the notice-and-comment process for these rulemakings. The EPA received no significant adverse comments in any of these earlier proposals regarding the rules' focus on ozone season EGU NO_X reductions to address interstate ozone transport. Further, many comments received on the proposed CSAPR Update encouraged the EPA to seek further EGU NO_X reductions to address interstate transport for the 2008 ozone NAAQS. As described later in this document, the EPA's analysis finds that the power sector continues to be capable of making NO_X reductions that reduce interstate transport with respect to ground-level ozone.

c. *Health and environmental effects.* Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. For more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure, see the EPA's October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) in the docket for this rule and can be also found in the docket for the 2015 ozone NAAQS, Docket No. EPA–HQ–OAR–2013–0169–0057.

[53] Bergin, M.S. *et al.* (2007) Regional air quality: local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[54] Liao, K. *et al.* (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[55] Jiang, G.; Fast, J.D. (2004) Modeling the effects of VOC and NO_X emission sources on ozone formation in Houston during the TexAQS 2000 field campaign. Atmospheric Environment 38: 5071–5085.

[56] Hidy, G.M. and Blanchard C.L. (2015) Precursor reductions and ground-level ozone in the Continental United States. J. of Air & Waste Management Assn. 65, 10.

[57] Simon, H. *et al.* (2015) Ozone trends across the United States over a period of decreasing NO_X and VOC emissions. Environmental Science & Technology 49, 186–195.

[58] CASTNET is the EPA's Clean Air Status and Trends Network. AQS is the EPA's Air Quality System.

[59] Gilliland, A.B. *et al.* (2008) Dynamic evaluation of regional air quality models: Assessing changes in O_3 stemming from changes in emissions and meteorology. Atmospheric Environment 42: 5110–5123.

[60] Summertime Zero-Out Contributions of regional NO_X and VOC emissions to modeled 8-hour ozone concentrations in the Washington, DC, Philadelphia, PA, and New York City MSAs.

[61] Gégo *et al.* (2007) Observation-based assessment of the impact of nitrogen oxides emissions reductions on O_3 air quality over the eastern United States. J. of Applied Meteorology and Climatology 46: 994–1008.

2. Events Affecting Application of the Good Neighbor Provision for the 2008 Ozone NAAQS

On March 12, 2008, the EPA promulgated a revision to the NAAQS, lowering both the primary and secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). These revisions of the NAAQS, in turn, triggered a 3-year deadline of March 12, 2011, for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. During this 3-year SIP development period, on September 16, 2009, the EPA announced [62] that it would reconsider the 2008 ozone NAAQS. To reduce the workload for states during the interim period of reconsideration, the EPA also announced its intention to propose staying implementation of the 2008 standards with respect to a number of the requirements. On January 6, 2010, the EPA proposed to revise the 2008 NAAQS for ozone from 75 ppb to a level within the range of 60 to 70 ppb. *See* 75 FR 2938 (January 19, 2010). The EPA indicated its intent to issue final standards based upon the reconsideration by summer 2011.

On August 8, 2011, the EPA published the original CSAPR, in response to the D.C. Circuit's remand of the EPA's prior federal transport rule, CAIR. *See* 76 FR 48208 (August 8, 2011). The original CSAPR addressed ozone transport under the 1997 ozone NAAQS, but did not address the 2008 ozone standard, because the 2008 ozone NAAQS was under reconsideration when CSAPR was finalized.

On September 2, 2011, consistent with the direction of the President, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget returned the draft final 2008 ozone rule the EPA had developed upon reconsideration to the agency for further consideration.[63] In view of that action and the timing of the agency's ongoing periodic review of the ozone NAAQS required under CAA section 109 (as announced on September 29, 2008), the EPA decided to coordinate further proceedings on its voluntary reconsideration of the 2008 ozone standards with its ongoing periodic review of the ozone NAAQS.[64] Implementation for the original 2008 ozone standards was renewed. However, a number of legal developments pertaining to the EPA's promulgation of the original CSAPR created uncertainty surrounding the EPA's statutory interpretation and implementation of the good neighbor provision.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA* addressing several legal challenges to CSAPR and holding, among other things, that states had no obligation to submit good neighbor SIPs until the EPA had first quantified each state's good neighbor obligation.[65] According to that decision, the submission deadline for good neighbor SIPs under the CAA would not necessarily be tied to the promulgation of a new or revised NAAQS. While the EPA disagreed with this interpretation of the statute and sought review of the decision in the D.C. Circuit and the U.S. Supreme Court, the EPA complied with the D.C. Circuit's ruling during the pendency of its appeal. In particular, the EPA indicated that, consistent with the D.C. Circuit's opinion, it would not at that time issue findings that states had failed to submit good neighbor SIPs for the 2008 ozone NAAQS.[66]

On January 23, 2013, the Supreme Court granted the EPA's petition for certiorari.[67] On April 29, 2014, the Supreme Court reversed the D.C. Circuit's *EME Homer City* opinion on CSAPR and held, among other things, that under the plain language of the CAA, states must submit SIPs addressing the good neighbor provision within 3 years of promulgation of a new or revised NAAQS, regardless of whether the EPA first provides guidance, technical data, or rulemaking to quantify the state's obligation.[68] Thus, the Supreme Court affirmed that states have an obligation in the first instance to address the good neighbor provision after promulgation of a new or revised NAAQS, a holding that also applies to the states' obligation to address transport for the 2008 ozone NAAQS.

States were therefore required to submit SIPs addressing the good neighbor provision with respect to the 2008 ozone NAAQS by March 12, 2011. Under the Supreme Court's holding, to the extent that states have failed to submit SIPs to meet this statutory obligation or the EPA has disapproved SIPs, then the EPA has not only the authority, but the obligation, to promulgate FIPs to address the CAA requirement.

B. Approach To Address Ozone Transport Under the 2008 Ozone NAAQS via FIPs

1. Requiring Emission Reductions From Upwind States

As described in section IV.A.1.b, the EPA finds that upwind EGU emission reductions are generally effective at reducing interstate transport of ozone pollution. And as described in section VI, with respect to this rule, the EPA finds that upwind emission reductions are achievable and will result in important and meaningful decreases in harmful downwind ozone pollution.

At the same time, the EPA also notes that section 110(a)(2)(D)(i)(I) of the CAA only requires upwind states to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. It does not shift to upwind states the full responsibility for ensuring that all areas in downwind states attain and maintain the NAAQS. Downwind states also have control responsibilities because, among other things, the Act requires each state to adopt enforceable plans (*i.e.,* State Implementation Plans) to attain and maintain air quality standards. The requirements established for upwind states through this final rule will supplement downwind states' local emission control strategies. The downwind states' local control strategies, in conjunction with the emission reductions from upwind states that this rule will provide, promote attainment and maintenance of the 2008 ozone NAAQS.

The Clean Air Act's good neighbor provision requires states and the EPA to address interstate transport of air pollution that affects downwind states' ability to attain and maintain NAAQS. Other provisions of the CAA, namely sections 179B and 319(b), are available

[62] Fact Sheet. The EPA to reconsider Ozone Pollution Standards. *http://www.epa.gov/groundlevelozone/pdfs/O3_Reconsideration_FACT%20SHEET_091609.pdf.*

[63] *See* Letter from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, to Lisa Jackson, Administrator, U.S. Environmental Protection Agency (Sept. 2, 2011), available at *http://www.reginfo.gov/public/return/EPA_Return_Letter_9-2-2011.pdf.*

[64] *Id.*

[65] *EME Homer City I,* 696 F.3d at 31.

[66] *See, e.g.,* Memorandum from the Office of Air and Radiation former Assistant Administrator Gina McCarthy to the EPA Regions, ''Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule,'' November 19, 2012; 78 FR 65559 (November 1, 2013) (final action on Florida infrastructure SIP submission for 2008 8-hour ozone NAAQS); 78 FR 14450 (March 6, 2013) (final action on Tennessee infrastructure SIP submissions for 2008 8-hour ozone NAAQS); Final Rule, Findings of Failure To Submit a Complete State Implementation Plan for section 110(a) Pertaining to the 2008 Ozone National Ambient Air Quality Standard, 78 FR 2884 (January 15, 2013).

[67] *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013) (granting the EPA's and other parties' petitions for certiorari).

[68] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1600–01.

to deal with NAAQS exceedances not attributable to the interstate transport of pollution covered by the good neighbor provisions but caused by emission sources outside the control of a downwind state. These provisions address international transport and exceptional events, respectively.[69] [70]

Comment: Some commenters claimed that local measures should be evaluated first, before requiring upwind emission reductions, in terms of efforts to attain and maintain the 2008 ozone NAAQS. Commenters also claimed that the EPA failed to adequately evaluate local measures to reduce ozone concentrations at identified nonattainment and maintenance receptors.

Response: The EPA disagrees with these comments. First, the Clean Air Act makes no reference to considering local measures before upwind measures in planning for attainment and maintenance of a NAAQS. In fact, the EPA notes that commenters' local-first argument is at opposition with the NAAQS implementation schedule provided in the CAA. Specifically, the Clean Air Act requires upwind states to submit infrastructure SIPs, including requirements to address interstate transport, within three years of promulgation of a new or revised NAAQS. Submission of interstate transport SIP requirements is one of the first chronological actions in NAAQS implementation. States are required to submit attainment plans for Moderate ozone nonattainment areas within 3 years of nonattainment designation, which normally comes two to three years after promulgation of a new or revised NAAQS. Marginal ozone nonattainment areas that fail to meet their attainment deadlines and are reclassified as Moderate areas may be provided a new deadline upon reclassification to submit Moderate area plans. *See* CAA section 182(i). Depending on the designations schedule, Moderate area attainment plans would be due approximately 5 years after promulgation of a new or revised standards, *i.e.,* 2 years after interstate transport SIPs, and plans for reclassified areas would follow even later. Commenters' request that the EPA not evaluate upwind obligations until downwind controls have been evaluated is therefore unavailing under the statutory structure. If states or the EPA waited until Moderate area attainment plans were due before requiring upwind reductions, then these upwind reductions would be delayed several years beyond the mandatory CAA schedule. Further, the CAA implementation timeline implies that requiring local reductions first would place an inequitable burden on downwind areas by requiring them to plan for attainment and maintenance without any upwind actions. Adhering to the CAA schedule provides that downwind areas are able to plan for attainment and maintenance while accounting for previously determined and quantified upwind actions.

Further, the commenters are incorrect in asserting that the EPA has not considered any local controls obligations at downwind receptors when quantifying upwind state emission reductions. As described further in section VI, when evaluating air quality improvements at each level of control stringency, the EPA assumed that the downwind state home to an identified receptor would make emission reductions at an equivalent level of control stringency. While this final rule does not mandate any particular level of reductions in downwind states, the analysis to quantify upwind state reductions assumes that downwind states share responsibility for addressing identified air quality problems with the upwind states.

2. Focusing on 2017 for Analysis and Implementation

The EPA is aligning the analysis and implementation of this final rulemaking with the 2017 ozone season (May 1–September 30) in order to assist downwind states with timely attainment of the 2008 ozone NAAQS. On March 6, 2015, the EPA's final 2008 Ozone NAAQS SIP Requirements Rule [71] revised the attainment deadline for ozone nonattainment areas currently designated as Moderate to July 20, 2018. The EPA established this deadline in the 2015 Ozone SIP Requirements Rule after previously establishing a deadline of December 31, 2018, which was vacated by the D.C. Circuit Court in *Natural Resources Defense Council* v. *EPA.* [72] In order to demonstrate attainment by this deadline, states will need to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018 deadline does not afford enough time for measured data of the full 2018 ozone season. Therefore, consistent with the court's instruction in *North Carolina,* the EPA has identified achievable upwind emissions reductions and aligned implementation of these reductions, to the extent possible, for the 2017 ozone season. These 2017 reductions can positively influence air quality that would be used to demonstrate attainment. To the extent that ozone improvements in 2017 yield the 4th highest daily maximum 8-hour average concentrations for all monitors in the area that are below the level of the 2008 ozone NAAQS, states can request a 1-year attainment date extension under CAA section 181(a)(5), as interpreted in 40 CFR 51.1107.

The EPA has therefore conducted its analyses of downwind air quality problems and upwind state contributions based on projections to the 2017 ozone season. The EPA also limits its assessment of NO_x mitigation potential to those strategies that are feasible for the 2017 ozone season. This rulemaking also finalizes the 2017 ozone season as the initial control period for the finalized FIPs.

Comment: Several comments claimed that requiring reductions beginning with the 2017 ozone season does not provide sufficient time to implement emission reductions for compliance with this rulemaking's limitations on emissions.

Response: The EPA disagrees with these comments. In establishing its limitations on emissions (*i.e.,* emission budgets and corresponding assurance levels), under the CSAPR Update rule the EPA explicitly took into account the fact that only certain emission reduction strategies can be implemented for the 2017 ozone season. Specifically, the

[69] The EPA recognizes that both in-state and upwind wildfires may contribute to monitored ozone concentrations. The EPA encourages all states to consider how the appropriate use of prescribed fire may benefit public safety and health by resulting in fewer ozone exceedances for both the affected state and their neighboring states.

[70] The CAA and the EPA's implementing regulations, specifically the Exceptional Events Rule at 40 CFR 50.14, allow for the exclusion of air quality monitoring data from regulatory determinations when events, including wildland fires, contribute to NAAQS exceedances or violations if they meet certain requirements, including the criterion that the event be not reasonably controllable or preventable. Wildland fires can be of two types: Wildfire (unplanned) and prescribed fire (planned). Under the Exceptional Events Rule, unless there is evidence to the contrary, wildfires are considered, by their nature, to be not reasonably controllable or preventable. Because prescribed fires on wildland are intentionally ignited for resource management purposes, to meet the not reasonably controllable or preventable criterion, they must be conducted under a certified Smoke Management Program or employ basic smoke management practices. Both types of wildland fire must also satisfy the other rule criteria for influenced air quality monitoring data to be excluded under the Exceptional Events Rule. In November 2015, the EPA proposed revisions to the Exceptional Events Rule and released a draft guidance document, which applies the proposed rule revisions to wildfire events that could influence ozone concentrations. These actions, which the EPA intends to finalize in the summer of 2016, further clarify the treatment of wildland fires under the Exceptional Events Rule.

[71] 80 FR 12264, 12268 (Mar. 6, 2015); 40 CFR 51.1103.

[72] 777 F.3d 456 (D.C. Cir. 2014).

agency considered activities that may be implemented quickly, such as turning on and optimizing existing SCR at power plants. The emission budgets are thus calculated to reflect only those activities that can be implemented by the 2017 ozone season.[73] Further, the CSAPR Update rule provides regulated entities the ability to comply by means of the CSAPR limited interstate trading program, which gives flexibility in compliance and does not require any specific action for compliance at any specific facility, other than holding allowances to cover emitted tons of pollution. Within this allowance trading program, the EPA also facilitates compliance by carrying over some banked allowances that can be used for compliance with the CSAPR Update, starting in 2017. More information about compliance feasibility is provided in section VII. Additionally, the EPA provides an EGU NO_X Mitigation Strategies Final Rule TSD, which is found in the docket for this final rule that further discusses the feasibility of complying with this rule's emissions requirements.

3. The CSAPR Framework

The original CSAPR used a four-step framework to address the requirements of the good neighbor provision for the 1997 ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.[74] The EPA is following the same CSAPR framework in this CSAPR Update to identify and address the requirements of the good neighbor provision with respect to the newer 2008 ozone NAAQS. By applying the CSAPR framework with respect to the newer 2008 ozone NAAQS, the EPA is using an approach that is informed by public comment on the original CSAPR rulemaking and has been reviewed in litigation by the D.C. Circuit Court of Appeals and the Supreme Court. The four steps are: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining clean air standards[75] (*i.e.,* NAAQS); (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to nonattainment or interfere with maintenance of a standard; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through regional emission allowance trading programs. The following subsections include summaries of the four steps and comments and responses on the application of the CSAPR framework from the proposal.

a. *Step 1.* In the original CSAPR, downwind air quality problems were assessed using modeled future air quality concentrations for a year aligned with attainment deadlines for the NAAQS considered in that rulemaking. The assessment of future air quality conditions generally accounts for on-the-books emission reductions[76] and the most up-to-date forecast of future emissions in the absence of the transport policy being evaluated (*i.e.,* base case conditions). The locations of downwind air quality problems are identified as those with monitors that are projected to be unable to attain (*i.e.,* nonattainment receptor) or maintain (*i.e.,* maintenance receptor) the standard. This final rule follows this same general approach. However, in this rule, the EPA also considers current monitored air quality data to further inform the projected identification of downwind air quality problems for this final rule. The proposed CSAPR Update put forward this change from the original CSAPR approach and commenters generally supported consideration of monitoring data. Further details and application of step one are described in section V of this rulemaking.

Comment: Some commenters challenged the methodology proposed by the EPA to identify maintenance receptors in the step 1 analysis. Commenters contend that maintenance receptors for purposes of the CSAPR Update analysis should only be identified as those areas that were previously designated nonattainment. The commenters explain that the proposed methodology for identifying maintenance receptors is inconsistent with how the statute defines maintenance areas in section 175A of the CAA. Other commenters contend that the EPA should not identify an area as a maintenance receptor where the area currently measures clean data. The commenters are concerned that it is arbitrary and capricious to treat clean data differently with respect to identifying nonattainment receptors and maintenance receptors.

Response: The EPA does not agree with the commenters' contention that it may only identify maintenance receptors as those areas that were once designated nonattainment. Such an interpretation would be contrary to the statutory process for SIP development. Area designations occur two to three years after promulgation of a new or revised NAAQS pursuant to CAA section 107(d)(1)(B)(i). State SIP submissions pursuant to CAA section 110(a)(1) and (2), including good neighbor SIPs, are also due three years after promulgation of a new or revised NAAQS. Attainment plans for those areas designated nonattainment are due between 18 months and 4 years after designation, depending on the pollutant, pursuant to the requirements of subpart D of title I of the CAA. Re-designations, including application of the requirements of CAA section 175A to develop a maintenance plan, by definition, occur after the initial designation and frequently well after the development and submission of the state's attainment plan.

Given that the statutory timeframe for development of the good neighbor SIP requires submission before the downwind state's development of an attainment plan, before an area is likely to be re-designated from nonattainment to attainment (with the attendant maintenance plan obligations), and in some cases before or at the same time designations for a new or revised standard might be finalized, the EPA does not believe it is reasonable to interpret the good neighbor provision to make states' emission reduction obligations dependent on either current or prior designations of downwind areas with potential air quality problems in other states. While circumstances related to implementation of the 2008 ozone NAAQS (described in more detail earlier) led many states to delay submission of good neighbor SIPs addressing that standard and while the EPA is, in this case, addressing its FIP obligation many years after designations were finalized, these circumstantial factors do not revise the Congressional intent inherent in the statutory structure just described.

Moreover, section 110(a)(1) instructs states to submit plans that provide for the ''implementation, maintenance, and enforcement'' of the NAAQS. Nothing in the provision indicates that states need only address maintenance of air quality

[73] This is true with one exception. The EPA finds that for Arkansas it is reasonable to delay EGU NO_X reduction potential for certain new combustion controls until 2018 and therefore gives Arkansas a 2017 budget that does not reflect these controls and a 2018 budget that does reflect these controls. This issue is discussed further in Section VI.

[74] *See* CSAPR, Final Rule, 76 FR 48208 (August 8, 2011).

[75] As noted in section IV, the term maintenance used under the CSAPR framework is distinct from the term as applied the plan required of nonattainment areas redesignated to attainment.

[76] Since CSAPR was designed to replace CAIR, CAIR emissions reductions were not considered ''on-the-books.''

in those areas that were once formally designated nonattainment as to a particular NAAQS. Therefore, where CAA section 110(a)(2)(D)(i)(I) instructs state plans to prohibit emissions activity within the state which will ''interfere with maintenance'' of the NAAQS in any other state, this provision is logically read consistent with section 110(a)(1) to require upwind states to address the maintenance of the NAAQS in all areas downwind. In this respect, the EPA does not agree with commenters that its identification of maintenance receptors for purposes of the good neighbor provision is constrained by the applicability of the provisions in CAA section 175A. Although the statute invokes the word ''maintenance'' in that provision to describe the requirements for maintenance plans that apply in areas that have been re-designated from nonattainment to attainment, the good neighbor provision neither implicitly nor explicitly indicates that a state's evaluation of whether it interferes with maintenance in another state should be limited to evaluation of areas subject to the requirements of section 175A.

Regardless of designation, any area may violate the NAAQS if emissions affecting air quality in that area are not adequately controlled. The court in *North Carolina* was specifically concerned with such areas when it rejected the view that ''a state can never 'interfere with maintenance' unless the EPA determines that at one point it 'contribute[d] significantly to nonattainment.' '' 531 F.3d at 910. The court pointed out that areas barely attaining the standard due in part to emissions from upwind sources would have ''no recourse'' pursuant to such an interpretation. *Id.* Accordingly, the court instructed the EPA to give ''independent significance'' to the maintenance prong of CAA section 110(a)(2)(D)(i)(I) by separately identifying such downwind areas for purposes of defining states' obligations pursuant to the good neighbor provision.

In areas that are currently measuring clean data with respect to the 2008 ozone NAAQS, these measurements can be driven by a number of factors, including recent meteorology that is not conducive to ozone formation. Due to the variable nature of meteorology, the fact that such areas are currently attaining the standard does not address whether the areas might struggle to maintain the standard in the future, which was precisely the issue raised in *North Carolina.* The EPA's approach to defining maintenance receptors directly responds to these concerns raised by the D.C. Circuit in *North Carolina.* Thus, although the EPA has considered recent monitored data for purposes of identifying nonattainment receptors in this rulemaking, it does not believe the data should inform the agency's identification of maintenance receptors.

b. *Step 2.* The original CSAPR used a screening threshold of one percent of the NAAQS [77] to identify upwind states that were ''linked'' to downwind air pollution problems. States were identified as needing further evaluation for actions to address transport if their air quality impact was greater than or equal to one percent of the NAAQS for at least one downwind problem receptor (*i.e.,* nonattainment or maintenance receptor identified in step 1). For ozone, the impacts include those from total emissions within the state of anthropogenic volatile organic compounds (VOC) and NO_X from all sectors. The EPA evaluated a given state's contribution based on the average relative downwind impact calculated over multiple days. States whose air quality impacts to all downwind problem receptors were below this threshold did not require further evaluation for actions to address transport—that is, these states were determined to make insignificant contributions to downwind air quality problems and therefore have no emission reduction obligations under the good neighbor provision. The EPA used this threshold because it determined that much of the ozone nonattainment problem in the eastern half of the United States results from collective impacts of relatively small contributions from a number of upwind states. Use of the one percent threshold for CSAPR is discussed in the preambles to the proposed and final CSAPR rules. *See* 75 FR 45237 (Aug. 2, 2010); 76 FR 48238 (Aug. 8, 2011).

The EPA is using the same approach for identifying states that are linked to downwind nonattainment and maintenance receptors in this final rule because the EPA's analysis shows that much of the ozone nonattainment problem being addressed by this rule is still the result of the collective impacts of relatively small contributions from many upwind states. Therefore, application of a uniform threshold helps the EPA to identify those upwind states that should share responsibility for addressing the downwind nonattainment and maintenance problem to which they collectively contribute. Continuing to use one percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emission transport under the ''good neighbor'' provision from one NAAQS to the next. Accordingly, the EPA has applied an air quality screening threshold calculated as one percent of the 2008 ozone NAAQS, 0.75 ppb, to identify those states ''linked'' to downwind nonattainment and maintenance receptors with respect to the 2008 ozone NAAQS which require further analysis to identify potential emission reductions. Consistent with the EPA's findings in the original CSAPR, the agency has determined that states with contributions to all downwind nonattainment and maintenance receptors below this threshold make insignificant contributions to downwind air quality problems and therefore have no emission reduction obligations under the good neighbor provision with respect to the 2008 ozone NAAQS. Application of step 2 is described in section V.

Comment: Some commenters supported the continued use of an air quality screening threshold of one percent of the NAAQS to identify upwind states requiring further analysis. However, some commenters opposed the use of the proposed one percent threshold because the commenters claim that the EPA had not technically demonstrated that continued use of the one percent screening metric is appropriate for linking an upwind state to a downwind nonattainment or maintenance receptor with respect to the 2008 ozone NAAQS. Some commenters believed that use of the one percent threshold was too stringent given that the proposed rule only focuses on emission reductions from one sector, EGUs. Other commenters believed that one percent (0.75 ppb) was not stringent enough, and they recommended using a lower value such as 0.5 ppb.

Response: The EPA continues to believe that it is appropriate to use a threshold of one percent of the NAAQS for identifying states which merit further analysis to determine if emission reductions may be warranted. The EPA has consistently determined in past analyses conducted for the NO_X SIP Call, CAIR, and CSAPR that ozone nonattainment problems generally result from relatively small contributions from many upwind states, along with contributions from in-state sources and in some cases, substantially larger

[77] *See* section IV.B for a discussion of the Supreme Court's consideration of the one percent threshold.

contributions from a subset of particular upwind states.[78]

The EPA determined that it is appropriate to use a low air quality threshold when analyzing states' collective contributions to downwind nonattainment and maintenance for ozone as well as $PM_{2.5}$.

To further support the EPA's evaluation of the appropriate screening threshold to use for this purpose, the EPA compiled the contribution modeling results from the air quality modeling conducted for this rule in order to analyze the impact of different possible thresholds. The EPA notes that similar contribution modeling data were available for comment in the docket for the proposed CSAPR Update. This compiled analysis demonstrates the reasonableness of continuing to use one percent as an air quality threshold to account for the combined impact of relatively small contributions from many upwind states. *See* the Air Quality Modeling Technical Support Document for the Final Cross-State Air Pollution Rule Update (AQM TSD). For each of the ozone receptors identified in the final CSAPR Update rule analysis, the EPA identified: (1) The total upwind state contributions, and (2) the amount of the total upwind state contribution that is captured at one percent, five percent, and half (0.5) percent of the NAAQS. The EPA continues to find that the total collective contribution from upwind states' sources represent a significant portion of the ozone concentrations at downwind nonattainment and maintenance receptor locations. This analysis shows that the one percent threshold generally captures a substantial percentage of the total pollution transport affecting downwind states without also implicating states that contribute insignificant amounts.

In response to commenters who advocated for a lower threshold, the EPA observes that the analysis shows that a lower threshold would result in relatively modest increases in the overall percentage of ozone pollution transport captured relative to the amounts captured at the one percent level at a majority of the receptors. A lower percent threshold could lead to emission reduction responsibilities in additional states that individually have a relatively small impact on those receptors, compared to other upwind states — an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor.

In response to commenters who advocated for a higher threshold, the EPA observes that the analysis of a 5 percent threshold shows that a higher threshold would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the amounts captured at the one percent level at a majority of the receptors. In fact, at a 5 percent threshold there would not be any upwind states linked to the nonattainment and maintenance receptors in Texas.

As a result of our analyses of higher and lower thresholds, as described in the AQM TSD, the agency is not convinced that selecting a threshold below one percent or above one percent is necessary or desirable.

Comment: Some commenters suggested more specifically that a 0.5 ppb threshold would be more appropriate for upwind states contributing to downwind receptors in Texas. The commenters note that the lower threshold will add more states in the rule and address more of the maximum combined upwind state impacts to Texas' receptors.

Response: The EPA agrees that a lower threshold of 0.5 ppb would capture more of the upwind states that contribute to Texas receptors. However, the contribution of upwind state interstate transport to receptors in Texas is less than the upwind state interstate transport contribution identified for other downwind nonattainment and maintenance receptors in this rule. Therefore, the potential ozone reductions that would result from including additional upwind states are relatively small. The EPA believes it is therefore reasonable to use a uniform threshold for all states included in this rule.

c. *Step 3.* For states that are linked in step 2 to downwind air quality problems, the original CSAPR evaluated emission reductions available in upwind states by application of uniform levels of control stringency, represented by cost. The EPA evaluated NO_X reductions that were available in upwind states by applying uniform levels of control stringency to entities in these states. For each uniform level of control stringency evaluated, the EPA used a multi-factor test to evaluate cost, NO_X reduction potential, and downwind air quality impacts. This multi-factor test was used to select a uniform level of control stringency on the remaining allowable emissions—those available after reducing significant contribution to nonattainment or interference with maintenance of a NAAQS downwind. The use of uniform control stringency also reasonably apportions upwind responsibility among linked upwind states. This approach was upheld by the Supreme Court in *EPA* v. *EME Homer City Generation*.[79]

In this final rule, the EPA applies this approach to establish EGU NO_X emission budgets that reflect NO_X reductions necessary to reduce interstate ozone transport for the 2008 NAAQS. In this process, the EPA also explicitly evaluates whether the budget quantified for each state would result in over-control, as required by the Supreme Court and the D.C. Circuit.[80] Specifically, the multi-factor test is used to evaluate whether an upwind state is linked solely to downwind air quality problems that are resolved at a given uniform control stringency, or if upwind states reduce their emissions at a given uniform control stringency such that contributions from sources in the state no longer meet or exceed the one percent air quality contribution threshold. This evaluation of cost, NO_X reductions, and air quality improvements, including consideration of potential over-control, results in the EPA's quantification of upwind emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind. The EPA's assessment of significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS and our development of EGU NO_X ozone season emission budgets is described in section VI of this document.

Comment: Some commenters claim that the CSAPR framework requires the same remedy for states linked solely to maintenance receptors as it does for states linked to nonattainment receptors and these commenters suggested that states linked solely to maintenance problems should have a different, less stringent requirement. These commenters contend that, as a result, the EPA has failed to given independent significance to the ''interfere with maintenance'' clause of CAA section 110(a)(2)(D)(i)(I) as compared to the ''significant contribution'' clause of that provision. The commenters contend that it constitutes over-control to impose budgets based on the same uniform control stringency to address both states that interfere with maintenance of the NAAQS in downwind states and those

[78] *See* NO_X SIP Call, 63 FR 57356, 57375–377 (October 27, 1998); CAIR, 70 FR 25162, 25172 & 25186 (May 12, 2005); CSAPR, 76 FR 48208, 48236–237 (August 8, 2011).

[79] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1606–07.

[80] *Id.* at 1608; *EME Homer City II,* 795 F.3d at 127.

that significantly contribute to nonattainment in downwind states. The commenters cite the Supreme Court's opinion in *EPA* v. *EME Homer City Generation,* explaining that the EPA may only limit emissions ''by just enough to permit an already-attaining State to maintain satisfactory air quality.'' 134 S. Ct. at 1604 n.18.

Response: The EPA disagrees with these comments. The CSAPR framework gives independent meaning to the ''maintenance'' prong of CAA section 110(a)(2)(D)(i)(I) as required by D.C. Circuit's decision in *North Carolina.* By identifying those downwind areas that are at risk of exceeding the NAAQS if historical meteorology conducive to ozone formation occurs again, the EPA thereby defines upwind states linked to these areas as having a transport obligation.[81] In its decision, on remand from the Supreme Court, the D.C. Circuit confirmed that the EPA's approach to identifying maintenance receptors in CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision. *EME Homer City II,* 795 F.3d at 136. The EPA's analysis indicates that the maintenance receptors identified in this rulemaking are at risk of NAAQS violations and therefore should be afforded protection.

CAA section 110(a)(2)(D)(i)(I) requires that state implementation plans, or the EPA where such plans are insufficient, prohibit emissions which will interfere with maintenance of the NAAQS in downwind states. Once the EPA identifies maintenance receptors, the EPA is compelled by the CAA to prohibit emissions that would jeopardize the ability of these receptors to maintain the standard. Put another way, it would be inconsistent with the CAA for the EPA to identify receptors that are at risk of NAAQS violations given certain conditions due to transported upwind emissions and then not prohibit the emissions that place the receptor at risk.

Moreover, the Supreme Court has acknowledged that the ''interfere with maintenance'' clause of the good neighbor provision is ambiguous with respect to how the EPA should quantify and allocate the emission reduction obligations for states linked to downwind maintenance concerns. The Supreme Court clearly stated that ''[n]othing in *either* clause of the Good Neighbor Provision provides the criteria by which EPA is meant to apportion responsibility.'' *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1604 n.18 (emphasis in original). Thus, the EPA is afforded deference to develop an appropriate application of this requirement so long as it is a ''permissible construction of the statute.'' *Chevron, U.S.A., Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 843, 104 S. Ct. 2778, 2782 (1984). The Supreme Court held that it was a permissible interpretation of the statute to apportion responsibility for states linked to nonattainment receptors considering ''both the magnitude of upwind States' contributions and the cost associated with eliminating them.'' *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1606. It is equally reasonable and permissible to use these factors to apportion responsibility among upwind states linked to maintenance receptors because the goal in both instances is to prohibit the ''amounts'' of pollution that will either significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind. The EPA's contribution analysis demonstrates that the amounts of pollution prohibited through implementation of the budgets finalized in this rule will, under certain projected conditions, otherwise contribute to downwind nonattainment and interfere with maintenance of the 2008 ozone NAAQS in downwind states.

All of that being said, contrary to the commenters' contention, the CSAPR framework does not necessarily dictate that upwind states linked solely to maintenance receptors be subject to the same level of NO_X control stringency as upwind states linked to nonattainment receptors. Rather, the selection of NO_X control stringency is in part informed by the difficulty of resolving the identified downwind air quality problem to which each state is linked. (*See* the components, including air quality considerations, of the multi-factor test described in section VI.D.)The data and analysis for the CSAPR Update show that the maintenance-only receptors generally represent less severe air quality problems than the nonattainment receptors. Specifically, in the final CSAPR Update modeling, maintenance-only receptors have an average maximum design value that is 1.9 ppb above the 2008 ozone NAAQS while nonattainment receptors have an average maximum design value that is 3.1 ppb above the NAAQS. As described in section VI.D, the specific emission reduction obligation for each state is limited by the amount of air quality improvement needed to either attain or maintain the NAAQS at the particular receptor to which the state's emissions are linked. These data therefore demonstrate that states linked to maintenance-only receptors would generally have a lesser emission reduction obligation than states linked to nonattainment receptors, but for the partial nature of this rule.

The original CSAPR rulemaking provides an example of this differentiation of control stringency based on the severity of downwind air quality problems. In that rulemaking, some states reduced their significant contribution of SO_2 for purposes of addressing downwind $PM_{2.5}$ nonattainment and maintenance problems at a lower uniform cost control stringency, while other states needed to comply with budgets calculated at a higher uniform control stringency in order to resolve their transport obligations.[82]

In the case of a full solution, which EPA is not promulgating in this action, a similar differentiation in the level of control stringency may emerge between the upwind states linked solely to maintenance and the upwind states linked to nonattainment. However, given the unique circumstances of this rulemaking and the need to obtain emission reductions on a tight timeframe in order to assist downwind states with meeting the downwind 2018 attainment deadline, the EPA is only quantifying a subset of each state's emission reduction obligation pursuant to the good neighbor provision. The EPA's analysis shows that even when all the emission reductions required by this rule are in place, both attainment and maintenance problems at downwind receptors may remain, and the EPA will need to evaluate whether the upwind states' emission reduction obligations should be more stringent considering other factors not addressed by this rule, including control strategies that can be implemented on a longer timeframe or by other source categories. Thus, the commenters are incorrect to state that the EPA is necessarily imposing the same remedy (in the form of the same level of control stringency) for states linked only to maintenance-only receptors as those linked to nonattainment receptors by way of applying the CSAPR framework. It is only due to the partial nature of the remedy provided by this rule that the EPA is finalizing a single uniform level of control stringency for all CSAPR Update states.

[81] 531 F.3d 896, 910–911 (D.C. Cir. 2008) (noting that the EPA's failure to separately address maintenance problems under CAIR ''unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite the EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference'').

[82] 76 FR at 48257–259.

d. *Step 4.* Finally, the original CSAPR used allowance trading programs to implement the necessary emission reductions represented by the emission budgets identified in step 3. Emission allowances were issued to units covered by the trading program, and each covered unit can then retain and/or acquire however many allowances are needed to cover its ozone season NO_X emissions over the course of each control period; however, because the total number of allowances issued in each period is limited to the sum of the states' emission budgets, total emissions across all affected EGUs are similarly limited such that overall emissions are controlled. Additionally, the original CSAPR included variability limits, which define the amount by which collective emissions within a state may exceed the level of that state's budget in a given control period to account for variability in EGU operations while still ensuring that the necessary emission reductions are achieved in each state. The variability limits for the CSAPR NO_X ozone season trading program is 21 percent of each state's budget. CSAPR set assurance levels equal to the sum of each state's emission budget plus its variability limit. The original CSAPR included assurance provisions that would require additional allowance surrenders in the instance that emissions in the state exceed the state's assurance level. This limited interstate trading approach is responsive to previous court decisions.[83] *See* discussion in section VII of this preamble. The EPA is applying this same approach to implement reductions in interstate transport for the 2008 ozone NAAQS in the CSAPR Update. Implementation of the CSAPR Update allowance trading program (CSAPR NO_X ozone season Group 2) is described in section VII of this final rule. This new program is substantially similar to the existing CSAPR NO_X ozone season program.

Comment: Some stakeholders have observed that a subset of existing post-combustion EGU NO_X controls (*e.g.,* SCR) may not have operated in recent years because CAIR or CSAPR allowance prices were below the operating costs of the controls. These commenters suggest that, accordingly, CAIR or CSAPR did not achieve optimal environmental protection, as identified by requiring existing controls to operate.

Response: Regional allowance trading programs set a limit on the overall amount of allowable emissions. This limit reflects a reduction from uncontrolled emission levels and compliance is demonstrated through an allowance trading program that allows regulated entities the flexibility to determine their own compliance path. In states that participated in both CAIR and CSAPR ozone season programs, summer NO_X emissions dropped by 20 percent from 2009 to 2015, and compliance was demonstrated nearly 100 percent of the time due to rigorous emissions monitoring and allowance tracking. These outcomes, combined with air quality improvements, demonstrate the environmental achievements of these programs. The EPA notes that the allowance prices were low because of significant emission reductions that took place by other means (*e.g.,* new low-emitting generating capacity coming online that replaced older, higher emitting generation as well as EGU retirements). These other means significantly reduced emissions and helped the power sector meet the CAIR and CSAPR emission budgets without relying on the use of allowances. In light of these and other dramatic reductions in power sector pollution, the supply of CAIR and CSAPR allowances rose and their prices fell. In this case, certain utilities appear to have turned off their emission controls, relying instead on purchased allowances. The EPA notes, however, that in this case, the overall net effect of these activities has been a significant reduction in emissions. The EPA expects that certain aspects of this final rule will alleviate some of these concerns about allowance prices. In particular, this action establishes new emission budgets to address the more stringent 2008 ozone NAAQS that are calculated based on a uniform cost that is reflective of, among other things, operating existing controls. *See* section VI in this preamble on EGU NO_X reductions and emission budgets.

4. Partial Versus Full Resolution of Transport Obligation

Given the unique circumstances surrounding the implementation of the 2008 ozone standard that have delayed state and the EPA's efforts to address interstate transport, at this time the EPA is focusing its efforts on the immediately available and cost-effective emission reductions that are achievable by the 2017 ozone season.

This rulemaking establishes (or revises currently established) FIPs for 22 eastern states under the good neighbor provision of the CAA. These FIPs contain requirements for EGUs in these states to reduce ozone season NO_X emissions beginning with the 2017 ozone season. As noted in section VI, the EPA has identified important EGU emission reductions that are cost-effective and achievable by the 2017 ozone season in the covered states through actions such as turning on and operating existing pollution controls. These readily available emission reductions will assist downwind states in attaining and maintaining the 2008 ozone NAAQS and will provide human health and welfare benefits through reduced exposure to ground-level ozone pollution.

While these reductions are necessary to assist downwind states in attaining and maintaining the 2008 ozone NAAQS, and are necessary to address good neighbor obligations for these states, the EPA acknowledges that they may not be sufficient to fully address these states' good neighbor obligations.[84] With respect to the 2008 ozone standard, the EPA has generally not attempted to quantify the ozone season NO_X reductions that may be necessary to eliminate all significant contribution to nonattainment or interference with maintenance in other states. Given the time constraints for implementing NO_X reduction strategies, the EPA believes that implementation of a full remedy that includes emission reductions from EGUs as well as other sectors may not be achievable for 2017. However, a partial remedy is achievable for 2017 and therefore this rule focuses on these more immediately available reductions.

To evaluate full elimination of a state's significant contribution to nonattainment or interference with maintenance, non-EGU ozone season NO_X reductions and further EGU reductions that are achievable after 2017 should be considered. The EPA did not quantify non-EGU emissions reductions to address interstate ozone transport for the 2008 ozone NAAQS at this time because: (1) There is greater uncertainty in the non-EGU emission inventory estimates than for EGUs; and (2) based on current knowledge, there appear to be few non-EGU reductions that could be accomplished by the beginning of the 2017 ozone season. This is discussed further in section VI. Commenters generally agreed with the EPA that non-EGU emission reductions are not readily available for the 2017 ozone season but advocated that such reductions should

[83] *North Carolina,* 531 F.3d at 907–08 (EPA ''must include some assurance that it achieves something measurable towards the goal of prohibiting sources 'within the State' from contributing to nonattainment or interfering with maintenance in 'any other State'.'').

[84] The requirements for one state, Tennessee, will fully eliminate that state's significant contribution to downwind air quality problems.

be included as appropriate in future mitigation actions.

Because the reductions in this action are EGU-only and because the EPA has focused the policy analysis for this action on reductions available by the beginning of the 2017 ozone season, CSAPR update reductions will represent, for most states, a first, partial step to addressing a given upwind state's significant contribution to downwind air quality impacts for the 2008 ozone NAAQS. Generally, a final determination of whether the EGU NO_X reductions quantified in this rule represent a full or partial elimination of a state's good neighbor obligation for the 2008 NAAQS is subject to an evaluation of the contribution to interstate transport from non-EGUs and further EGU reductions that are achievable after 2017. However, the EPA believes that it is beneficial to implement, without further delay, EGU NO_X reductions that are achievable in the near term. The NO_X emission reductions in this final rule are needed (although they may not be all that is needed) for these states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS.

Comment: Several commenters questioned whether the CAA authorizes the EPA to implement a ''partial'' remedy, and also suggested that the partial nature of the proposed rule might ''circumvent'' prior courts' instructions regarding over-control. Those commenters note that the statute does not describe a process for issuing a partial FIP, and suggest that the EPA may only issue a FIP that fully eliminates transported contribution from upwind States. These commenters also imply that the Supreme Court's approval of the EPA's use of costs in defining ''significant contribution'' in *EME Homer City* does not apply to the agency's approach in this rule because the commenters claim that ''CSAPR was a transport rule that developed comprehensive state budgets [and][t]his proposed rule only addresses EGUs.''

Other commenters were concerned that the EPA is not meeting its statutory obligation to develop federal implementation plans that fully resolve downwind transport problems. These commenters argue that the EPA's own delay in preparing a rule to resolve interstate transport with respect to the 2008 ozone NAAQS caused the tight timeline now faced by the agency, and cannot be used as an excuse for failing to promulgate a full remedy by 2017. In the alternative, commenters argue that even if time constraints only allow the EPA to impose a partial remedy by the 2017 ozone season, the agency must provide a plan now for how it will achieve the rest of the necessary reductions in the future, and suggests the agency could do so by implementing a second implementation phase to go into effect after the 2017 ozone season.

Response: The EPA disagrees with commenters who suggest that the agency lacks authority to promulgate a partial FIP. As described in section III, the EPA's current statutory deadlines to promulgate FIPs extend until 2017 and 2018 for most states, and the EPA will remain mindful of those deadlines as it evaluates what further steps may be necessary to fully address interstate transport for the 2008 ozone NAAQS.

Nothing in section 110(c)(1) of the CAA suggests that the agency is barred from taking a partial step at this time (before its FIP deadline has passed), nor does the statutory text indicate Congress' intent to preclude the EPA from tackling this problem in a step-wise process. The D.C. Circuit has held on numerous occasions that agencies have the authority to tackle problems in an incremental fashion, particularly where a lack of resources or technical expertise make it difficult to immediately achieve the statute's full mandate. *See, e.g., Grand Canyon Air Tour Coal.* v. *FAA,* 154 F.3d 455, 478 (D.C. Cir. 1998); *City of Las Vegas* v. *Lujan,* 891 F.2d 927, 935 (D.C. Cir. 1989) (''[A]gencies have great discretion to treat a problem partially . . .' [and a] court will not strike down agency action 'if it were a first step toward a complete solution.'''); *Gen'l Am. Transp. Corp.* v. *ICC,* 872 F.2d 1048, 1059 (D.C. Cir. 1989); *Nat'l Ass'n of Broadcasters* v. *FCC,* 740 F.2d 1190, 1209–14 (D.C. Cir. 1984).

As explained previously, the EPA expects that a full resolution of upwind transport obligations would require emission reductions from sectors besides EGUs, including non-EGUs, and further EGU reductions that are achievable after 2017. Given the approaching July 2018 attainment deadline for the 2008 ozone NAAQS, developing a rule that would have covered additional sectors and emission reductions on longer compliance schedules would have required more of the EPA's resources over a longer rulemaking schedule to fully address. As discussed earlier in this document, the EPA is still in the process of developing information regarding available emission reductions from non-EGUs. Had the EPA waited to promulgate FIPs until that information was fully developed, we could not have assured emission reductions by 2017, in time to assist downwind states to meet the July 2018 attainment deadline. Accordingly, the EPA reasonably concluded that it was most prudent to promulgate a first step to address interstate transport for the 2008 ozone NAAQS that achieves those immediate reductions while addressing any remaining obligation that might be achievable on a longer timeframe in a separate rulemaking. The EPA intends to continue to collect information and undertake analyses for potential future emission reductions at non-EGUs that may be necessary to fully quantify states' interstate transport obligations in a future action.

The EPA further disagrees with commenters that its partial step here runs afoul of the Supreme Court and D.C. Circuit's instructions to avoid unnecessary over-control of upwind state emissions. As acknowledged by these commenters, due to its limited nature, this final action does not generally fully resolve downwind air quality problems, much less result in over-control of upwind state emissions relative to those air quality problems. *See* section VI for further discussion of the EPA's over-control analysis applied to address these courts' concerns. To the extent the EPA determines that it must require additional emission reductions in a later rulemaking to address interstate transport with respect to the 2008 ozone NAAQS, the EPA will also confirm that such reductions do not result in unnecessary over-control, consistent with the courts' instructions.

The EPA also disagrees that the Supreme Court's affirmation of its use of uniform control stringency to define significant contribution does not apply equally to this action. The commenters are mistaken insofar as they suggest that the original CSAPR regulated sources other than EGUs. This rule is identical to the original CSAPR rule in terms of the form of its remedy—an emission budget issued to each state, with allowances allocated to EGUs within the state. As in the original CSAPR, each state is free to submit a SIP to replace the FIP indicating that it will meet its emission budget via reductions from other sectors.

Furthermore, the EPA took a similar partial approach in quantifying interstate transport obligations with respect to the 1997 ozone NAAQS in the original CSAPR rulemaking. In that rule, the EPA's modeling indicated that there would be persistent nonattainment and maintenance problems at some receptors even after imposition of CSAPR's emission reductions. The EPA stated that, because additional emission reductions may be available at higher cost thresholds and from other sectors, such as non-EGUs, the emission

reductions quantified in the rule did not necessarily fully quantify certain states' interstate transport obligation with respect to the 1997 ozone NAAQS.[85] Therefore, for states linked to those receptors, the agency concluded that its FIP provided a partial remedy, and that more emission reductions might be required in order to fully satisfy the states' transport obligations. As discussed later, this action now concludes that the EPA has fulfilled its FIP obligation with respect to the 1997 ozone NAAQS.

Finally, the EPA disagrees with commenters who suggest that the agency's ''own delay'' in implementing a transport rule to address the 2008 ozone NAAQS led to the current circumstances the states and the EPA now face. Until mid-2014 when the Supreme Court reversed the D.C. Circuit's original vacatur of CSAPR, the governing judicial holding was that the EPA lacked legal authority to promulgate any FIP addressing 2008 ozone transport obligations until the agency first quantified each state's emission reduction obligation, allowed states time to submit SIPs, and acted on those SIPs.[86] In July 2015, the D.C. Circuit issued its final decision generally upholding CSAPR, albeit subject to remand without vacatur of certain state budgets for reconsideration. The agency then proceeded on an expedited basis to issue a proposal to address its FIP obligation with respect to the 2008 ozone NAAQS in the fall of 2015. While commenters and the EPA may agree that it would be best if a full remedy could be possible by the 2017 ozone season such that downwind areas would receive those benefits in time for their Moderate area attainment deadlines, such a remedy simply is not feasible in the existing timeframe.

As noted previously, CAA section 110(c)(1) directs the EPA to promulgate a FIP ''at any time within two years'' of its disapproval or finding of failure to submit. For the majority of states affected, that timeframe will not end until 2017 or later, and as mentioned previously, *North Carolina* compels the EPA to identify upwind reductions and implementation programs to achieve these reductions by the 2017 ozone season. As the EPA has explained, it believes that reductions from other sectors besides EGUs should be evaluated in developing a full remedy, and the agency does not have sufficient information at this time to promulgate such a rule. Therefore, given these circumstances, the agency maintains that only requiring at this time necessary and achievable reductions by the 2017 ozone season is reasonable.

5. Why Focus on Eastern States

The final CSAPR Update focuses on collective contributions of ozone pollution from states in the east. In this action, the EPA is not addressing interstate emission transport in this action for the 11 western contiguous United States.[87] The CSAPR framework builds on previous eastern-focused efforts to address collective contributions to interstate transport, including the NO_X Budget Trading Program, CAIR, and the original CSAPR rulemaking. However, for western states, the EPA believes that there may be geographically specific factors to consider in evaluating interstate ozone pollution transport. Accordingly, given the need for near-term 2017 analysis and implementation of the CSAPR Update FIPs, the EPA focused this rulemaking on eastern states where the CSAPR method for assessing collective contribution has proven effective.

The EPA did not propose CSAPR Update FIPs to address interstate emission transport for western states and it is not finalizing FIPs for any of these states. However, the EPA notes that western states are not relieved of their statutory obligation to address interstate transport under the section 110(a)(2)(D)(i)(I). The EPA and western states, working together, are continuing to evaluate interstate transport obligations on a case-by-case basis. The EPA will fulfill its backstop role with respect to issuing FIPs for western states if and when that becomes necessary. The EPA notes that a 2-year FIP clock has started for New Mexico and California following the July 13, 2015 finding of failure to submit. The EPA notes that analyses developed to support this rule, including air quality modeling and the EPA's assessment of EGU NO_X mitigation potential, contain data that can be useful for western states in developing SIPs. The data from these analyses are available in the docket for this rulemaking.[88]

The proposed CSAPR Update solicited comment on whether to promulgate FIPs to address interstate ozone transport for the 2008 ozone NAAQS for western states, either in this rulemaking or in a subsequent rulemaking. Most commenters generally agreed with the EPA's proposal to exclude western states in this rule given that there may be geographically specific factors to consider in evaluating western states' interstate transport requirements.

6. Short-Term NO_X Emissions

In eastern states, the highest measured ozone days tend to occur within the hottest days or weeks of the summer. There tends to be a higher demand for electricity (for instance, to power air conditioners) on hotter days and with this increased power demand, ozone formation can increase causing peak ozone days. In discussions with representatives and officials of eastern states in April 2013 and April 2015, and in several letters to the EPA, officials from states that are part of the Ozone Transport Region (OTR)[89] states suggested that EGU emissions transported from upwind states may disproportionally affect downwind ozone concentrations on peak ozone days in the eastern U.S. These representatives asked that the EPA consider additional peak day limits on EGU NO_X emissions.

Comment: The proposed CSAPR Update took comment on whether or not short-term (*e.g.,* peak-day) EGU NO_X emissions disproportionately impact downwind ozone concentrations and, if they do, what EGU emission limits would be reasonable complements to the seasonal CSAPR requirement. Most commenters requested that the EPA not impose a short-term limit at this time.

Response: As noted previously,[90] the EPA finds that NO_X ozone season trading programs are effective at reducing peak ozone concentrations, and the agency is therefore continuing with a seasonal approach in this final rule. The EPA will continue to look at this matter with an eye towards future rulemakings.

C. Responding to the Remand of CSAPR NO_X Ozone Season Emission Budgets

As noted previously, in *EME Homer City II,* the D.C. Circuit declared invalid the CSAPR phase 2 NO_X ozone season emission budgets of 11 states, holding that those budgets over-control with respect to the downwind air quality problems to which those states were linked for the 1997 ozone NAAQS. 795 F.3d at 129–30, 138. As to ten of these

[85] 76 FR 48208, 48256–57 (August 8, 2011).

[86] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012).

[87] For purposes of this action, the western U.S. (or the West) consists of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

[89] The OTR was established by the CAA amendments of 1990 to facilitate addressing the ozone problem on a regional basis and consists of the following states, or portions thereof: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia and northern Virginia. 42 U.S.C. 7511c, CAA section 184.

[90] *See* Section IV.A.1.

states, the court held that the EPA's 2014 modeling conducted to support the RIA for CSAPR demonstrated that air quality problems at the downwind locations to which those states were linked would resolve by phase 2 of the CSAPR program without further transport regulation (either CAIR or CSAPR). *Id.* at 129–30. With respect to Texas, the court held that the record reflected that the ozone air quality problems to which the state was linked could be resolved at a lower cost threshold. *Id.* The court therefore remanded those budgets to the EPA for reconsideration consistent with the court's opinion. *Id.* at 138. The court instructed the EPA to act ''promptly'' in addressing these issues on remand. *Id.* at 132.

The court's decision explicitly applies to 11 state budgets involved in that litigation: Florida, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and West Virginia. *Id.* at 129–30, 138. The EPA is finalizing FIPs for eight of those states to address interstate transport with respect to the 2008 ozone NAAQS: Maryland, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and West Virginia. The FIPs incorporate revised emission budgets that replace the budgets promulgated in the CSAPR rule to address the 1997 ozone NAAQS, the same budgets remanded by the D.C. Circuit for reconsideration. Further, in this rule, these budgets will be effective for the 2017 ozone season, the same period in which the phase 2 budgets that were invalidated by the court are currently scheduled to become effective. Therefore, this action provides an appropriate and timely response to the court's remand by replacing the phase 2 budgets promulgated in the CSAPR to address the 1997 ozone NAAQS, which were declared invalid by the D.C. Circuit, with budgets developed to address the revised and more stringent 2008 ozone NAAQS.[91]

For the three remaining original CSAPR ozone season states affected by this portion of the *EME Homer City II* decision, Florida, North Carolina, and South Carolina, the EPA is not finalizing FIPs because the EPA's analysis performed to support the final rule does not indicate that these states are linked to any identified downwind nonattainment or maintenance receptors with respect to the 2008 ozone standard. Because the 2008 ozone NAAQS is more stringent than the 1997 ozone NAAQS, this modeling necessarily indicates that Florida, North Carolina, and South Carolina are also not linked to any remaining air quality concerns with respect to the 1997 ozone standard for which the states were regulated in the original CSAPR. Accordingly, in order to address the Court's remand with respect to these three states' interstate transport responsibility under the 1997 ozone standard, the EPA is removing these states from the CSAPR ozone season trading program beginning in 2017 when the phase 2 ozone season emission budgets were scheduled to be implemented.[92]

Comment: Some commenters contend that the D.C. Circuit's remand of the phase 2 ozone season emission budgets in *EME Homer City II* requires the EPA to calculate new budgets to address the states' transport obligations with respect to the 1997 ozone NAAQS. These commenters contend that the EPA has not fully responded to the court's remand until it quantifies new budgets.

Response: As described earlier, the D.C. Circuit remanded 10 of CSAPR's ozone season NO_X budgets because the EPA's 2014 modeling conducted to support the RIA for CSAPR demonstrated that air quality problems at the downwind locations to which those states were linked would resolve by phase 2 of the CSAPR program without further transport regulation. The court essentially found that, by phase 2 of the CSAPR program, the CSAPR record did not support the EPA's authority to require emission reductions from these 10 states in order to address the 1997 ozone NAAQS. Thus, absent any new analysis demonstrating that these states are linked to downwind air quality problems with respect to the 1997 ozone NAAQS, the EPA does not have the authority to subject these states to the CSAPR NO_X ozone season emissions program beginning in 2017 and therefore does not have the authority to calculate new emission budgets for these states to address that standard. For Florida, North Carolina, and South Carolina, the EPA is therefore relieving sources in the states from the obligation to comply with the NO_X ozone season trading program in response to the remand. For the remaining seven states, sources located in these states will no longer be subject to the phase 2 NO_X ozone season budgets calculated to address the 1997 standard; however, because these states are linked to downwind air quality problems with respect to the 2008 ozone NAAQS, the EPA is promulgating new ozone season NO_X emission budgets at 40 CFR 97.810(a). *See* also 40 CFR 52.38(b)(2)(ii) (relieving sources in all ten of these states of the obligation to comply with the remanded phase 2 NO_X ozone season emission budgets after 2016).

With respect to Texas, because the court determined that the phase 2 ozone season budget was more stringent than necessary to address Texas' interstate transport obligation with respect to the 1997 ozone NAAQS, the EPA removed Texas's budget as a constraint in the 2017 air quality modeling. Even in the absence of this constraint, the updated 2017 air quality modeling shows that the predicted average DVs and maximum DVs are below the level of the 1997 ozone NAAQS for the downwind receptors of concern to which Texas was linked in the original CSAPR rulemaking with respect the 1997 ozone NAAQS. Accordingly, the EPA has concluded that it need not require additional emission reductions from sources in Texas in order to address the state's interstate transport obligation. Thus, sources in Texas will no longer be subject to the phase 2 NO_X ozone season budget calculated to address the 1997 standard; however, because Texas is linked to downwind air quality problems with respect to the 2008 ozone NAAQS, the EPA is promulgating a new ozone season NO_X emission budget to address that standard at 40 CFR 97.810(a). *See* also 40 CFR 52.38(b)(2)(ii) (relieving sources in Texas of the obligation to comply with the remanded phase 2 NO_X ozone season emission budgets after 2016).

Separately, various petitioners filed legal challenges in the D.C. Circuit to an EPA supplemental rule that added five

[91] The methodology for developing the budgets to address the 2008 ozone NAAQS is described in more detail in Sections VI and VII in this preamble. Section VI also includes an evaluation, as instructed by the court in *EME Homer City II,* to affirm that the budgets do not over-control with respect to downwind air quality problems identified in this rule. 795 F.3d at 127–28.

[92] One other state from the original CSAPR rulemaking, Georgia, was also not linked to any identified downwind nonattainment or maintenance receptors with respect to the 2008 ozone standard. However, when EPA promulgated the original CSAPR rulemaking, Georgia remained linked to an ongoing air quality problem with respect to the 1997 standard even after implementation of the emissions budget quantified in that rulemaking. Therefore, unlike Florida, North Carolina, and South Carolina, Georgia's budget was not subject to the same record issues identified by the D.C. Circuit related to the EPA's 2014 modeling and was not subject to remand for reconsideration. As Georgia remained linked to a continued air quality problem with respect to the 1997 ozone NAAQS in the original CSAPR analysis, the EPA retained this budget as a constraint in its analysis for this rule. Assuming compliance with that budget, the EPA determined that Georgia does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind. The EPA has also concluded, as discussed in section IV.D, that compliance with that budget is sufficient to fully address Georgia's interstate transport obligation with respect to the 1997 NAAQS.

states to the CSAPR ozone season trading program, 76 FR 80760 (Dec. 27, 2011). *See Public Service Company of Oklahoma* v. *EPA,* No. 12–1023 (D.C. Cir., filed Jan. 13, 2012). The case was held in abeyance during the pendency of the litigation in *EME Homer City*. The case remains pending in the D.C. Circuit as of the date of signature of this rule.[93] The EPA notes that this rulemaking also promulgates FIPs for all five states added to CSAPR in the supplemental rule: Iowa, Michigan, Missouri, Oklahoma, and Wisconsin. These FIPs incorporate revised emission budgets that replace the budgets promulgated in the supplemental CSAPR rule to address the 1997 ozone NAAQS for these five states and will be effective for the 2017 ozone season. In light of the court's decision in *EME Homer City II,* the EPA examined the record supporting the CSAPR rulemaking and determined that, like the 10 states discussed earlier, the EPA's 2014 modeling conducted to support the RIA for CSAPR demonstrated that air quality problems at the downwind locations to which four of the states added to CSAPR in the supplemental rule, Iowa, Michigan, Oklahoma, and Wisconsin, were linked would resolve by phase 2 of the CSAPR program without further transport regulation (either CAIR or CSAPR). Accordingly, sources in these states will no longer be subject to the phase 2 NO_X ozone season budgets calculated to address the 1997 standard; however, because these states are linked to downwind air quality problems with respect to the 2008 ozone NAAQS, the EPA is promulgating new ozone season NO_X emission budgets at 40 CFR 97.810(a). *See* also 40 CFR 52.38(b)(2)(ii) (relieving sources in these four states of the obligation to comply with the original phase 2 NO_X ozone season emission budgets after 2016).

The D.C. Circuit also remanded without vacatur the CSAPR phase 2 SO_2 annual emission budgets for four states (Alabama, Georgia, South Carolina, and Texas) for reconsideration. 795 F.3d at 129, 138. This final rule does not address the remand of these CSAPR phase 2 SO_2 annual emission budgets. On June 27, 2016, the EPA released a memorandum outlining the agency's approach for responding to the D.C. Circuit's July 2015 remand of the CSAPR phase 2 SO_2 annual emission budgets for Alabama, Georgia, South Carolina, and Texas. The memorandum can be found at *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO2_Remand_Memo.pdf*.

D. Addressing Outstanding Transport Obligations for the 1997 Ozone NAAQS

In the original CSAPR, the EPA noted that the reductions for 11 states may not be sufficient to fully eliminate all significant contribution to nonattainment or interference with maintenance for certain downwind areas with respect to the 1997 ozone NAAQS.[94] The 11 states are: Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Texas. In the original CSAPR, the EPA did not require EGU NO_X reductions represented by costs that exceeded $500 per ton because it noted that, at cost thresholds higher than $500 per ton, non-EGU reductions should also be considered. Additionally, the EPA's analysis projected continued nonattainment and maintenance problems at downwind receptors to which these upwind states were linked after implementation of the CSAPR trading programs. Specifically, persistent ozone problems were expected in Baton Rouge, Louisiana; Houston, Texas; and Allegan, Michigan according to the remedy case modeling conducted for the final rule. At that time the EPA did not quantify further ozone season EGU or non-EGU NO_X reductions that would be needed in these states to fully resolve the good neighbor obligation under the CAA with respect to the 1997 ozone NAAQS.

To evaluate whether additional emission reductions would be needed in these 11 states to address the states' full good neighbor obligation for the 1997 ozone NAAQS, the EPA reviewed the 2017 air quality modeling conducted for this rule, which includes emission reductions associated with the CSAPR phase 2 ozone season budgets that were not remanded. The modeling included the phase 2 ozone season budgets for 10 of the states listed above—all but Texas. For each of these states, the updated 2017 air quality modeling shows that the predicted average DVs and maximum DVs for 2017 are below the level of the 1997 ozone NAAQS for the downwind receptors of concern to which the 11 states were linked in the original CSAPR rulemaking with respect the 1997 ozone NAAQS, meaning that these receptors no longer qualify as either nonattainment or maintenance receptors for that NAAQS. The 2017 air quality modeling also shows that there are no other nonattainment or maintenance receptors to which these states would be linked with respect to the 1997 ozone NAAQS. Thus, the EPA finds that, with implementation of the original CSAPR NO_X ozone season emission budgets in the states not subject to the remand, emissions within these ten states no longer significantly contribute to downwind nonattainment or interference with maintenance for the 1997 ozone NAAQS. Thus, the promulgation of the CSAPR NO_X ozone season budgets in those states satisfied the EPA's FIP obligation pertaining to the good neighbor provision for the 1997 ozone NAAQS. The EPA further finds that, with implementation of the CSAPR Update NO_X ozone season emission budgets, emissions from these ten states also no longer significantly contribute to downwind nonattainment or interference with maintenance for the 1997 ozone NAAQS.

Despite the EPA's conclusion in CSAPR that the 1997 ozone transport problems to which Texas was linked were not fully resolved, the court concluded in *EME Homer City II* that the ozone season emission budget finalized for Texas resulted in over-control as to the ozone air quality problems to which the state was linked. 795 F.3d at 129–30. As described earlier, in response to this determination, the EPA removed Texas's phase 2 ozone season budget as a constraint in the 2017 air quality modeling. Even in the absence of this constraint, the updated 2017 air quality modeling shows that the predicted average DVs and maximum DVs are below the level of the 1997 ozone NAAQS for the downwind receptors of concern to which Texas was linked in the original CSAPR rulemaking with respect the 1997 ozone NAAQS. Accordingly, the EPA has concluded that it need not require additional emission reductions from sources in Texas in order to address the states' interstate transport obligation with respect to the 1997 standard, and that the EPA has therefore fully addressed its FIP obligation with respect to Texas. Texas remains subject to the CSAPR Update in this final rulemaking with respect to the 2008 ozone NAAQS.

No Texas emissions were linked to expected ozone problems in Baton Rouge, Louisiana, and Allegan, Michigan. As noted previously receptors for these areas are no longer a concern for the 1997 ozone NAAQS. The EPA finds that Texas emissions no longer contribute significantly to

[93] In 2012, the EPA also finalized two rules making certain revisions to CSAPR. 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012). Various petitioners filed legal challenges to these rules in the D.C. Circuit, and the cases were also held in abeyance pending the litigation in *EME Homer City. See Wisconsin Public Service Corp.* v. *EPA,* No. 12–1163 (D.C. Cir., filed Apr. 6, 2012); *Utility Air Regulatory Group* v. *EPA,* No. 12–1346 (D.C. Cir., filed Aug. 9, 2012). The cases currently remain pending in the D.C. Circuit.

[94] *See* CSAPR Final Rule, 76 FR at 48220, and the CSAPR Supplemental Rule, 76 FR at 80760, December 27, 2011.

nonattainment in, or interfere with maintenance by, any other state with respect to the 1997 ozone NAAQS. Thus, the EPA no longer has a FIP obligation pertaining to Texas emissions and the good neighbor provision for the 1997 ozone NAAQS.

V. Analyzing Downwind Air Quality and Upwind State Contributions

In this section, the agency describes the air quality modeling performed consistent with steps 1 and 2 of the CSAPR framework described earlier in order to (1) identify locations where it expects nonattainment or maintenance problems with respect to the 2008 ozone NAAQS for the 2017 analytic year chosen for this final rule, and (2) quantify the contributions from anthropogenic emissions from upwind states to downwind ozone concentrations at monitoring sites projected to be in nonattainment or have maintenance problems for the 2008 ozone NAAQS in 2017.

This section includes information on the air quality modeling platform used in support of the final rule with a focus on the base year and future base case emission inventories. The EPA also provides the projection of 2017 ozone concentrations and the interstate contributions for 8-hour ozone. The Final Rule AQM TSD in the docket for this rule contains more detailed information on the air quality modeling aspects of this rulemaking.

The EPA provided two separate opportunities to comment on the air quality modeling platform and air quality modeling results that were used for the proposed CSAPR Update. On August 4, 2015, the EPA published a Notice of Data Availability (80 FR 46271) requesting comment on these data. Specifically, in the NODA, the EPA requested comment on the data and methodologies related to the 2011 and 2017 emissions and the air quality modeling to project 2017 concentrations and contributions. In addition to the comments received via the NODA, the EPA also received comments on emissions inventories and air quality modeling in response to the proposed CSAPR Update. Comments on both the NODA and proposed rule were considered for this final rule.

A. Overview of Air Quality Modeling Platform

For the proposed rule, the EPA performed air quality modeling for three emissions scenarios: A 2011 base year, a 2017 baseline, and a 2017 control case that reflects the emission reductions expected from the rule.[95]

The EPA selected 2011 as the base year to reflect the most recent National Emissions Inventory (NEI). In addition, the meteorological conditions during the summer of 2011 were generally conducive for ozone formation across much of the U.S., particularly the eastern U.S. As described in the AQM TSD, the EPA's guidance for ozone attainment demonstration modeling, hereafter referred to as the modeling guidance, recommends modeling a time period with meteorology conducive to ozone formation for purposes of projecting future year design values [96]. The EPA therefore believes that meteorological conditions and emissions during the summer of 2011 provide an appropriate basis for projecting 2017 ozone concentrations in contributions.

As noted in section IV, the EPA selected 2017 as the projected analysis year to coincide with the attainment deadline for Moderate areas under the 2008 ozone NAAQS. The agency used the 2017 baseline emissions in its air quality modeling to identify future nonattainment and maintenance locations and to quantify the contributions of emissions from upwind states to 8-hour ozone concentrations at downwind locations. The air quality modeling of the 2017 baseline and 2017 illustrative control case emissions are used to inform the agency's assessment of the air quality impacts resulting from this rule.

For the final rule modeling, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx) version 6.20 [97] to simulate pollutant concentrations for the 2011 base year and the 2017 future year scenarios. This version of CAMx was the most recent, publicly available version of this model at the time that the EPA performed air quality modeling for this rule. CAMx is a grid cell-based, multi-pollutant photochemical model that simulates the formation and fate of ozone and fine particles in the atmosphere. The CAMx model applications were performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 United States, the District of Columbia, and adjacent portions of Canada and Mexico using a horizontal resolution of 12 x 12 km. A map of the air quality modeling domain is provided in the AQM TSD.

The 2011-based air quality modeling platform includes 2011 base year emissions, 2017 future year projections of these emissions, and 2011 meteorology for air quality modeling with CAMx. In the remainder of this section, the EPA provides an overview of (1) the 2011 and 2017 emissions inventories, (2) the methods for identifying nonattainment and maintenance receptors along with a list of 2017 baseline nonattainment and maintenance receptors in the eastern U.S., (3) the approach to developing metrics to measure interstate contributions to 8-hour ozone, and (4) the predicted interstate contributions of upwind states to downwind nonattainment and maintenance in the eastern U.S. The EPA also identifies which predicted interstate contributions are at or above the screening threshold described in section IV, which the agency applies in step 2 of the CSAPR framework for purposes of identifying those upwind states that are linked to downwind air quality problems and which merit further analysis with respect to regulation of interstate transport of ozone for purposes of the 2008 ozone standard.

The EPA conducted an operational model performance evaluation of the 2011 modeling platform by comparing the 8-hour daily maximum ozone concentrations predicted during the May through September ''ozone season'' to the corresponding measured concentrations. This evaluation generally followed the approach described in the modeling guidance. Details of the model performance evaluation are described in the AQM TSD. The model performance results indicate that the 8-hour daily maximum ozone concentrations predicted by the 2011 CAMx modeling platform reflect the corresponding 8-hour observed ozone concentrations in the 12-km U.S. modeling domain. As recommended in the modeling guidance, the acceptability of model performance was judged by considering the 2011 CAMx performance results in light of the range of performance found in recent regional ozone model applications. These other modeling studies represent a wide range of modeling analyses that cover various models, model configurations, domains, years and/or episodes, and chemical mechanisms. Overall, the ozone model

[95] The 2017 control case is relevant to the EPA's policy analysis discussed in section VI and to the benefits and costs assessment discussed in section VIII of this preamble. It is not used to identify nonattainment or maintenance receptors or quantify the contributions from upwind states to these receptors.

[96] U.S. Environmental Protection Agency, 2014. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC. (*http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf*).

[97] Comprehensive Air Quality Model with Extensions Version 6.20 User's Guide. ENVIRON International Corporation, Novato, CA, March 2015.

performance results for the 2011 CAMx simulations are within the range found in other recent peer-reviewed and regulatory applications. The model performance results, as described in the AQM TSD, demonstrate that the predictions from the 2011 modeling platform correspond to measured data in terms of the magnitude, temporal fluctuations, and spatial differences for 8-hour daily maximum ozone. These results provide confidence in the ability of the modeling platform to provide a reasonable projection of expected future year ozone concentrations and contributions.

Comment: The EPA received comments that model performance should be evaluated for the individual days that were used in calculating projected 2017 ozone design values and projected 2017 ozone contributions. Commenters said that, in cases where model performance on these individual days is poor, the impact of the poor performance on projected concentrations and contributions must be investigated and considered in the final results by removing or adjusting these days to account for model bias.

Response: The EPA is using air quality modeling to provide data for a set of representative days with meteorological conditions conducive for ozone formation and transport for use in projecting ozone design values and for calculating the average contribution metric. As described in sections V.D and V.E of this preamble, EPA is using air quality model predictions in a relative sense for estimating 2017 ozone design values and contributions. In this regard, the approach for projecting future design values is ''anchored'' by measured concentrations. As stated in the modeling guidance, it is reasoned that factors causing bias (either under or over-predictions) in the base year will also affect the future case. While good model performance remains a prerequisite for use of a model, problems posed by imperfect model performance on individual days are expected to be reduced when using the relative approach. Moreover, there are no universally accepted, generally applicable numerical bright-line criteria for determining which days might be candidates to exclude or adjust based on model performance for specific days at individual sites, as in the approach suggested by the commenter. Thus, the EPA disagrees that such an approach is necessary or appropriate for determining the sets of days used to provide data for projecting 2017 design values and for calculating the average contribution metric.

The results of the model performance evaluation, as described previously and in the AQM TSD, indicate that ozone predictions from the modeling platform correspond to measured data in terms of the magnitude, temporal fluctuations, and spatial differences for 8-hour daily maximum ozone. Prior court rulings are deferential to modeling choices in this regard. The D.C. Circuit has declined to ''invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world.'' [98] The fact that a ''model does not fit every application perfectly is not criticism; a model is meant to simplify reality in order to make it tractable.'' [99] The court has held that ''it is only when the model bears no rational relationship to the characteristics of the data to which it is applied that we will hold that the use of the model was arbitrary and capricious.'' [100] As demonstrated by the EPA's model performance evaluation, the modeling platform used in this rulemaking provides reasonable projections of expected future year ozone concentrations and contributions, and is thus an appropriate basis on which to base the findings made in this action.

B. Emission Inventories

The EPA developed emission inventories for this rule including emission estimates for EGUs, non-EGU point sources, stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, wild fires, prescribed fires, and for biogenic emissions that are not the result of human activities. The EPA's air quality modeling relies on this comprehensive set of emission inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

To prepare the emission inventories for air quality modeling, the EPA processed the emission inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 3.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the CAMx air quality model. Additional information on the development of the emission inventories and on data sets used during the emissions modeling process for the final rule are provided in the TSD ''Preparation of Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform,'' hereafter known as the ''Final Rule Emissions Modeling TSD.'' This TSD is available in the docket for this rule and at *www.epa.gov/air-emissions-modeling/2011-version-6-air-emissions-modeling-platforms*.

The emission inventories, methodologies, and data used for the proposal air quality modeling were provided for public comment in the August 4, 2015 NODA. Comments received on this NODA and on the proposal were considered for the final rule and the resulting data and procedures are documented in the Final Rule Emissions Modeling TSD.

1. Foundation Emission Inventory Data Sets

The EPA developed emission data representing the year 2011 to support air quality modeling of a base year from which future air quality could be forecasted. The primary basis for the 2011 inventories used in air quality modeling was the 2011 National Emission Inventory (NEI) version 2 (2011NEIv2), released in March 2015. Documentation on the 2011NEIv2 is available in the 2011 National Emissions Inventory, version 2 TSD available in the docket for this rule and at *www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-documentation*. Updates to the 2011NEIv2 were incorporated between the proposed and the final rule in response to comments received on the NODA and on the proposal. The future base case scenario modeled for 2017 includes a representation of changes in activity data and of predicted emission reductions from on-the-books actions, including planned emission control installations and promulgated federal measures that affect anthropogenic emissions.[101] The emission inventories for air quality modeling include sources that are held constant between the base and future years, such as biogenic emissions and emissions from agricultural, wild and prescribed fires. The land use data used for the computation of the biogenic emissions were updated from those used in the proposal modeling to use the 2011 National Land Cover Database (NLCD) along with other updated data sets related to forest species, elevation, and cropland data in response to comments received on the NODA. The

[98] *EME Homer City II,* 795 F.3d at 135–36.

[99] *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994).

[100] *Appalachian Power Co.* v. *EPA,* 135 F.3d 791, 802 (D.C. Cir. 1998).

[101] Biogenic emissions and emissions from wild fires and prescribed fires were held constant between 2011 and 2017 since (1) these emissions are tied to the 2011 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

base and future year emissions for Canada used for the proposed rule were held constant at 2010 levels. For the final rule, the 2010 inventories were updated to reflect closures of EGUs and reductions to onroad and nonroad mobile source emissions in 2017. Emissions for Mexico represent the year 2018 and were unchanged from the proposed rule inventories.

2. Development of Emission Inventories for EGUs

Annual NO_X and SO_2 emissions for EGUs in the 2011NEIv2 are based primarily on data from continuous emission monitoring systems (CEMS), with other EGU pollutants estimated using emission factors and annual heat input data reported to the EPA. For EGUs without CEMS, the EPA used data submitted to the NEI by the states. The final rule inventories include some updates to 2011 EGU stack parameters and emissions made in response to comments on the NODA and proposal. Between proposal and final, additional point sources in the inventory were identified as small EGUs. This resulted in increases to EGU NO_X emissions that were offset by equivalent reductions in non-EGU point source NO_X emissions in Arkansas, California, Florida, Idaho, Louisiana, Mississippi, New Hampshire, Oregon, and Texas. For more information on the details of how the 2011 EGU emissions were developed and prepared for air quality modeling, see the Final Rule Emissions Modeling TSD.

The EPA projected future 2017 baseline EGU emissions using version 5.15 of the Integrated Planning Model (IPM) (*www.epa.gov/airmarkets/power-sector-modeling*). IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emission control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. The EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.[102]

To project future 2017 baseline EGU emissions for the CSAPR Update, the EPA adjusted the 2018 IPM version 5.15 base case results to account for three categories of differences between 2017 and 2018.[103] The categories are: (1) Adjusting NO_X emissions for units with SCRs in 2018 but that are assumed not to operate or be installed in 2017; (2) adding NO_X emissions for units that are retiring in 2018 but are projected to operate in 2017; and (3) adjusting NO_X emissions for coal-fired units that are projected to convert to natural gas (*i.e.,* ''coal-to-gas'') in 2018, but are still projected to burn coal in 2017. These adjustments are discussed in greater detail in the IPM documentation found in the docket for this final rule.

The IPM version 5.15 base case accounts for comments received as a result of the NODAs released in 2013, 2014, and 2015. This base case also accounts for comments received on the proposed CSAPR Update as well as updated environmental regulations. Unlike the modeling for the proposed rule, which was conducted prior to the D.C. Circuit's issuance of *EME Homer City II,*[104] this projected base case accounts for compliance with the original CSAPR by including as constraints all original CSAPR emission budgets with the exception of remanded phase 2 NO_X ozone season emission budgets for 11 states and phase 2 NO_X ozone season emission budgets for four additional states that were finalized in the original CSAPR supplemental rule.[105] [106] Specifically, to reflect original CSAPR ozone season NO_X requirements, the modeling includes as constraints the original CSAPR NO_X ozone season emission budgets for 10 states—Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee.

The IPM projected base case also accounts for the effects of the finalized and effective MATS,[107] New Source Review settlements, and on-the-books state rules through February 1, 2016 [108] impacting SO_2, NO_X, directly emitted particulate matter, and CO_2, and final actions the EPA has taken to implement the Regional Haze Rule.[109] The EPA's IPM base case also includes two federal non-air rules affecting EGUs: The Cooling Water Intake Structure (Clean Water Act section 316(b)) rule and the Coal Combustion Residuals (CCR) rule. The IPM modeling performed for the final CSAPR Update does not include the final Clean Power Plan (CPP). Documentation of IPM version 5.15 is in the docket and available online at *www.epa.gov/airmarkets/power-sector-modeling*.

Comment: Many comments requested that the agency not include the CPP in the 2017 projections informing policy decisions in this rule. This was in response to our discussion of this topic and request for comment in the proposal preamble and a memorandum to the docket (hereinafter referred to as the ''Harvey Memo'').[110] Commenters cited discrete CPP-related outputs in the 2017 modeling results, such as the retirement of model plants, for the proposed CSAPR Update and provided

[102] Detailed information and documentation of the EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on the EPA's Web site at: *www.epa.gov/airmarkets/power-sector-modeling.*

[103] The EPA uses this approach to project 2017 data because 2017 is not a direct IPM run year.

[104] *EME Homer City Generation, L.P.,* v. *EPA,* No. 795 F.3d 118 (D.C. Cir. 2015).

[105] In *EME Homer City II,* the D.C. Circuit declared invalid the CSAPR phase 2 NO_X ozone season emission budgets of 11 states: Florida, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and West Virginia. *Id.* 795 F.3d at 129–30, 138. The court remanded those budgets to the EPA for reconsideration. *Id.* at 138. As a result, the EPA removed the original CSAPR phase 2 NO_X ozone season emission budgets as constraints for these 11 states in the 2017 IPM modeling.

[106] The EPA acknowledges that the CSAPR NO_X ozone season emission budgets for Iowa, Michigan, Oklahoma, and Wisconsin—which were finalized in the original CSAPR Supplemental Rule (76 FR 80760, December 27, 2011)—were linked to the same receptors that lead to the remand of other states' NO_X ozone season emission budgets in *EME Homer City II.*

[107] In *Michigan* v. *EPA,* the Supreme Court reversed on narrow grounds a portion of the D.C. Circuit decision upholding the MATS rule, finding that the EPA erred by not considering cost when determining that regulation of EGUs was ''appropriate'' pursuant to CAA section 112(n)(1). 135 S. Ct. 192 (2015). On remand, the D.C. Circuit left the MATS rule in place pending the EPA's completion of its cost consideration in accordance with the Supreme Court's decision. *White Stallion Energy Ctr.* v. *EPA,* No. 12–1100 (Dec. 15, 2015) (order remanding MATS rule without vacatur). The EPA finalized its supplemental action responding to the Supreme Court's Michigan decision on April 14, 2016. 81 FR 24420 (April 25, 2016). The MATS rule is currently in place.

[108] For any specific version of IPM there is a cutoff date after which it is no longer possible to incorporate updates into the input databases.

[109] The EPA did not include the federal Regional Haze Plans for Texas and Oklahoma, published January 5, 2016, in IPM for this rule. These Regional Haze Plans do not require significant emission reductions for three to five years from the effective date of the rule, *see* 81 FR 296, 305. Also, the Fifth Circuit has since stayed those requirements pending judicial review, *Texas* v. *EPA,* 2016 U.S. App. LEXIS 13058 (5th Cir. July 15, 2016).

[110] Reid Harvey, Dir., Clean Air Markets Div., Memorandum to the Docket, Inclusion of the Clean Power Plan in the baseline for the proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (Dec. 2, 2015) (hereinafter ''Harvey Memo'').

information indicating that retirements of the actual plants represented in the model were not expected to occur by 2017. Commenters specifically requested that EPA should not include the CPP in the base case modeling.

Response: We agree that the CPP should not be included in the base case modeling for this rule.

The EPA recognizes that, in general, including the illustrative modeling of the CPP, as a promulgated rule, in the baseline of the CSAPR Update would accord with typical practice. This typical practice is one common approach for ensuring that all power sector and air quality impacts evaluated in the CSAPR Update analysis are fully incremental to and independent of the impacts of preceding rules. However, the CSAPR requirements will be implemented at least five years before any requirements are applied to sources under the CPP, and there should be no meaningful impact of the CPP on power sector dispatch decisions in the timeframe of the CSAPR requirements, as analyzed here.[111]

In the Harvey Memo prepared for the CSAPR Update proposal, we identified several key factors and uncertainties associated with measuring the effects of the CPP in 2017. We identified simplifying assumptions in the CPP modeling regarding the types of plans states may develop, and noted that the CPP does not have any pre-2022 requirements for sources and provides states and utilities with ample options to minimize near-term impacts. Harvey Memo, at 11–13. Therefore, we observed that in the context of the CPP, the model projected impacts in 2016–2018 are likely overstated due to the modeling structure's perfect foresight of future prices and market conditions that don't reflect real-world uncertainty. Id. at 6. We also noted the likelihood that states would choose implementation pathways that would completely avoid the actions that were forecast in the model to occur by 2018. For these reasons, the modeling results prior to 2020 were not relied upon for the CPP RIA. Id. at 13.

Commenters, particularly the regulated utilities, by and large agreed that these considerations were significant and atypical and urged the agency to exclude the CPP from the CSAPR Update modeling. Thus, while the EPA continues to believe that the modeling analysis for the CPP in the final CPP RIA was useful and reliable with respect to the model years analyzed for that rule (*i.e.,* 2020, 2025, and 2030), we are excluding the CPP from the base case in this action.

For further discussion of the CPP, see discussion below at Section VII.H.2; see also Harvey Memo, at 5–11.

3. Development of Emission Inventories for Non-EGU Point Sources

The 2011 non-EGU point sources in the 2011 base case inventory match those in the proposal modeling, except for those sources that were updated as a result of comments including sources in Georgia, Illinois, North Carolina, and Oklahoma. Most changes were a result of the reclassification of sources as EGUs and amount to less than 2 percent of the non-EGU point NO_X emissions in each state. The largest change in terms of overall tonnage was 2,800 tons of reduction in Texas, 1,300 of which were offset by increases to the EGU sector and 1,500 tons of which were reductions of railroad equipment emissions based on a comment from the Texas Commission on Environmental Quality. In addition to comments related to emissions, some comments on stack parameters were received and incorporated. Details on the development of the 2011 emission inventories can be found in the Final Rule Emissions Modeling TSD and the 2011NEIv2 TSD.

Prior to air quality modeling, the emission inventories must be processed into a format that is appropriate for the air quality model to use. Details on the processing of the emissions for 2011 and on the development of the 2017 non-EGU emission inventories are available in the Final Rule Emissions Modeling TSD.

Projection factors and percent reductions in this rule reflect comments received as a result of the August 4, 2015 NODA and the proposed CSAPR Update. Non-EGU emissions for 2017 also changed from the proposal due to a correction to the order of precedence for the application of control programs. The largest tonnage change from the projected 2017 NO_X emissions in the proposal was a 2,200 ton increase in Wisconsin, an 8 percent increase. The largest percentage change to 2017 non-EGU point emissions was a 1,300 ton reduction in Oregon equivalent to 9 percent of non-EGU point emissions in the state and offset by an increase in EGU emissions. The 2017 non-EGU point emissions reflect emission reductions due to national and local rules, control programs, plant closures, consent decrees and settlements. Reductions from several Maximum Achievable Control Technology (MACT) and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards are included. Projection approaches for corn ethanol and biodiesel plants, refineries and upstream impacts represent requirements pursuant to the Energy Independence and Security Act of 2007 (EISA).

For aircraft emissions at airports, the EPA developed projection factors based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast (TAF) system, published in March 2013.

Point source and nonpoint oil and gas emissions are projected to 2018 [112] using regional projection factors by product type using Annual Energy Outlook (AEO) 2014 projections to year 2018, the year for which all data sources needed to develop the projections were available. NO_X and VOC reductions that are co-benefits to the NESHAP and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS NO_X controls and NSPS Oil and Gas VOC controls are reflected for select source categories. The projection approach for oil and gas emissions was unchanged from that used for the proposal inventories, with the exception of changes incorporated in response to comments in Colorado, Oklahoma, Texas and Utah and due the correction of an error in the projection factors that had been applied at proposal to oil and gas emissions in Kansas. There were modest changes to NO_X emissions in New Mexico and North Dakota as a result of the correction to the order of precedence in the application of control programs. Details on the development of the projected point and nonpoint oil and gas emission inventories are available in the Final Rule Emissions Modeling TSD.

[111] On February 9, 2016, after the close of the public comment period for the CSAPR Update rule, the Supreme Court granted applications to stay the Clean Power Plan, pending judicial review of the rule in the D.C. Circuit, including any subsequent review by the Supreme Court. *West Virginia et al.* v. *EPA,* No. 15A773 (U.S. Feb. 9, 2016). The concerns discussed here predated and are unrelated to the stay. It is currently unclear what adjustments, if any, will need to be made to implementation timing in light of the stay. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the CPP is finally adjudicated.

[112] Developing oil and gas sector projections was a very complex process that combined data from many different sources. Not all of the same data was available for 2017, so the projected emissions were retained at 2018 levels as they had been prepared for proposal, but were adjusted based on comments.

4. Development of Emission Inventories for Onroad Mobile Sources

The EPA developed the onroad mobile source emissions for states other than California using the EPA's Motor Vehicle Emissions Simulator, version 2014a (MOVES2014a), a newer version of MOVES than was used in the proposal modeling. The agency computed the emissions within SMOKE by multiplying the MOVES-based emission factors with the appropriate activity data. The agency also used MOVES emission factors to estimate emissions from refueling. Both 2011 and 2017 onroad mobile source activity data and model databases were updated for Ohio, New Jersey, North Carolina, and Texas in response to comments received on the NODA and on the proposed rule. Additional information on the approach for generating the onroad mobile source emissions is available in the Final Rule Emissions Modeling TSD. Onroad mobile source emissions for California were updated from the proposal using emissions submitted by the state in response to comments on the NODA.

In the future-year modeling for mobile sources, the EPA included all national measures known at the time of modeling. The future scenarios for mobile sources reflect projected changes to fuel usage and onroad mobile control programs finalized as of the date of the model run. In response to comments on the NODA, the EPA developed future year onroad mobile source emission factors and activity data for the final rule modeling that directly represented the year 2017, whereas in the proposal modeling the 2017 emissions were based on adjustments to 2018 emissions. Finalized rules that are incorporated into the mobile source emissions include: Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008–2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007). Impacts of rules that were in effect in 2011 are reflected in the 2011 base year emissions at a level that corresponds to the extent to which each rule had penetrated into the fleet and fuel supply by the year 2011. Local control programs such as the California LEV III program are included in the onroad mobile source emissions. Activity data for onroad mobile sources was projected using AEO 2014. Updated onroad mobile source emissions in California for the final rule modeling of the year 2017 were provided by the California Air Resources Board.

5. Development of Emission Inventories for Commercial Marine Category 3 (Vessel)

The commercial marine category 3 vessel (''C3 marine'') emissions in the 2011 base case emission inventory for this rule are consistent with those in the proposal modeling and are equivalent to those in the 2011NEIv2. These emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_X, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect as early as 2010. The cumulative impacts of these rules through 2017 are incorporated in the 2017 projected emissions for C3 marine sources.

6. Development of Emission Inventories for Other Nonroad Mobile Sources

To develop the nonroad mobile source emission inventories other than C3 marine for the modeling platform, the EPA used monthly, county, and process level emissions output from the National Mobile Inventory Model (NMIM) (*http://www.epa.gov/otaq/nmim.htm*). State-submitted emissions data for nonroad sources were used for Texas and California. For Texas, these emissions are consistent with those in the 2011NEIv2, while the California emissions were consistent with those used in the proposal modeling. Locomotive emissions in Texas and North Carolina in the final rule modeling incorporated updates in response to comments received on the NODA.

In response to comments received on the NODA and the proposal, the EPA used NMIM to project nonroad mobile emissions directly to 2017, as opposed to adjusting 2018 emissions back to 2017 as was done for the proposal modeling. The nonroad mobile emission control programs include reductions to locomotives, diesel engines and marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Final Rule Emissions Modeling TSD.

7. Development of Emission Inventories for Nonpoint Sources

The emissions for stationary nonpoint sources in the 2011 base case emission inventory are largely consistent with those in the proposal modeling and in the 2011NEIv2, although some updates to Connecticut, Massachusetts, North Carolina, Texas and also to portable fuel container emissions were made in response to comments on the NODA and the proposal. For more information on the nonpoint sources in the 2011 base case inventory, see the Final Rule Emissions Modeling TSD and the 2011NEIv2 TSD.

Where states provided the EPA with information about projected control measures or changes in nonpoint source emissions, the EPA incorporated those inputs in its projections. Updates to nonpoint emissions in North Carolina, Connecticut, Massachusetts, and Texas were incorporated in response to comments received on the NODA. The EPA included adjustments for state fuel sulfur content rules for fuel oil in the Northeast. Projected emissions for portable fuel containers reflect the impact of projection factors required by the final Mobile Source Air Toxics (MSAT2) rule and the EISA, including updates to cellulosic ethanol plants, ethanol transport working losses, and ethanol distribution vapor losses.

For the final rule, emissions for nonpoint oil and gas sources were updated in Colorado, Texas, and Oklahoma in response to comments received on the 2015 NODA, and an error was corrected in the projections for Kansas. The EPA developed regional projection factors for nonpoint oil and gas sources by product type based on Annual Energy Outlook (AEO) 2014 projections to year 2018. The agency reflected criteria air pollutant (CAP) co-benefit reductions resulting from the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE) and NSPS rules and Oil and Gas NSPS VOC controls for select source categories. Additional details on the projections are available in the Final Rule Emissions Modeling TSD.

C. Definition of Nonattainment and Maintenance Receptors

In this section, the EPA describes how it determines locations where nonattainment or maintenance problems are expected for the 2008 8-hour ozone NAAQS in the 2017 analytic future year chosen for this rule. The EPA then describes how it factored current monitored data into the identification of sites as having either nonattainment or maintenance concerns for the purposes of this rulemaking. These sites are used as the ''receptors'' for quantifying the contributions of emissions in upwind states to nonattainment and

maintenance concerns in downwind locations.

In this rule, the EPA is relying on the CSAPR approach (as described below) to identify separate nonattainment and maintenance receptors in order to give independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina.*[113] In its decision on remand from the Supreme Court, the D.C. Circuit confirmed that the EPA's approach to identifying maintenance receptors in CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision. *EME Homer City II,* 795 F.3d at 136.

In CSAPR, the EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS. The EPA separately identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The original CSAPR approach for identifying nonattainment and maintenance receptors relied only upon air quality model projections of measured design values. In the original CSAPR, if the average design value in the analysis year was projected to exceed the NAAQS, then the monitoring site was identified as a nonattainment receptor without consideration of whether the monitoring site is currently measuring ''clean data'' (*i.e.,* design values below the NAAQS based on the most recent three years of measured data). In prior transport rulemakings, such as the NO_X SIP Call and CAIR, the EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that the EPA projects will be in nonattainment in the future compliance year.[114] The EPA explained that it had the most confidence in its projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. In the original CSAPR, the EPA was compelled to deviate from this practice of incorporating monitored data into its evaluation of projected nonattainment receptors because the most recent monitoring data then available reflected large emission reductions from CAIR, which the original CSAPR was designed to replace. As recently affirmed by the D.C. Circuit, it was therefore reasonable for the EPA to decide not to compare monitored data reflecting CAIR emissions reductions to its modeling projections that instead excluded CAIR from its baseline.[115]

As the EPA is not replacing an existing transport program in this CSAPR Update, the agency proposed to once again consider current monitored data as part of the process for identifying projected nonattainment receptors for this rulemaking. The agency received comments supporting the consideration of current monitored data for identifying projected nonattainment receptors. Thus, for the final CSAPR Update the EPA is identifying as nonattainment receptors those monitors that both currently measure nonattainment and that the EPA projects will be in nonattainment in 2017.

As noted previously, in the original CSAPR, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base year period.

The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor. The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. Therefore, the maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind states whose emissions, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

For the final CSAPR Update, the EPA assesses the magnitude of the maximum projected design value for 2017 at each receptor in relation to the 2008 ozone NAAQS and, where such a value exceeds the NAAQS, the EPA determines that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II.*[116] That is, monitoring sites with a maximum projected design value that exceeds the NAAQS are projected to have a maintenance problem in 2017.

In addition, those sites that are currently measuring clean data, but are projected to be nonattainment based on the average design value (and that, by definition, are projected to have a maximum design value above the standard) are also identified as maintenance-only receptors. Unlike nonattainment receptors, current clean monitored data does not disqualify a receptor from being identified as a maintenance receptor because the possibility of failing to maintain the NAAQS in the future, even in the face of current attainment of the NAAQS, is exactly what the maintenance prong of the good neighbor provision is designed to guard against.

Comment: The agency received comments that the EPA should not include as a downwind receptor any site that is currently measuring clean data. Commenters also raise concerns with the EPA's reliance on the projected maximum design value to determine whether an area should be identified as a maintenance receptor, particularly where the projected average design value is below the NAAQS. The commenters contend that this approach does not take into account the nationwide trend toward decreasing ozone design values and improving ozone air quality.

Response: The EPA disagrees with this comment based on several factors. First, current (*i.e.,* 2013–2015) ozone design values in many portions of the eastern U.S. may be lower than what might otherwise have been expected due to cooler than normal temperatures during the summers of 2013, 2014, and 2015 which led to meteorological conditions which were generally unfavorable for the formation of high ozone concentrations. An examination of historical inter-annual variability in summer meteorological conditions in the East indicates that in spite of the

[113] 531 F.3d at 910–911 (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[114] 63 FR at 57375, 57377 (Oct. 27, 1998); 70 FR at 25241 (May 12, 2005). *See also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable the EPA's approach to defining nonattainment in CAIR).

[115] *EME Homer City II,* 795 F.3d at 135–36; *see also* 76 FR 48208 at 48230–31 (August 8, 2011).

[116] *See* 795 F.3d at 136.

relatively non-conducive meteorological conditions seen in the last 3 years, conditions more favorable to ozone formation have often occurred in the past and are likely to reoccur in the future, therefore leading to the risk of a violation of the NAAQS. *See* the AQM TSD for more details.

Second, ambient monitoring data for maintenance sites that are currently measuring attainment suggest that these sites are at risk of violating the NAAQS. Table V.D–3 provides the 2013–2015 design values and the 4th highest annual 8-hour daily maximum ozone concentrations used to calculate these design values for each of the maintenance receptors that are currently measuring attainment. The data in Table V.D–3 indicate (1) seven of the nine sites had measured 4th high values [117] which exceed the level of the NAAQS in at least one of the years during this 3-year time period and (2) 4th high ozone concentration increased from 2014 to 2015 at all but one of these sites. There were increases in measured 4th high values between 2013 and 2015 at all but one of these sites (with the highest increase of 22 ppb occurring in Harris County TX), despite the fact that ozone precursor emissions are continuing to trend downward.[118] In addition, preliminary monitoring for 2016 also indicates that ozone has increased, based on 4th high values, in 2016 compared to the concentrations that were measured in 2014 at most of the receptor sites.[119] This shows that the influence of meteorology on measured ozone values can overwhelm the general downward trend in emissions. Thus, given the variability of meteorological conditions, there is every reason to believe that these maintenance sites that are currently measuring attainment are at risk of violating the NAAQS in 2017, as projected by the EPA's modeling.

The EPA believes it is therefore appropriate and reasonable to use the maximum design value to identify receptors that may have maintenance problems in the future. This approach uses measured data in order to establish potential air quality outcomes at each receptor that take into account the variable meteorological conditions present across the entire period of measured data (2009 to 2013). The EPA interprets the maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor. The EPA construes the average design value at a receptor to be a reasonable projection of future air quality in that area under ''average'' conditions. However, the EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) that promote ozone formation, may recur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, recur. It also identifies upwind emissions that under those circumstances could interfere with the downwind area's ability to maintain the NAAQS.

D. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

The following is a brief summary of the procedures for projecting future-year 8-hour ozone average and maximum design values to 2017 to determine nonattainment and maintenance receptors. Consistent with the EPA's modeling guidance the agency uses the air quality modeling results in a ''relative'' sense to project future concentrations. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values [120] up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. Because the base year for this rule is 2011, the EPA is using the base period 2009–2013 ambient ozone design value data in order to project 2017 average design values in a manner consistent with the modeling guidance.

The approach for projecting future ozone design values involved the projection of an average of up to 3 design value periods, which include the years 2009–2013 (design values for 2009–2011, 2010–2012, and 2011–2013). The 2009–2011, 2010–2012, and 2011–2013 design values are accessible at *www.epa.gov/airtrends/values.html*. The average of the 3 design values creates a ''5-year weighted average'' value. The 5-year weighted average values were then projected to 2017. To project 8-hour ozone design values, the agency used the 2011 base year and 2017 future base-case model-predicted ozone concentrations to calculate relative response factors (RRFs) for the location of each monitoring site. The RRFs were applied to the 2009–2013 average ozone design values and the individual design values for 2009–2011, 2010–2012, and 2011–2013. Details of this approach are provided in the AQM TSD.

Projected design values that are greater than or equal to 76.0 ppb are considered to be violating the NAAQS in 2017. As noted previously, nonattainment receptors are those sites that are violating the NAAQS based on the most recent measured air quality data and also have projected average design values of 76.0 ppb or greater. Therefore, as an additional step, for those sites that are projected to be violating the NAAQS based on the average design values in 2017, the EPA examined the most recent measured design value data to determine if the site was currently violating the NAAQS. For the final rule, the agency examined ambient data for the 2013–2015 period, which is the most recent available measured design values at the time of this rule.

Maintenance-only receptors therefore include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data, and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76.0 ppb or greater. The EPA notes that the 2017 ozone nonattainment receptors are inclusive of areas that, in addition to having projected nonattainment, may have maintenance issues in the future, since the maximum design values for each of these sites is always greater than or equal to the average design value.

Table V.D–1 contains the ambient 2009–2013 base period average and maximum 8-hour ozone design values, the 2017 projected baseline average and maximum design values, and the ambient 2013–2015 design values for the 6 sites in the eastern U.S. projected to be 2017 nonattainment receptors. Table V.D–2 contains this same information for the 13 maintenance-only sites in the eastern U.S. The design

[117] Ozone season measured daily 4th high 8-hour average ozone concentrations are used to calculate design values. The design value is a 3 year average of the 4th high values. See 40 CFR part 50, Appendix P to Part 50.

[118] *See* the AQM TSD.

[119] This is based on preliminary 2016 data available from the Air Quality System (AQS) and AirNow as of August 23, 2016, which represents only a portion of the ozone season. This data has not been certified by state agencies.

[120] The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site. See 40 CFR part 50, Appendix P to Part 50.

values for all monitoring sites in the U.S. are provided in docket.

TABLE V.D–1—AVERAGE AND MAXIMUM 2009–2013 AND 2017 BASELINE 8-HOUR OZONE DESIGN VALUES AND 2013–2015 DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT SITES IN THE EASTERN U.S.

[Nonattainment receptors]

Monitor ID	State	County	Average design value 2009–2013	Maximum design value 2009–2013	Average design value 2017	Maximum design value 2017	2013–2015 design value
090019003	Connecticut	Fairfield	83.7	87	76.5	79.5	84
090099002	Connecticut	New Haven	85.7	89	76.2	79.2	78
480391004	Texas	Brazoria	88.0	89	79.9	80.8	80
484392003	Texas	Tarrant	87.3	90	77.3	79.7	76
484393009	Texas	Tarrant	86.0	86	76.4	76.4	78
551170006	Wisconsin	Sheboygan	84.3	87	76.2	78.7	77

TABLE V.D–2—AVERAGE AND MAXIMUM 2009–2013 AND 2017 BASELINE 8-HOUR OZONE DESIGN VALUES AND 2013–2015 DESIGN VALUES (ppb) AT SITES IN THE EASTERN U.S. THAT ARE PROJECTED MAINTENANCE-ONLY RECEPTORS

Monitor ID	State	County	Average design value 2009–2013	Maximum design value 2009–2013	Average design value 2017	Maximum design value 2017	2013–2015 design value
090010017	Connecticut	Fairfield	80.3	83	74.1	76.6	81
090013007	Connecticut	Fairfield	84.3	89	75.5	79.7	83
211110067	Kentucky	Jefferson	85.0	85	76.9	76.9	[121] N/A
240251001	Maryland	Harford	90.0	93	78.8	81.4	71
260050003	Michigan	Allegan	82.7	86	74.7	77.7	75
360850067	New York	Richmond	81.3	83	75.8	77.4	74
361030002	New York	Suffolk	83.3	85	76.8	78.4	72
390610006	Ohio	Hamilton	82.0	85	74.6	77.4	70
421010024	Pennsylvania	Philadelphia	83.3	87	73.6	76.9	73
481210034	Texas	Denton	84.3	87	75.0	77.4	83
482010024	Texas	Harris	80.3	83	75.4	77.9	79
482011034	Texas	Harris	81.0	82	75.7	76.6	74
482011039	Texas	Harris	82.0	84	76.9	78.8	69

TABLE V.D–3—AMBIENT OZONE DESIGN VALUES FOR 2013–2015 AND THE 4TH HIGHEST 8-HOUR DAILY MAXIMUM OZONE CONCENTRATIONS (ppb) FOR EACH MAINTENANCE-ONLY RECEPTOR THAT IS CURRENTLY MEASURING ATTAINMENT

Monitor ID	State	County	2013–2015 design value	2013 4th highest value	2014 4th highest value	2015 4th highest value
211110067	Kentucky	Jefferson	N/A	N/A	70	*76
240251001	Maryland	Harford	71	72	67	74
260050003	Michigan	Allegan	75	*78	*77	72
360850067	New York	Richmond	74	69	68	*77
361030002	New York	Suffolk	72	72	66	*78
390610006	Ohio	Hamilton	70	69	70	72
421010024	Pennsylvania	Philadelphia	73	68	72	*79
482011034	Texas	Harris	74	69	66	*88
482011039	Texas	Harris	69	69	63	*77

* Indicates 4th highest values that exceed the NAAQS.

Comment: The EPA received comments on the approach for projecting future year design values for monitoring sites located in certain coastal areas (*i.e.,* monitoring sites located in southern Connecticut along Long Island Sound, in Wisconsin and Michigan along Lake Michigan and in Maryland along the Chesapeake Bay).

[121] The 2013–2015 design value at this site is not valid due to incomplete data for 2013. There are valid 4th high measured concentrations for 2014 and 2015 and therefore the site may have valid design value data when the 2014–2016 data is complete. The 2014 4th high value at this site was 70 ppb and the 2015 4th high value at this site was 76 ppb. In addition, there is one other monitoring site in Jefferson County KY which has a valid 2013–2015 design value of 66 ppb. There is one other site in the Louisville CBSA which has a slightly higher 2013–2015 design value of 68 ppb (site 211850004 in Oldham County KY). Since there is no valid design value data that indicates that the Jefferson County receptor or any other monitoring site in Jefferson County or the Louisville metropolitan area is currently exceeding the 2008 NAAQS, for the purposes of this final rule, the Jefferson County KY receptor will be considered a maintenance receptor.''

Some commenters said that the relative response factors for coastal sites should be based on modeled ozone in the grid cell containing the monitoring site or ''land'' cells only, rather than the grid cell with the highest 2011 base case modeled value from among the 3 by 3 matrix of grid cells surrounding the monitoring site (*i.e.,* the 3 x 3 matrix approach). Some commenters said that using the 3 x 3 approach for coastal sites can result in the use of modeled data from grid cells over water, which the commenters claim are not representative of the location of the monitor. These commenters contend that modeled values from ''over water'' cells are biased high and will overstate projected 2017 design values at coastal sites. In this regard, the commenters said EPA should consider using the modeled data in the grid cell containing the monitoring site or use the highest value in ''over land'' grid cells adjacent to the monitoring site.

Commenters examined model performance in the grid cell that contained the monitor and also compared these measured values to the ''highest'' modeled value in the 3 x 3 grid cell matrix surrounding the monitoring site. They contend that higher modeled ozone concentrations from the 3 x 3 matrix overstate concentrations measured at the monitoring site and, as a result, commenters claim that using the 3 x 3 modeled values will lead to inaccurate future model projections.

Response: EPA first notes that the modeling guidance recommends calculating relative response factors based on the highest values in the vicinity of the monitoring site (*i.e.,* the 3 x 3 matrix approach) in part because limitations in the inputs and model physics can affect model precision at the grid cell level. Allowing some leeway in the precision of the predicted location of daily maximum ozone concentrations can help assure that possibly artificial, fine scale variations do not inadvertently impact an assessment of modeled ozone response. In addition, monitors are sometimes located very close to the border of two or more grid cells. For both of these reasons, choosing to calculate the model response from the nearby grid cell with the highest modeled ozone value is likely to be most representative of model response during high measured ozone conditions. In addition, coastal sites by the nature of their location near large water bodies often measure ozone concentrations in air from over the water when winds are blowing from the water to the land. Such wind flows can occur as part of a broader ''synoptic scale'' wind pattern and/or during more local scale onshore wind flows associated with a ''sea breeze'', ''sound breeze'', ''lake breeze'', or ''bay breeze'' depending on the nature of the adjacent body of water. Thus, it is appropriate to consider modeled values from both ''over water'' and ''over land'' grid cells to represent ozone concentrations which may impact monitoring sites in coastal areas.

The commenters also compared measured ozone values at monitoring locations to the highest modeled concentrations in the 3 x 3 grid cells surrounding the monitor and found that modeled ozone in grid cells over the water (where there are no monitoring sites) often ''over predicted'' the measured values at the monitors. The commenters claim that this will lead to an overstatement of future year design values and inaccurate future year values. The EPA finds no basis for this conclusion. First, the components of the modeling system used for this final rule, (*i.e.,* the photochemical grid model, the meteorological model, emissions models, and input data) are based on state-of-the-science methods and data that are designed to represent the physical and chemical processes associated with the formation, transport, and fate of ozone and precursor pollutants. The intent of the model evaluation is to use available measurements to gain confidence in the use of the modeling system not only to predict concentrations for times and locations where there are measurements, but also to provide credible estimates of base year concentrations in other locations which can be used to project future year concentrations. Second, the EPA is not using the absolute modeled concentrations to determine future year (2017) design values. As described in the preamble and the AQM TSD, the EPA projects future year design values based on the percent change (*i.e.,* relative response) in ozone using predictions from a model simulation for 2011 and predictions from a corresponding model simulation for 2017. The relative response factors based on the modeled data from the 3 x 3 matrix approach are applied to measured ozone design value.

For the final rule, the EPA performed an analysis that compared the 2017 projected design values based on applying the 3 x 3 matrix approach recommended in EPA's modeling guidance to an approach that relies exclusively on modeled values in the grid cell containing the monitoring (*i.e.,* monitor-cell approach). This analysis was performed for ozone monitoring sites nationwide including the coastal sites of concern to commenters. A data file with the projected 2017 design values using the 3 x 3 matrix approach and the monitor-cell approach at individual monitoring sites can be found in the docket.

In our analysis we examined the data separately for each of four groupings of monitoring sites: (1) All sites nationwide, (2) all sites in the East, (3) all nonattainment and maintenance receptors identified in this rule, and (4) the set of coastal sites of particular concern to the commenters together with a coastal site in Harford Co., MD that is also receptor for this final rule. The specific set of 8 coastal sites analyzed as a separate group include Fairfield Co., CT sites 090010017, 090013007, and 090019003, New Haven Co., CT 090093002, Baltimore Co., MD 240053001, Harford Co., MD 240251001, Allegan Co., MI, 260050003, and Sheboygan Co, WI 551170006. Note that all of these sites, except for the site in Baltimore Co., MD are receptors for this final rule. The results indicate that the 3 x 3 approach results in lower or equivalent projected 2017 design values compared to the monitor-cell approach at 76 percent of the monitoring sites nationwide. That is, at a majority of the monitoring sites, the 3 x 3 approach which relies on the highest base year concentrations in the vicinity of the monitoring site tends to be more responsive to emissions reductions than only using data from the grid cell containing the monitor. For the Eastern U.S., 75 percent of the monitoring sites had lower projected 2017 design values with the 3 x 3 approach, compared to the monitor-cell approach. At 14 of the 19 nonattainment and maintenance receptors for this rule, the 3 x 3 approach design value is either lower or within 0.5 ppb [122] of the corresponding value from the monitor-cell approach. Finally, for the 8 coastal sites, the 3 x 3 approach on balance does not result in an overall notable bias compared to the monitor-cell approach. Specifically, at half of these sites the 3 x 3 approach design value is lower or within 0.5 ppb of the corresponding value from the monitor-cell approach. EPA does not believe that it would be appropriate to use the 3 x 3 approach for some coastal receptors and the single monitor-cell approach for other coastal receptors, depending solely on the outcome as to which approach yields lower future design value at an individual receptor site. Based on the results of this analysis

[122] ''In this analysis ''within 0.5 ppb'' includes values that greater than or equal to -0.5 ppb and also less than or equal to 0.5 ppb.

the EPA continues to believe that the 3 x 3 approach is appropriate for projecting design values for this rule and provides for regional consistency in the projection methodology across all sites.

Comment: Commenters contend that the EPA is not appropriately considering international emissions in the process of identifying downwind nonattainment and maintenance receptors. The commenters cite CAA section 179B and contend that it requires the Administrator to approve plans that would be sufficient to attain or maintain the NAAQS but for emissions emanating from outside of the U.S. They therefore contend that, where a receptor in the EPA's modeling would attain or maintain the standard when international emissions are accounted for, the EPA has no authority to require emissions from upwind states pursuant to section 110(a)(2)(D)(i)(I). Commenters state that such reduction requirements would constitute the over-control of emissions from upwind states.

The commenters explicitly recommend that the EPA exclude the projected contributions from Canada and Mexico from the projected design values before comparing the projections to the NAAQS for purposes of identifying receptors. Commenters further recommend that the EPA exclude a ''conservatively calculated'' 5 percent of EPA-estimated contributions attributable to the anthropogenic fraction of boundary concentrations. The commenters propose that this approach would result in fewer receptors and relieve upwind states of the obligation to make emission reductions associated with these receptors.

Response: The EPA disagrees with commenters that section 179B of the Clean Air Act obviates the good neighbor obligations imposed upon states by section 110(a)(2)(D)(i)(I) of the Act.

First, commenters misunderstand the provisions of section 179B. Section 179B permits the EPA to approve an attainment plan or plan revision for areas that could attain the relevant NAAQS by the statutory attainment date ''but for'' emissions emanating from outside the U.S. When applicable, this CAA provision relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those necessary to address reasonably controllable emissions from within the U.S. Specifically, CAA section 179B(a) provides that the EPA shall approve a plan for such an area if: (i) The plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that ''but for emissions emanating from outside the United States,'' the area would attain and maintain the relevant NAAQS. In addition, CAA section 179B(b) applies specifically to the ozone NAAQS and provides that if a state demonstrates that an ozone nonattainment area would have timely attained the NAAQS by the applicable attainment date ''but for emissions emanating from outside of the United States,'' then the area can avoid extension of the ozone attainment dates pursuant to CAA section 181(a)(5), the application of fee provisions of CAA section 185, and the mandatory reclassification provisions under CAA section 181(b)(2) for areas that fail to attain the ozone NAAQS by the applicable attainment date.

Commenters fail to acknowledge that, even if an area is impacted by emissions from outside the U.S., CAA section 179B does not affect the designations process. The designations process is meant to protect public health and welfare. Designating an area nonattainment for a particular NAAQS ensures that the public is informed that the air quality in a specific area exceeds the standard. Congress determined that in nonattainment areas, there should be adequate safeguards to protect public health and welfare. For example Congress required such areas to have nonattainment new source review permitting programs, to ensure that air quality is not further degraded. Accordingly, areas with design values above the NAAQS are designated nonattainment and classified with a classification as indicated by actual ambient air quality. As a result of designation and classification, the state is subject to the applicable requirements, including nonattainment new source review, conformity, and other measures prescribed for nonattainment areas by the CAA. Section 179B of the CAA does not provide for any relaxation of mandatory emissions control measures (including contingency measures) or the prescribed emissions reductions; it only eliminates the obligation for an attainment demonstration that demonstrates attainment and maintenance of the NAAQS, which is conditioned upon the state meeting all other attainment plan requirements, and voids certain consequences of an area's failure to attain, including mandatory reclassifications.

CAA section 179B also does not alter the CAA's general construct expressed in subpart 1 of part D that states with nonattainment areas are expected to adopt reasonable emissions controls to lessen emissions of criteria pollutants to promote citizen health protection. The construct ensures that states will take reasonable actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that are within the jurisdiction of the state regardless of impacts from interstate or international emissions. The primary purpose of part D of Title I of the CAA is to achieve emission reductions so that people living in a nonattainment area receive the public health protection intended by the NAAQS.

In sum, section 179B provides an important tool that provides states relief from the requirement to demonstrate attainment—and from the more stringent planning requirements that would result from failure to attain—in areas where, even though the air agency has taken appropriate measures to address air quality in the influenced area, emissions from outside of the U.S. prevent attainment. The provision does not absolve states of the obligation to impose reasonable emission controls even where states can demonstrate that the area would attain ''but for'' the impact of international emissions. The commenters do not explain why, given the obligation of downwind states with designated nonattainment areas to impose reasonable controls on emissions, upwind states should not also be subject to a similar obligation to take certain reasonable steps to reduce emissions impacting those downwind areas.

The commenters have not explained why the terms of section 179B require its application to EPA's evaluation of upwind state's interstate transport obligations. Section 179B is located in subpart D of title I, which addresses plan requirements for designated nonattainment areas. As just described, the specific terms of section 179B outline which nonattainment area requirements will and will not apply upon approval of a section 179B demonstration, none of which apply directly to upwind states via section 110(a)(2)(D)(i)(I). In particular, the good neighbor provision does not require upwind areas to ''demonstrate attainment and maintenance'' of the NAAQS. Rather, the statute requires upwind states to prohibit emissions which will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of a NAAQS. As discussed further in section IV.B.1, while upwind states must address their fair share of downwind air quality problems, the EPA has not interpreted this provision to hold upwind areas

responsible for bringing downwind areas into attainment. Therefore, the relief provided by section 179B(a) and (b) from the obligation to demonstrate attainment, extension of the attainment date, and mandatory reclassifications, is simply not applicable to downwind states.

Even if section 179B were in some manner applicable to upwind states' transport obligations, the EPA does not believe that the contribution of international emissions should impact EPA's identification of downwind nonattainment and maintenance receptors affected by the interstate transport of emissions. These receptors represent areas that the EPA projects will have difficulty attaining and maintaining the NAAQS, and which therefore require adequate safeguards to protect public health and welfare. The EPA therefore does not agree that, when identifying downwind air quality problems for purposes of interstate transport, section 179B requires that we subtract the contributions of international emissions from the projected design values. This would be inconsistent with EPA's approach to area designations and is simply not required by the plain language of the statute. Moreover, such an interpretation would allow downwind and upwind areas to make no efforts to address clear violations of the NAAQS, leaving the area's citizens to suffer the health and environmental consequences of such inaction.

Moreover, just as any state with a nonattainment area—including downwind states—must take reasonable steps to control emissions even where an area is impacted by international emissions, the EPA believes that it is appropriate for upwind states to also adopt reasonable emissions controls to lessen the impact of emissions generated in their state and subsequently transported to downwind areas. As noted in Section IV of the preamble, the EPA does not view the obligation under the good neighbor provision as a requirement for upwind states to bear all of the burden for resolving downwind air quality problems. Rather, it is an obligation that upwind and downwind states share responsibility for addressing air quality problems. If, after implementation of reasonable emissions reductions by an upwind state, a downwind air quality problem persists, whether due to international emissions or emissions originating within the downwind state, the EPA can relieve the upwind state of the obligation to make additional reductions to address that air quality problem. But the statute does not absolve the upwind state of the obligation to make reasonable reductions in the first instance.

The EPA took just such an approach in the original CSAPR rulemaking when calculating annual SO_2 emissions budgets for states linked to downwind $PM_{2.5}$ air quality problems. There, the EPA imposed budgets based on a level of control stringency equivalent to $2,300 per ton of SO_2 emissions. Despite the persistence of downwind air quality problems to which certain upwind states were linked, the EPA concluded that this level of control stringency represented the upwind states' full transport obligation with respect to the $PM_{2.5}$ standards and additional controls were not reasonable because significant reductions could not be achieved at higher costs. 76 FR 48208, 48257–259.

Accordingly, the EPA also does not agree that imposing emission reductions on upwind states linked to areas affected by international emissions based on the implementation of reasonable control measures would result in over-control. As discussed in section VII.D of the preamble, the emissions reductions required by this rulemaking are based on relatively modest investments in turning on and optimizing already existing SCRS and installing a limited amount of combustion controls, which is feasibly and reasonably achieved by the 2017 ozone season. Moreover, the emissions reductions required by this rulemaking do not fully resolve most of the air quality problems identified in this rule. As discussed further in section VI.D, the D.C. Circuit has identified those circumstances that would constitute over-control pursuant to CAA section 110(a)(2)(D)(i)(I), and those circumstances are not present here.

E. Pollutant Transport From Upwind States

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures the EPA used to quantify the impact of emissions from specific upwind states on 2017 8-hour design values for identified downwind nonattainment and maintenance receptors. The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors (NO_X and VOC) to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

The EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique [123] to quantify the contribution of 2017 baseline NO_X and VOC emissions from all sources in each state to projected 2017 ozone concentrations at air quality monitoring sites. The EPA continues to believe that the OSAT/APCA tool is the most appropriate source apportionment technique for quantifying contributions for the purposes of this rule because it is constructed to provide source culpability data to inform the design of emissions control strategies.[124] In the source apportionment model run, the EPA tracked the ozone formed from each of the following contribution categories (*i.e.,* ''tags''):

- States—anthropogenic NO_X and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_X and VOC emissions domain-wide (*i.e.,* not by state);
- Boundary Concentrations—concentrations transported into the modeling domain;
- Tribes—the emissions from those tribal lands with point source inventory data in the 2011 NEI (contributions from individual tribes were not modeled);
- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (contributions from Canada and Mexico were not modeled separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.,* not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms (*i.e.,* not by state).

The contribution modeling provided contributions to ozone from anthropogenic NO_X and VOC emissions

[123] As part of this technique, ozone formed from reactions between biogenic VOC and NO_X with anthropogenic NO_X and VOC are assigned to the anthropogenic emissions.

[124] Comprehensive Air Quality Model with Extensions Version 6.20 User's Guide. ENVIRON International Corporation, Novato, CA, March 2015.

in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_X and VOC emissions were modeled and assigned to the ''biogenic'' category. The contributions from wild fire and prescribed fire NO_X and VOC emissions were modeled and assigned to the ''fires'' category. The contributions from the ''biogenic'', ''offshore'', and ''fires'' categories are not assigned to individual states nor are they included in the state contributions.

The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected 2017 baseline emissions and 2011 meteorology for this time period. The hourly contributions [125] from each tag were processed to obtain the 8-hour average contributions corresponding to the time period of the 8-hour daily maximum concentration on each day in the 2017 model simulation. This step was performed for those model grid cells containing monitoring sites in order to obtain 8-hour average contributions for each day at the location of each site. The model-predicted contributions on the days with high modeled concentrations in 2017 were then applied in a relative sense to quantify the contributions to the 2017 average design value at each site. The resulting 2017 average contributions from each tag to each monitoring site in the eastern and western U.S. along with additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD.

The average contribution metric is intended to provide a reasonable representation of the contribution from individual states to the projected 2017 design value, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The largest contribution from each state in the East to any single 8-hour ozone nonattainment receptor in a downwind state is provided in Table V.E–1. The largest contribution from each state in the East to any single 8-hour ozone maintenance-only receptor in a downwind state is also provided in Table V.E–1.

TABLE V.E–1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS FOR EACH STATE IN THE EASTERN U.S.

Upwind state	Largest downwind contribution to nonattainment receptors (ppb)	Largest downwind contribution to maintenance receptors (ppb)
AL	0.99	0.73
AR	1.00	2.07
CT	0.00	0.46
DE	0.38	1.32
DC	0.07	0.86
FL	0.71	0.75
GA	0.60	0.62
IL	17.90	23.61
IN	6.49	12.32
IA	0.58	0.81
KS	1.13	1.22
KY	0.68	10.88
LA	3.01	3.20
ME	0.00	0.01
MD	2.12	5.22
MA	0.12	0.06
MI	2.62	1.27
MN	0.40	0.36
MS	0.81	0.79
MO	1.67	3.78
NE	0.35	0.27
NH	0.02	0.02
NJ	9.52	11.90
NY	18.50	18.81
NC	0.51	0.50
ND	0.06	0.22
OH	1.83	3.78
OK	2.24	1.62
PA	9.28	14.61
RI	0.03	0.01
SC	0.15	0.30
SD	0.08	0.12
TN	0.50	1.82
TX	2.18	2.64
VT	0.01	0.01
VA	1.92	5.21
WV	1.04	3.31
WI	0.33	2.52

2. Application of Screening Threshold

Once the EPA has quantified the magnitude of the contributions from each upwind state to downwind nonattainment and maintenance receptors, it then uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to ''link'' them to the downwind nonattainment and maintenance receptors and justify further analysis of potential emission reductions to address significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states. As discussed previously in section IV, the EPA is establishing an air quality screening threshold calculated as one percent of the 2008 ozone NAAQS. Specifically, the agency has calculated an 8-hour ozone value for this air quality threshold of 0.75 ppb.

States in the East [126] whose contributions to a specific receptor meet or exceed the screening threshold are considered linked to that receptor; those states' ozone contributions and emissions (and available emission reductions) are analyzed further, as described in section VI, to determine whether and what emissions reductions might be required from each state. States in the East whose contributions are below the threshold are not included in the rule and are considered to make insignificant contributions to projected downwind air quality problems. Accordingly, as discussed in section IV, the EPA has determined that sources in these states need not make any further emissions reductions in order to address the good neighbor provision with respect to the 2008 ozone NAAQS.

Based on the maximum downwind contributions identified in Table V.E–1, the following states contribute at or above the 0.75 ppb threshold to downwind nonattainment receptors: Alabama, Arkansas, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and West Virginia. Based on the maximum downwind contributions in Table V.D–1, the following states contribute at or above the 0.75 ppb threshold to downwind maintenance-only receptors: Arkansas, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. In the proposed rule North Carolina was linked to a maintenance receptor in Baltimore Co., MD (site 240053001). North Carolina was not linked to any other receptor in the proposal. In the final rule modeling, this site is no longer projected to be a receptor because the 2017 average and maximum design values for this site are projected to be below the level of the NAAQS, and North Carolina is not linked to any other

[125] Contributions from anthropogenic emissions under ''NO_X-limited'' and ''VOC-limited'' chemical regimes were combined to obtain the net contribution from NO_X and VOC anthropogenic emissions in each state.

[126] As discussed in section IV, the EPA's assessment shows that there are problem receptors in the West where western states contribute amounts greater than or equal to the screening threshold used to evaluate eastern states (*i.e.,* 1 percent of the NAAQS), but for a number of reasons the EPA is not addressing transport in the West in this rulemaking.

nonattainment or maintenance receptor, based on the final rule modeling.

Comment: The EPA received comments that the version of CAMx used for the proposal modeling (CAMx v6.11) did not include the most recent halogen chemistry that would affect ozone concentrations in saltwater marine atmospheres and transport of ozone from Florida to receptors in Texas. The commenter said that the EPA should include this chemistry in modeling for the final rule.

Response: In the EPA's 2017 modeling for the final rule, Florida is modeled to have an average contribution at the 0.75 ppb threshold to the 2017 design values at two receptors in Houston (*i.e.,* Harris County sites 482010024 and 482011034). A report by the CAMx model developer on the impact of modeling with the latest CAMx halogen chemistry indicates that the updated chemistry results in lower modeled ozone in air transported over saltwater marine environments for multiple days. Specifically, the report notes that on days with multi-day transport across the Gulf of Mexico, modeling with the updated chemistry could lower 8-hour daily maximum ozone concentrations by up to 2 to 4 ppb in locations in eastern Texas, including Houston. Air parcel trajectories for individual days used in the EPA's calculation of the contribution from Florida to the Houston receptors confirm that on days with high modeled transport from Florida to the receptors in Houston, air travels for multiple days over the Gulf of Mexico from Florida before reaching the receptors in Houston (see the AQM TSD for more details).

In the final rule modeling, the EPA was not able to explicitly account for the updated chemistry because this chemistry had not yet been included by the model developer in the source apportionment tool in CAMx at the time the modeling was performed for this rule. However, because Florida's maximum contribution to receptors in Houston is exactly at the 0.75 ppb threshold, the agency believes that if it had performed the final rule modeling with the updated halogen chemistry, Florida's contribution would likely be below this threshold. Therefore, the EPA is not including Florida in the final rule because it finds that Florida's contribution to downwind nonattainment and maintenance receptors is insignificant when this updated halogen chemistry is considered. As described in the AQM TSD, the source-receptor transport pattern between Florida and Houston involving multi-day transport over the Gulf of Mexico is unique such that modeling with the updated halogen chemistry would not be expected to affect linkages from other upwind states to receptors in Houston or any other linkages from upwind states to downwind nonattainment and maintenance receptors for this final rule.

Based on the EPA's application of the 0.75 ppb threshold, the linkages between each upwind state and downwind nonattainment receptors and maintenance-only receptors in the eastern U.S. are provided in Table V.E–2 and Table V.E–3, respectively.

TABLE V.E–2—LINKAGES BETWEEN EACH UPWIND STATE AND DOWNWIND NONATTAINMENT RECEPTORS IN THE EASTERN U.S.

Upwind state	Downwind nonattainment receptors
AL	Tarrant Co, TX (484392003); Tarrant Co, TX (484393009).
AR	Brazoria Co, TX (480391004).
IL	Brazoria Co, TX (480391004); Sheboygan Co, WI (551170006).
IN	Fairfield Co, CT (090019003); Sheboygan Co, WI (551170006).
KS	Tarrant Co, TX (484392003); Sheboygan Co, WI (551170006).
LA	Brazoria Co, TX (480391004); Tarrant Co, TX (484392003); Tarrant Co, TX (484393009); Sheboygan Co, WI (551170006).
MD	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
MI	Fairfield Co, CT (090019003); Sheboygan Co, WI (551170006).
MS	Brazoria Co, TX (480391004).
MO	Brazoria Co, TX (480391004); Sheboygan Co, WI (551170006).
NJ	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
NY	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
OH	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
OK	Tarrant Co, TX (484392003); Tarrant Co, TX (484393009); Sheboygan Co, WI (551170006).
PA	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
TX	Sheboygan Co, WI (551170006).
VA	Fairfield Co, CT (090019003); New Haven Co, CT (090099002).
WV	Fairfield Co, CT (090019003).

TABLE V.E–3—LINKAGES BETWEEN EACH UPWIND STATES AND DOWNWIND MAINTENANCE-ONLY RECEPTORS IN THE EASTERN U.S.

Upwind state	Downwind maintenance receptors
AR	Allegan Co, MI (260050003); Harris Co, TX (482011039).
DE	Philadelphia Co, PA (421010024).
DC	Harford Co, MD (240251001).
IL	Jefferson Co, KY (211110067); Harford Co, MD (240251001); Allegan Co, MI (260050003); Suffolk Co, NY (361030002); Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024); Harris Co, TX (482011039).
IN	Fairfield Co, CT (090013007); Jefferson Co, KY (211110067); Harford Co, MD (240251001); Allegan Co, MI (260050003); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024).
IA	Allegan Co, MI (260050003).
KS	Allegan Co, MI (260050003).
KY	Harford Co, MD (240251001); Richmond Co, NY (360850067); Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024).
LA	Denton Co, TX (481210034); Harris Co, TX (482010024); Harris Co, TX (482011034); Harris Co, TX (482011039).

TABLE V.E–3—LINKAGES BETWEEN EACH UPWIND STATES AND DOWNWIND MAINTENANCE-ONLY RECEPTORS—Continued
IN THE EASTERN U.S.

Upwind state	Downwind maintenance receptors
MD	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Philadelphia Co, PA (421010024).
MI	Fairfield Co, CT (090013007); Jefferson Co, KY (211110067); Harford Co, MD (240251001); Suffolk Co, NY (361030002); Hamilton Co, OH (390610006).
MS	Harris Co, TX (482011039).
MO	Allegan Co, MI (260050003); Hamilton Co, OH (390610006); Harris Co, TX (482011034); Harris Co, TX (482011039).
NJ	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Philadelphia Co, PA (421010024).
NY	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007).
OH	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Jefferson Co, KY (211110067); Harford Co, MD (240251001); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Philadelphia Co, PA (421010024).
OK	Allegan Co, MI (260050003); Denton Co, TX (481210034); Harris Co, TX (482011034); Harris Co, TX (482011039).
PA	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Harford Co, MD (240251001); Richmond Co, NY (360850067); Suffolk Co, NY (361030002).
TN	Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024).
TX	Harford Co, MD (240251001); Allegan Co, MI (260050003); Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024).
VA	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Harford Co, MD (240251001); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Philadelphia Co, PA (421010024).
WV	Fairfield Co, CT (090010017); Fairfield Co, CT (090013007); Harford Co, MD (240251001); Richmond Co, NY (360850067); Suffolk Co, NY (361030002); Hamilton Co, OH (390610006); Philadelphia Co, PA (421010024).
WI	Allegan Co, MI (260050003).

The EPA's modeling to quantify upwind state EGU NO_X emission budgets, described in section VI, used a more recent IPM version 5.15 base case projection as compared to the IPM projection used for air quality modeling described here in section V. This more recent IPM base case reflects minor updates to IPM model inputs. Because this more recent IPM base case projection was not used for the air quality modeling for the final rule, the aforementioned results do not account for updates which are subsequently included in the budget-setting analysis. In order to ensure that the budget-setting base case projection would not change any conclusions drawn from the air quality modeling, the EPA performed an assessment of the budget-setting base case using a method that relied on the EPA's air quality modeling contribution data as well as projected ozone concentrations from the EPA's 2017 illustrative policy case developed for the Regulatory Impact Analysis. For more information about these methods, refer to the Ozone Transport Policy Analysis Final Rule TSD. This assessment shows no change in the set of nonattainment or maintenance receptors identified here in section V. In addition to evaluating the status of downwind receptors identified for the rule, the EPA evaluated whether the budget-setting base case would reduce ozone contributions from upwind states to the extent that a previously linked state would have a maximum contribution less than the one percent threshold. This assessment shows that with the budget-setting base case, all previously identified states are expected to remain linked (*i.e.,* contribute greater than or equal to one percent of the NAAQS) to at least one downwind nonattainment or maintenance receptor. Therefore, using the budget-setting base case for the final rule does not impact the scope of states linked to downwind nonattainment or maintenance receptors relative to the modeled base case.

Additionally, after the emissions and air quality modeling for the final rule were already underway, Pennsylvania published a new RACT rule [127] that would require EGU and non-EGU NO_X reductions starting on January 1, 2017. The EPA recognizes that the implementation of this final state rule will precede the first control period for the final CSAPR Update rule. The agency believes it is reasonable to evaluate the potential influence of the Pennsylvania RACT rule on downwind receptors and state linkages identified for this final rule prior to evaluating any further EGU NO_X reductions for the CSAPR Update rule. Therefore, because Pennsylvania's new RACT rule was not represented explicitly in the emission inventory and air quality modeling already underway, the EPA first added an evaluation of emissions and air quality impacts expected to result from Pennsylvania's RACT rule [128] before then evaluating air quality impacts of the further reductions that might be required under the CSAPR Update rule at each uniform control stringency identified. The EPA estimates that, for the adjusted historical emission level including Pennsylvania RACT, no nonattainment or maintenance receptors identified in section V dropped below 76 ppb and Pennsylvania's contribution to downwind ozone problems did not drop below one percent of the NAAQS. Therefore, the identified receptors and linked upwind states in section V remain unchanged.

VI. Quantifying Upwind State EGU NO_X Emission Budgets To Reduce Interstate Ozone Transport for the 2008 NAAQS

A. Introduction

This section describes the EPA's methodology for quantifying emission budgets to reduce interstate emission transport for the 2008 ozone NAAQS. The CSAPR Update emission budgets limit allowable emissions and represent the emission levels that remain after each state makes EGU NO_X emission reductions that are necessary to reduce interstate ozone transport for the 2008 NAAQS. The EPA's assessment of upwind state emission budgets in this rule reflects analysis of uniform NO_X

[127] Published April 23, 2017 (*http://www.pabulletin.com/secure/data/vol46/46-17/694.html*).

[128] For more information about the EPA's assessment of Pennsylvania's RACT rule, see the Pennsylvania RACT memo to the docket for this rulemaking.

emission control stringency. Each level of uniform NO_X control stringency represents an estimated marginal cost per ton of NO_X reduced and is characterized by a set of pollution control measures. The EPA applies a multi-factor test, the same multi-factor test that was used in the original CSAPR,[129] to evaluate increasing levels of uniform NO_X control stringency. The multi-factor test considers cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. The uniform NO_X emission control stringency, represented by marginal cost, also serves to apportion the reduction responsibility among collectively-contributing upwind states. This approach to quantifying upwind state emission reduction obligations using uniform cost was reviewed by the Supreme Court in *EPA* v. *EME Homer City Generation,* which held that using such an approach to apportion emission reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts ''is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' 134 S. Ct. at 1607.

There are four stages in developing the multi-factor test to quantify upwind state emission budgets as to the 2008 ozone NAAQS: (1) Identify levels of uniform NO_X control stringency (represented by an estimated marginal cost of control that is applied across linked upwind states); (2) evaluate NO_X emission reductions and corresponding NO_X emission budgets (*i.e.,* remaining allowable emissions after reductions are made) at each identified level of uniform control stringency; (3) assess air quality improvements resulting at each level of control; and (4) select a level of control stringency by applying the multi-factor test to consider cost, available emission reductions, and downwind air quality impacts, including ensuring that the budgets do not unnecessarily over-control relative to the contribution threshold or downwind air quality.

The multi-factor evaluation informs the EPA's determination of appropriate EGU NO_X ozone season emission budgets necessary to reduce emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS for the 2017 ozone season and subsequent control periods. For most CSAPR Update states, the emission reductions achieved through implementation of these budgets will partially satisfy the EPA's good neighbor FIP obligation to fully prohibit emissions that contribute to downwind air quality problems with respect to the 2008 ozone NAAQS pursuant to CAA section 110 (a)(2)(D)(i)(I).[130] For one state, Tennessee, the emission reductions achieved through implementation of its emission budget will fully satisfy the EPA's good neighbor FIP obligation for the 2008 ozone NAAQS. Section VII describes the EPA's approach to implementing these emission budgets through updates to the CSAPR NO_X ozone season trading program.

B. Levels of Uniform Control Stringency

The following subsections describe the EPA's analysis to establish levels of uniform control stringency for EGU and non-EGU point sources. Each level of uniform NO_X control stringency is characterized by a set of pollution control measures and represents an estimated marginal cost per ton of NO_X reduced. This section summarizes the EPA's findings when assessing NO_X reduction strategies and cost.

As described in section IV of this preamble, the EPA is quantifying near-term ozone season NO_X emission reductions to reduce interstate emission transport for the 2008 ozone NAAQS in order to assist downwind states with meeting the impending July 20, 2018 Moderate area attainment date. Although this final rule does not require or impose any specific technology standards on affected sources, the EPA limited its analysis of potential NO_X reductions in each upwind state to those that could be feasibly implemented for the 2017 ozone season, which is the last full ozone season prior to the July 20, 2018 attainment date. This approach ensures that the emission budgets are achievable for the 2017 ozone season. The EPA did not further analyze potential NO_X reductions from strategies that were deemed infeasible to implement for the 2017 ozone season for purposes of quantifying upwind state emission budgets, but the EPA anticipates considering those controls in any future action that may be necessary to address upwind states' full emission reduction obligations with respect to the 2008 ozone standard. For more details on these assessments, refer to the EGU NO_X Mitigation Strategies Final Rule TSD and the Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final Rule TSD in the docket for this rule.

1. EGU NO_X Mitigation Strategies

In developing levels of uniform control stringency, the EPA considered all NO_X control strategies that are widely in use by EGUs: Fully operating existing Selective Catalytic Reduction (SCR), including both optimizing NO_X removal by existing, operational SCRs and turning on and optimizing existing idled SCRs; turning on existing idled SNCRs; installing state-of-the-art NO_X combustion controls; shifting generation to existing units with lower-NO_X emission rates within the same state; and installing new SCRs and SNCRs. For the reasons explained in the EGU NO_X Mitigation Strategies Final Rule TSD, the EPA determined that these EGU NO_X mitigation strategies are feasible for the 2017 ozone season, with the exception of installing new SCRs or SNCRs.

The following subsections describe the EPA's identification of uniform levels of NO_X emission control stringency. Each level of uniform NO_X control stringency represents an estimated marginal cost per ton of NO_X reduced and is characterized by a set of pollution control measures. The levels of NO_X control stringency identified are used in the EPA's multi-factor test described later on.

a. *$800 per ton, representing optimizing existing and operating SCRs.* Optimizing NO_X removal for existing and operating SCRs can significantly reduce EGU NO_X emissions quickly, using investments in pollution control technologies that have already been made. SCRs can achieve up to 90 percent reduction in EGU NO_X with sufficient reagent and installed catalyst. These controls are in widespread use across the U.S. power sector. In the 22 state CSAPR Update region, approximately 53 percent of coal-fired EGU capacity and 76 percent of natural gas combined cycle (NGCC) EGU capacity is equipped with SCR. Recent power sector data reveal that some SCR controls are being underused. In some cases, SCR controls are not fully operating (*i.e.,* the controls could be operated at a greater NO_X removal rate).[131] As described later on in this preamble, the EPA finds that optimizing existing and operating SCRs is a readily

[129] *See* CSAPR, Final Rule, 76 FR 48208 (August 8, 2011).

[130] See section IV.B.4 for further discussion of this partial remedy.

[131] This assessment is available in the EGU NO_X Mitigation Strategies Final Rule TSD.

available approach for EGUs to reduce NO_X emissions.

The EPA identifies $800 per ton as a level of uniform control stringency that represents optimizing existing SCR controls that are already operating to some extent. The EPA's final analysis for the CSAPR Update rule is informed by comment on the proposal.[132] This cost level is premised on variable costs, specifically additional reagent (*i.e.,* ammonia or urea) and additional catalyst, being the primary costs incurred for optimizing an existing SCR unit that is already operating to some extent. More information about this analysis is available in the EGU NO_X Mitigation Strategies Final Rule TSD.

b. *$1,400 per ton, representing turning on idled existing SCRs and installing state-of-the-art NO_X combustion controls.*

Turning on idled, existing SCRs also can significantly reduce EGU NO_X emissions quickly, using investments in pollution control technologies that have already been made. Recent power sector data reveal that, in some cases, SCR controls have been idled for several seasons or years. The EPA finds that turning on idled SCRs is a readily available approach for EGUs to reduce NO_X emissions.

The EPA identifies $1,400 per ton as a level of uniform control stringency that represents turning on idled SCR controls. The EPA's analysis of this level of uniform control stringency for the final CSAPR Update is informed by comment on the proposal.[133] While the costs of optimizing existing, operational SCRs include only variable costs (as described earlier), the cost of bringing existing SCR units that are currently idled back into service considers both variable and fixed costs. Variable and fixed costs include labor, maintenance and repair, reagent, parasitic load, and ammonia or urea. The EPA performed an in-depth cost assessment for all coal-fired units with SCRs. More information about this analysis is available in the EGU NO_X Mitigation Strategies Final Rule TSD, which is found in the docket for this rule.

The EPA also includes installing state-of-the-art combustion controls in the level of uniform control stringency represented by $1,400 per ton. State-of-the-art combustion controls such as low-NO_X burners (LNB) and over-fire air (OFA) can be installed quickly, and can significantly reduce EGU NO_X emissions. In the 22 state CSAPR Update Region, approximately 99 percent of coal-fired EGU capacity in the East is equipped with some form of combustion control. Combustion controls alone can achieve NO_X emission rates of 0.15 to 0.50 lbs/mmBtu.[134] Once installed, combustion controls reduce NO_X emissions at all times of EGU operation. The EPA finds that the installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce NO_X emissions.

The cost of installing state-of-the-art combustion controls per ton of NO_X reduced is dependent on the combustion control type and unit type. The EPA estimates the cost per ton of state-of-the-art combustion controls to be $500 per ton to $1,200 per ton of NO_X removed. In specifying a representative marginal cost at which state-of-the-art combustion controls are widely available, the EPA uses the conservatively high end of this identified range of costs, $1,200 per ton. Because $1,200 per ton is similar in terms of EGU NO_X control stringency to $1,400 per ton, for purposes of the analysis that follows, the EPA includes installing state-of-the-art NO_X combustion controls in the uniform control stringency level represented by $1,400 per ton of NO_X removed.[135]

c. *$3,400 per ton, representing turning on idled existing SNCRs.* Turning on idled existing SNCRs can also significantly reduce EGU NO_X emissions quickly, using investments in pollution control technologies that have already been made. SNCRs can achieve up to 25 percent reduction in EGU NO_X emissions (with sufficient reagent). These controls are in widespread use across the U.S. power sector. In the 22 state CSAPR Update region, approximately 10 percent of coal-fired EGU capacity is equipped with SNCR. Recent power sector data reveal that, in some cases, SNCR controls have been idled for several seasons or years. The EPA finds that turning on idled SNCRs is a readily available approach for EGUs to reduce NO_X emissions

The EPA identifies $3,400 per ton as a level of uniform control stringency that represents turning on and fully operating idled SNCRs. For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable costs associated with these controls. Fixed and variable costs include labor, maintenance and repair, reagent, parasitic load, and ammonia or urea. The majority of the total fixed and variable operating costs for SNCR is related to the cost of the reagent used (*e.g.,* ammonia or urea) and the resulting cost per ton of NO_X reduction is sensitive to the NO_X rate of the unit prior to SNCR operation. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this rule.

d. *$5,000 per ton, representing installing new SCRs.* The amount of time to retrofit with new SCR exceeds the implementation timeframes considered in this final rule. It would therefore not be feasible to retrofit new SCR to achieve EGU NO_X reductions for the 2017, or even 2018, ozone season. Exclusion of new SCR installation from this analysis reflects a determination only that these strategies are infeasible for implementation of this rule, not a determination that they are infeasible or inappropriate for consideration of NO_X reduction potential to address interstate emission transport over a longer timeframe. *See* EGU NO_X Mitigation Strategies Final Rule TSD for discussion of feasibility of EGU NO_X controls for the 2017 ozone season.

The EPA identifies $5,000 per ton as a level of uniform control stringency that represents retrofitting a unit with new SCR technology. The EPA evaluated this level of uniform NO_X emission control stringency, with the limitation that no new SCR systems were installed as a result of the EPA's analysis for the 2017 ozone season. The agency examined the cost for retrofitting a unit with new SCR technology, which typically attains controlled NO_X rates of 0.07 lbs/mmBtu, or less. Because this EGU NO_X reduction strategy is prospective and the EPA does not know the exact specifications of EGUs that may find this NO_X reduction strategy feasible and cost-effective beyond 2017, it performed a cost analysis using a representative electric generating unit.

[132] The EPA proposed that $500 per ton was a level of uniform control stringency that represented optimizing existing SCR controls that are already operating to some extent. The EPA received comments suggesting that its cost estimates should be revised. Details of the EPA's final cost analysis can be found in the EGU NO_X Mitigation Strategies Final Rule TSD.

[133] The EPA proposed that $1,300 per ton was a level of uniform control stringency that represented turning on idled SCR controls. The EPA received comments suggesting that its cost estimates should be revised. Details of the EPA's final cost analysis can be found in the EGU NO_X Mitigation Strategies Final Rule TSD.

[134] Details of the EPA's assessment of state-of-the-art NO_X combustion controls are provided in the EGU NO_X Mitigation Strategies Final Rule TSD.

[135] As described in section VI, the EPA's assessment of emission budgets reflecting uniform NO_X control stringency represented by $1,400 per ton does not over-control as to any upwind state. Only one state, Tennessee, fully resolves its obligation at this level of control stringency and Tennessee's emission budget is exactly the same at $800 per ton and $1,400 per ton, indicating that it was not necessary for the agency to evaluate a distinct level of uniform NO_X control stringency linked solely installing state-of-the-art NO_X combustion controls.

A coal-fired EGU with an uncontrolled NO_X rate of 0.35 lbs/mmBtu, retrofitted with an SCR to a lower emission rate of 0.07 lbs/mmBtu, results in a cost of approximately $5,000 per ton of NO_X removed. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this rule.

e. *$6,400 per ton, representing installing new SNCRs.* The amount of time to retrofit with new SNCR exceeds the implementation timeframes considered in this final rule. It would therefore not be feasible to retrofit new SNCR to achieve EGU NO_X reductions for the 2017, or even 2018, ozone season. Exclusion of new SNCR installation from this analysis reflects a determination only that these strategies are infeasible for implementation of this rule, not a determination that they are infeasible or inappropriate for consideration of NO_X reduction potential to address interstate emission transport over a longer timeframe. *See* EGU NO_X Mitigation Strategies Final Rule TSD for discussion of feasibility of EGU NO_X controls for the 2017 ozone season.

The EPA identifies $6,400 per ton as a level of uniform control stringency that represents retrofitting a unit with new SNCR technology. The EPA evaluated this level of uniform NO_X emission control stringency, with the limitation that no new SNCR systems were installed as a result of the EPA's analysis for the 2017 ozone season. SNCR technology provides owners a low capital cost option for reducing NO_X emissions, albeit at the expense of higher operating costs. The higher cost per ton of NO_X removed reflects this technology's lower removal efficiency, which results in greater reagent consumption and escalates the cost of operating the SNCR relative to tons of NO_X removed. Owners may favor this technology to meet certain NO_X performance requirements for certain units. Because this EGU NO_X reduction strategy is prospective and the EPA does not know the exact specifications of EGUs that may find this NO_X reduction strategy feasible and cost-effective beyond 2017, the EPA performed a cost analysis using a representative electric generating unit. For a unit with a 40 percent capacity factor and using a NO_X emission reduction assumption of 25 percent, the cost is $6,500 per ton of NO_X removed. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this rule.

2. Non-EGU NO_X Mitigation Strategies and Feasibility for the 2017 Ozone Season

The EPA is not at this time addressing non-EGU emission reductions in its efforts to reduce interstate emission transport for the 2017 ozone season with respect to the 2008 ozone NAAQS. As compared to EGUs, there is greater uncertainty in the EPA's current assessment of non-EGU point-source NO_X mitigation potential and the EPA believes more time is required for states and the EPA to improve non-EGU point source data and pollution control assumptions before including related reduction potential in this regulation. Further, the 2017 ozone season implementation timeframe for this rulemaking would limit the number of non-EGU source categories that could potentially implement NO_X emission reductions within that timeframe. Finally, using the best information available to the EPA, which was submitted for public comment with the proposed CSAPR Update, the EPA finds that there are more non-EGU point sources than EGU sources and that these sources on average emit less relative to EGUs. The implication of these fleet characteristics is that there are more individual sources to control and there are relatively fewer emission reductions available from each source. Considering these factors, the EPA finds substantial uncertainty regarding whether significant aggregate NO_X mitigation is achievable from non-EGU point sources for the 2017 ozone season.

In assessing the potentially available 2017 ozone season NO_X emission reductions from non-EGU sources, the EPA identified potential controls, the reduction potential of each control, the associated cost of each control using a nationwide average, and the timing for the installation of control. The EPA then evaluated the cost-effective controls that could be implemented by the 2017 ozone season. While there may be a few categories where cost-effective installation of non-EGU NO_X controls on a limited number of sources would be feasible by the 2017 ozone season, the EPA does not observe that significant, certain, and meaningful non-EGU NO_X reduction is in fact feasible for the 2017 ozone season. For example, one factor influencing uncertainty is that the EPA lacks sufficient information on the capacity and experience of suppliers and major engineering firms' supply chains to conclude that they would be able to execute the project work for non-EGU sources in the limited timeframe of this rule.

The EPA has evaluated the potential for ozone season NO_X reductions from non-EGU sources. A detailed discussion of this assessment was provided in the draft Non-EGU NO_X Mitigation Potential TSD, which was located in the docket for the proposed rule and was available for comment. The EPA did not receive any comments that changed its conclusions in the draft Non-EGU NO_X Mitigation Potential TSD. As commenters generally agreed with the EPA's assessment with respect to the regulation of non-EGUs in this rule, the TSD will be finalized with no substantive change from the proposal TSD. This TSD contains information shared at the proposal on non-EGU source category emissions, the EPA's tools for estimating emission reductions from non-EGU categories, brief discussions of available controls, costs, potential emission reductions for specific source categories and efforts, to date, to review and refine its estimates for certain states. There were no significant comments on the TSD, and the minor comments that were received will be addressed in the response to comments document. The EPA views this non-EGU assessment as a step toward future efforts to evaluate non-EGU categories that may be necessary to fully quantify upwind states' significant contribution to nonattainment or interference with maintenance.

Although the EPA is not analyzing non-EGU reductions for purposes of quantifying emission budgets in this final action, future EPA rulemakings or guidance could revisit the potential for reductions from non-EGU sources.

3. Summary of EGU Uniform Control Stringency Represented by Marginal Cost of Reduction (Dollar per Ton)

Table VI.B–1 lists the final EGU uniform NO_X emission control stringencies, represented by marginal cost per ton of NO_X reduced, that the EPA evaluated and the NO_X reduction strategy or policy that identified each uniform cost level.

TABLE VI.B–1—LEVELS OF EGU UNIFORM NO_X EMISSION CONTROL STRINGENCY AND REPRESENTATIVE MARGINAL COST

Levels of EGU uniform control stringency	Representative EGU NO_X controls
$800 per ton	Widespread availability of optimizing existing and operating SCRs.
$1,400 per ton	Widespread availability of turning on idled existing SCRs and installing state-of-the-art combustion controls.
$3,400 per ton [136]	Widespread availability of turning on idled existing SNCRs.
$5,000 per ton	Widespread availability of installing new SCRs.[137]
$6,400 per ton	Widespread availability of installing new SNCRs.[138]

The EPA finds that $800 per ton is the lowest marginal cost at which any specific EGU pollution control technology (*i.e.,* optimizing existing and operating SCRs) is available and feasible in the timeframe for implementing this rule. The EPA's final analysis shows that no specific EGU NO_X reduction technologies are available at a lower cost than $800 per ton. The implication of this finding is that evaluating $500 per ton, which was assessed at proposal, for the final rule would not yield any EGU NO_X reduction potential attributable to specific pollution control technologies. As such, $800 per ton is the lowest uniform cost evaluated for the final CSAPR Update.

In the CSAPR Update proposal, the EPA also evaluated $10,000 per ton as a uniform level of control stringency. The EPA identified this level of control stringency as an upper bound for the analysis conducted for the proposed rule. However, the proposal's analysis showed that no specific EGU NO_X reduction technologies were available at a higher cost than $6,400 per ton. The EPA did not receive comment on the proposal indicating that there are additional EGU NO_X reduction technologies available between $6,400 per ton and $10,000 per ton. As a result, the EPA did not evaluate $10,000 per ton as a uniform level of control stringency for the final CSAPR Update.

The EPA finds that the selection of uniform cost thresholds presented in Table VI.B–1 is appropriate to evaluate potential EGU NO_X reductions and corresponding emission budgets to address interstate emission transport for the 2008 ozone NAAQS. The EPA has identified cost thresholds where control technologies are widely available and therefore where the most significant incremental emission reduction potential is expected. The EPA did not evaluate additional cost thresholds in between those selected because this analysis would not yield meaningful insights as to NO_X reduction potential as the EPA did not identify any control technologies that become available at such cost thresholds. Because these cost thresholds are linked to costs at which EGU NO_X mitigation strategies become widely available in each state, the cost thresholds represent the break points at which the most significant step-changes in EGU NO_X mitigation are expected.

C. EGU NO_X Reductions and Corresponding Emission Budgets

The EPA evaluated the EGU NO_X reduction potential for each identified uniform level of NO_X control stringency represented by marginal cost. This analysis applied the uniform control stringency to EGUs in each upwind state NO_X using IPM version 5.15. The EPA then used the modeled EGU NO_X reduction potential in combination with monitored EGU data to quantify emission budgets for each uniform level of NO_X control stringency. The next step of the process (described in the next subsection) evaluated air quality impacts of each set of emission budgets.

1. Evaluating EGU NO_X Reduction Potential

The EPA evaluates emission reductions from all EGU NO_X mitigation strategies available at each level of uniform NO_X control stringency. However, two components of this assessment are key to the level of reductions available and/or received significant comment at proposal. These components are the achievable NO_X rate for units with SCR and shifting generation to lower NO_X-emitting or zero-emitting EGUs.

One key input to the EPA's analysis of EGU NO_X reduction potential is the NO_X emission rate that can be achieved for EGUs with SCRs that are not optimized or are idled. This input influences the EPA's estimate of EGU NO_X reduction potential and corresponding NO_X ozone season emission budgets. To estimate EGU NO_X reduction potential from optimizing or turning-on idled SCRs, the EPA considers the delta between the non-optimized or idled NO_X emission rates and an achievable operating and optimized SCR NO_X emission rate. Assuming a higher achievable EGU NO_X emission rate for SCRs yields a higher emission budget and assuming a lower achievable EGU NO_X emission rate for SCRs yields a lower emission budget. For the final rule analysis, the EPA finds that an achievable 2017 EGU NO_X ozone season emission rate for units with SCR is 0.10 lbs/mmBtu. To determine this rate, the EPA evaluated coal-fired EGU NO_X ozone season emission data from 2009 through 2015 and calculated an average NO_X ozone season emission rate across the fleet of coal-fired EGUs with SCR for each of these seven years. The EPA finds it prudent to not consider the lowest or second lowest ozone season NO_X rates, which may reflect new SCR systems that have all new components (*e.g.,* new layers of catalyst). Data from these new systems are not representative of ongoing achievable NO_X rates considering broken-in components and routine maintenance schedules. The EPA believes that the third lowest fleet-wide average coal-fired EGU NO_X rate for EGUs with SCR is representative of ongoing achievable emission rates. The EPA observes that the third lowest fleet-wide average coal-fired EGU NO_X rate for EGUs with SCR is 0.10 lbs/mmBtu. The EPA has implemented 0.10 lbs/mmBtu as an EGU NO_X rate ceiling in IPM. For more information about how this rate is implemented in IPM, see the EPA's IPM documentation, which can be found in the docket for this rulemaking or at *www.epa.gov/powersectormodeling*.

The EPA's analysis of SCR NO_X rates for the final rule differs from the proposal in two ways. First, the evaluation focuses on a more recent timeframe for analysis—2009 through 2015 compared to 2003 through 2014. The EPA believes this change is reasonable because there have been

[136] The EPA notes that this cost is similar to the NO_X SIP Call ozone season NO_X cost threshold, adjusted to 2014$.

[137] The cost assessment for new SCR is available in the EGU NO_X Mitigation Strategies Final Rule TSD. While chosen to define a cost-threshold, new SCRs were not considered a feasible control on the compliance timeframe for this rule.

[138] The cost assessment for new SNCR is available in the EGU NO_X Mitigation Strategies Final Rule TSD. While chosen to define a cost-threshold, new SNCRs were not considered a feasible control on the compliance timeframe for this rule.

significant shifts in the power sector since 2003, particularly with respect to power sector economics (*e.g.,* lower natural gas prices in response to shale gas development) and environmental regulations (*e.g.,* CAIR and CSAPR). Because of these changes, the EPA considers it reasonable to evaluate SCR performance focusing on more recent historical data that better represent the current landscape of considerations affecting the power sector. The EPA chose 2009 because that is the first year of CAIR NO_X annual compliance. Second, the analysis focuses on the third best ozone season average rate as compared to the second best rate at proposal. The EPA believes that the second best rate, as discussed previously, could continue to capture disproportionately new SCR components and does not necessarily reflect achievable ongoing NO_X emission rates. Therefore, the EPA is finalizing analysis using the third best rate.

The proposed CSAPR Update put forward 0.075 lbs/mmBtu as a widely achievable EGU NO_X ozone season emission rate for coal-fired EGUs with SCR. As noted in the previous paragraph, the EPA has reassessed this assumption, partly in response to comment received on the proposal. Some of the key comments are summarized later and additional detail can be found in the Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD and the Response to Comments Document.

Comment: Some commenters suggested that the EPA's proposed coal-fired EGU NO_X ozone season emission rate of 0.075 lbs/mmBtu for units with SCR was too low and did not represent an achievable NO_X rate for the 2017 ozone season. These commenters provided several examples of changes in power sector economics that have significantly changed EGU dispatch in recent years and also changes in compliance planning for environmental regulations. These commenters suggested that the EPA should consider a shorter time-frame for evaluating SCR operation.

Response: The EPA acknowledges that various factors, both economic and regulatory, have influenced the power sector in recent years. The EPA believes that the achievable SCR NO_X rate and underlying assumptions that it is finalizing in this action are generally responsive to these comments. As discussed previously, for the purposes of evaluating EGU NO_X reduction potential, the EPA uses an EGU NO_X emission rate for units with SCR of 0.10 lbs/mmBtu as a ceiling in the IPM model. This rate reflects a generally achievable NO_X emission rate that is appropriate for the EPA's budget-setting purposes. The use of this rate to establish emission budgets was supported in comments by many power sector companies and their representative groups.

Comment: Other commenters noted that many coal-fired EGUs with SCR have demonstrated the ability to achieve NO_X emission rates of 0.06 lbs/mmBtu or lower. These commenters suggested that the EPA should use SCR NO_X ozone season emission rates that are lower than 0.075 lbs/mmBtu in quantifying emission budgets.

Response: The EPA acknowledges that many individual coal-fired EGUs with SCR have achieved rates lower than 0.075 lbs/mmBtu. However, in evaluating a regional environmental challenge (*i.e.,* interstate transport of ozone pollution) and designing an analysis of EGU NO_X reduction potential in the many states in that region, the EPA believes it is prudent to consider a range of demonstrated NO_X emission rates and believes that an ozone season average is a more reasonable approach for identifying NO_X reduction potential using a uniform standard.

Another key input to the EPA's analysis of EGU NO_X reduction potential is shifting generation to existing, lower NO_X-emitting or zero-emitting EGUs within the same state. Shifting generation to existing lower NO_X-emitting or zero-emitting EGUs within the same state would be a readily available approach for EGUs to reduce NO_X emissions, and the EPA included this NO_X mitigation strategy in quantifying EGU NO_X reduction potential in the analyses informing this rule.

Regarding feasibility of shifting generation to existing lower-NO_X emitting or zero-emitting units within the same state for the 2017 ozone season, the EPA finds that this EGU NO_X reduction strategy is consistent with demonstrated EGU dispatch behavior. Power generators produce a relatively fungible product, electricity, and they operate within an interconnected electricity grid in which electricity generally cannot be stored in large volumes, so generation and use must be balanced in real time. *See FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760, 768 (2016). Because of their uniquely interconnected and interdependent operations—so much so that the utility sector has been likened to a ''complex machine'' [139]—power plants shift generation in the normal course of business. Every time a power plant either increases or decreases operations, that has implications for the overall amount of pollution emitted by other plants within the interconnected electricity grid, because those other plants must commensurately decrease or increase their operations to balance supply with demand. As a result, by shifting some generation from higher-emitting to lower-emitting plants, sources can achieve an effective degree of emission limitation that might otherwise have required them to make much more expensive investments in end-of-stack technologies at their particular plants. As a result, sources would likely use shifting generation measures to comply with standards whenever doing so is less expensive than end-of-stack controls, even if EPA considered only end-of-stack controls in determining those standards. Further, the flexibility that power plants have to shift generation in establishing dispatch patterns is synergistic with the flexibility afforded by implementation through an allowance trading program, as the EPA is finalizing in this CSAPR Update. Allowance prices can be seamlessly factored into dispatch decisions, which provides for an efficient approach to administering shifting generation for compliance with the CSAPR Update requirements, if EGUs so choose. For these reasons, it is therefore reasonable for the EPA to consider that sources may cost-effectively address their emissions through arrangements that incorporate cleaner forms of power generation.

For establishing emission budgets for the CSAPR Update, the EPA finds that shifting specified, small amounts of generation to existing lower NO_X-emitting or zero-emitting units could occur consistent with the near-term 2017 implementation timing for this rule.[140] As a proxy for limiting the amount of generation shifting that is feasible for the 2017 ozone season, the EPA limited its assessment to shifting generation to other EGUs within the same state. The EPA believes that limiting its evaluation of shifting generation (which we sometimes refer to as re-dispatch) to the amount that could

[139] Phillip F. Schewe, The Grid: A Journey Through the Heart of Our Electrified World 1 (2007). The integrated nature of the utility power sector is well-recognized. *See, e.g.,* CAA section 404(f)(2)(B)(iii)(I); *New York* v. *Federal Energy Regulatory Commission,* 535 U.S. 1, at 7 (2002).

[140] The EGU NO_X Mitigation Strategies Final Rule TSD provides data indicating the extent to which electricity generation shifted from one ozone season to another in recent years.

occur within the state transfer represents a conservatively small amount of generation-shifting because it does not capture further potential emission reductions that would occur if generation was shifted more broadly among units in different states within the interconnected electricity grid, which the EPA believes is feasible over time. However, this broader, interstate generation-shifting may involve greater complexity—due to, for example, the greater amount of demand, larger number of sources, and greater amount of infrastructure involved—and therefore may be more challenging to implement in the near term. Limiting our consideration of such generation-shifting potential to a small percentage of total generation-shifting potential is consistent with the limited amount of time that states and sources have to achieve the required reductions. EPA relied on the in-state limitation as a reasonable indication of the amount of EGU NO_X reduction potential from shifting generation to existing lower NO_X-emitting or zero-emitting units that states and sources can readily implement by the 2017 summer ozone season. Of course, sources are not limited to generation-shifting within state, and instead are free to shift generation across state lines to comply with the CSAPR Update requirements.

Regarding the cost of the amount of generation-shifting that would result from shifting generation to existing lower-NO_X emitting or zero-emitting units within the same state, the EPA finds that this NO_X reduction strategy occurs on a cost continuum rather than at a discrete marginal cost per ton of NO_X. In tracking power sector development over time, the EPA observes that shifting generation to existing lower-NO_X emitting or zero-emitting EGUs occurs in response to economic factors such as fuel costs. Similar to this response to economic factors, the EGU NO_X reduction potential analysis conducted for the CSAPR Update rule shows shifting generation occurring on a continuum in response to environmental policy, represented by marginal cost of NO_X reductions. In other words, unlike the retrofit pollution control technologies that are evaluated in this CSAPR Update, there is no discrete cost at which this EGU NO_X mitigation strategy is singularly widely available. Rather, relatively lower marginal NO_X costs incentivize some EGU NO_X reductions from shifting generation, while relatively higher marginal NO_X costs incentivize more EGU NO_X reductions from shifting generation. The EPA quantified NO_X reduction potential from this EGU NO_X reduction strategy at each uniform NO_X control stringency level analyzed. As described in the EGU NO_X Mitigation Strategies Final Rule TSD, the amount of generation shifting seen in the CSAPR Update is modest in comparison to ozone season-to-ozone season generation shifting seen in recent years.

Comment: Commenters raised concerns regarding the EPA's authority pursuant to CAA section 110(a)(2)(D)(i)(I) to analyze generation shifting as a NO_X reduction strategy for purposes of calculating budgets for the final rule. The commenters cite the statutory language requiring states to prohibit ''any source . . . from emitting'' pollutants that contribute to downwind nonattainment and maintenance as constraining the EPA's authority to require reductions only from existing sources. The commenters claim that this language prohibits the EPA's authority to require sources to re-dispatch to new or alternative existing emission sources as this does not constitute a control on a ''source.'' Commenters add that the proposed budgets make it impossible for states to comply without taking this measure. Some commenters claim that, while the EPA may not set budgets assuming generation shifting, re-dispatch can serve as a compliance option for EGUs to meet budgets quantified in this rule.

Some commenters cite to the EPA's reliance on generation shifting in developing the best system of emissions reductions (BSER) pursuant to CAA section 111(d) in the CPP. These commenters claim that the EPA cannot rely on the same justification used to consider generation shifting in the CPP because, unlike CO_2, NO_X is not a global, well-mixed pollutant with limited control options. These commenters also note that the EPA's assertion that section 111(d) permits consideration of generation shifting is subject to current litigation.

Response: The good neighbor provision requires state and federal plans implementing its requirements 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 or interfere with maintenance of the NAAQS in any other state. CAA section 110(a)(2)(D)(i)(I) (emphasis added). The EPA's consideration of the potential for generation shifting in developing state budgets is consistent with this statutory requirement.

First, contrary to the commenters' contention, the statute does not limit the EPA's authority under the good neighbor provision to basing regulation only to control strategies for individual sources. The statute authorizes the state or EPA in promulgating a plan to prohibit emissions from ''any source or other type of emissions activity within the State'' that contributes (as determined by EPA) to the interstate transport problem with respect to a particular NAAQS. This broad statutory language shows that Congress was directing the states and the EPA to address a wide range of entities and activities that may be responsible for downwind emissions. However, this provision is silent as to the type of emission reduction measures that the states and the EPA may consider in establishing emission reduction requirements, and it does not limit those measures to individual source controls. The EPA reasonably interprets this provision to authorize consideration of a wide range of measures to reduce emissions from sources, which is consistent with the broad scope of this provision, as noted immediately above.[141] In the case of power plants, those measures can include on-site technology-based control measures, but they can also include measures through which power plants reduce emissions by shifting generation from higher-emitting EGUs to lower-emitting EGUs. It should be noted that because of the integrated nature of the power sector, higher-emitting EGUs have a variety of methods for implementing generation-shifting.[142] In addition, states can take action, such as imposing permit limits, that would result in generation shifting.

Moreover, the statute instructs the plan to prohibit emissions activity in ''amounts'' that significantly contribute to nonattainment or interfere with maintenance of downwind air quality. In identifying those amounts, the EPA has not mandated generation shifting, but rather has factored each state's capacity for re-dispatch into the calculation of the amounts of emission reductions that are achievable to address downwind air quality. The

[141] Interpreting the Good Neighbor Provision to be sufficiently broad to authorize reliance on generation shifting is also consistent with the legislative history for the 1970 CAA Amendments. The Senate Report stated that to achieve the NAAQS, ''[g]reater use of natural gas for electric power generation may be required,'' S. Rep. No. 91–1196 at 2, which can best be achieved by shifting generation from coal-fired to natural-gas-fired generators.

[142] *See* Legal Memorandum Accompanying Clean Power Plan for Certain Issues, 137–48, *EPA–HQ–OAR–2013–0602–36872; West Virginia* v. *EPA, D.C. Cir. No. 15–1363, Brief of Amici Curia* Grid Experts Benjamin F. Hobbs, Brendan Kirby, Kenneth J. Lutz, James D. McCalley, and Brian Parsons in Support of Respondents, at 1–4, 12–14.

emission reductions are captured in state budgets, which are then implemented through the flexible CSAPR NO_X ozone season allowance trading program that allows each source to determine its own strategy for compliance, whether that be through implementation of on-site controls, re-dispatch, or the purchase of allowances. Indeed, no state would violate the provisions of the rule if sources within the state decided not to employ re-dispatch as a means of compliance. As discussed in Section VII, the EPA performed a feasibility analysis which demonstrates that regionally and for each CSAPR Update state, the trading program requirements promulgated by this rule can be met through cost-effective measures, even without re-dispatch.

Further, we note that while commenters urged EPA to allow sources to use generation shifting as a means of compliance with statewide emissions budgets, they do not explain why they believe that re-dispatch may be used by sources for compliance but that the EPA may not consider this anticipated and widely-used means of reducing emissions when quantifying the amount of reductions achievable from sources within the state. In fact, because these comments acknowledge that sources are able to implement generation-shifting for the purpose of reducing emissions, they support EPA's reliance on generation-shifting to quantify the amount of reductions required under the good neighbor provision. Moreover, these comments support the view that even if the EPA did not base the amount of required emission reductions on generation-shifting, sources would rely on generation-shifting to meet their requirements as long as it is less expensive than other emission controls.

Although the commenters contend that the consideration of shifting generation as a source of emission reductions is unprecedented, shifting generation is a well-established technique for reducing power plant emissions, which has already been incorporated into many other CAA programs. For example, when promulgating the original CSAPR rulemaking, the EPA considered shifting generation when establishing state budgets in the same manner in which the EPA has incorporated generation shifting into the analysis for this rule.[143]

Finally, the commenters have not identified a clear conflict with the EPA's justification for considering generation shifting in the context of the CPP. The CPP was designed pursuant to the authority in CAA section 111(d), while the CSAPR Update is promulgated consistent with the requirements of the good neighbor provision at CAA section 110(a)(2)(D)(i)(I). As explained earlier, the good neighbor provision is permissibly interpreted to allow the EPA to consider generation shifting when defining the ''amounts'' of emission reductions that may be required to address each states' significant contribution to nonattainment and interference with maintenance of downwind air quality. Thus, while EPA is confident that its interpretation of section 111(d) to authorize generation-shifting will be upheld, the fact that litigants have challenged the EPA's authority pursuant to section 111(d) does not affect the EPA's authority pursuant to the good neighbor provision.

Moreover, the fact that there are factual differences between the nature of CO_2 and NO_X as air pollutants, does not constrain the EPA's authority to consider shifting generation when regulating NO_X emissions pursuant to the good neighbor provision. Rather, as described earlier, both rules regulate sources in the power sector that commonly engage in generation shifting as a means of achieving emission reductions of either CO_2 or NO_X. It is thus reasonable for the EPA to consider such practices in quantifying achievable emission reductions to address downwind air quality concerns. Furthermore, the rulemakings appropriately reflect the factual differences to the extent they are relevant (*e.g.,* this rule includes assurance provisions constraining emissions in each state and CPP does not, which reflects the regional nature of NO_X and the global nature of CO_2).

Comment: Commenters contend that the EPA cannot consider generation shifting for purposes of developing state emission budgets because the Federal Energy Regulatory Commission (FERC) has exclusive authority over dispatch requirements under the Federal Power Act. These commenters claim that scheduling and dispatch are controlled by regional transmission organizations and independent system operators, pursuant to FERC approval. Additionally, the commenters note that EGUs already may have committed their capacity under long term power purchase agreements (PPAs), which the EPA lacks the authority to alter or abrogate. Other commenters contend that the EPA must at least confer with FERC to confirm that the generation shifting required by this rule do not impact grid reliability.

Response: The CSAPR Update is an air-pollution rule specifically authorized by the CAA. As discussed in response to the previous comment, shifting generation is a well-established technique for reducing power plant emissions, which has already been incorporated into many other CAA programs. This rule limits EGU NO_X emissions that interfere with downwind states' ability to attain and maintain the 2008 ozone NAAQS. The rule does not regulate any other aspect of energy generation, distribution, or sale. For these reasons, the CSAPR Update does not intrude on FERC's power under the Federal Power Act, 16 U.S.C. 791a, *et seq.,* nor does the rule alter or abrogate the PPAs to which EGUs are subject. Like any pollution limits for the power industry (of which there are many under the CAA), the CSAPR Update will indirectly impact energy markets, but those impacts do not mean that the EPA has overstepped its authority.

The CSAPR Update does not require implementation of any specific control technology or compliance strategy. As described in section VII, the emission reductions quantified in this rule are implemented through EGU participation in a flexible allowance trading program. Sources may achieve these emission reductions in any manner they choose, including the purchasing of additional allowances if a particular source is constrained to reduce its emissions. Although sources have demonstrated ability to use re-dispatch as a compliance strategy (and indeed, some commenters concede they intend to do so here), such actions are not mandated

[143] *See* 76 FR at 48280 (EPA's selection of a $500 threshold ''reflect[ed] an amount of . . . generation shifting that can be achieved for $500/ton''). For other CAA programs and rules that are based at least in part on generation-shifting, *see* S. Rep. No. 101–228, at 316 (1989) (Congress designed the Title IV acid rain provisions in the 1990 CAA Amendments in part on the ability of power plants to re-dispatch); 77 FR 9304, 9410 (Feb. 16, 2012) (in Mercury Air Toxics Rule, EPA authorized compliance extensions so that power plants could comply by generation-shifting); 70 FR 28606, 28619 (May 18, 2005) (in Clean Air Mercury Rule, EPA based emission requirements in part on the ability of power plants to generation shift); 70 FR 25162, 25256–57, 25277 (May 12, 2005) (several of CAIR's provisions were based on the ability of power plants to re-dispatch); 63 FR 57356, 57401 (Oct. 27, 1998) (NO_X SIP Call included ''changes in dispatch'' among the highly cost-effective controls that served as the basis for the required amount of reductions). In addition, several states have already adopted renewable energy measures in their SIPs for attaining and maintaining the NAAQS, and the EPA has provided initial guidance for states to do so. *See, e.g.,* Guidance on SIP Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures (Aug. 2004), *http://www.epa.gov/ttn/oarpg/t1/memoranda/ereseerem_gd.pdf.* For example, in 2005, EPA approved inclusion of county government commitments to purchase 5 percent of their annual electricity consumption from wind power in Maryland's SIP. 70 FR 24988 (May 12, 2005).

by this rule. As discussed in Section VII, the EPA performed a feasibility analysis which demonstrates that regionally and for each CSAPR Update state, the trading program requirements promulgated by this rule can be met, even without re-dispatch.

Moreover, the EPA has evaluated the impact on electric reliability of the emission reductions required by this rule and found that compliance with the CSAPR Update requirements is consistent with maintaining electric reliability. For more information regarding this assessment, see the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this rule. The EPA also met with FERC during the development of the CSAPR Update to discuss compliance with the entirety of the rule, not only in relation to shifting generation. This meeting is documented in the docket for the CSAPR Update.

2. Quantifying Emission Budgets

In the proposed CSAPR Update, the EPA proposed setting emission budgets by considering monitored heat input (mmBtu) and modeled emission rates (lbs/mmBtu) from IPM. Specifically, the proposed CSAPR Update put forward a methodology to set emission budgets by multiplying monitored historical state-level heat input by model-projected 2017 state-level emission rates. The monitored historical data were based on 2014, which was the most recent complete ozone season dataset at the time of the proposal. The model-projected state-level emission rates were used to reflect EGU NO_X reduction potential. The proposed emission budgets were the lower of the calculated emission budget or the 2014 historical state-level emissions. The EPA took comment on all aspects of quantifying state emission budgets reflecting upwind EGU NO_X reduction potential.

The proposed CSAPR Update budget-setting approach differed from the finalized methodology in the original CSAPR, which used model-projected state-level emission data as emission budgets. The EPA received feedback on the finalized original CSAPR budget-setting approach through model input data submitted after the final rule that led to two revisions rules [144] and in litigation on the original CSAPR. Considering this feedback, the EPA believed that it was reasonable to update the budget-setting methodology for the proposed CSAPR Update. The proposed approach is similar to the proposed approach used to quantify emission budgets for the original CSAPR.[145]

The final rule methodology for setting emission budgets reflects the CSAPR Update proposal in that it retains the approach of multiplying historical state-level heat input by state-level emission rates that reflect EGU NO_X reduction potential. For the final CSAPR Update rule, the EPA is refining its methodology for establishing emission budgets that reflect EGU NO_X reduction potential by using historical state-level NO_X emission rates [146] adjusted by modeled NO_X reduction potential. Specifically, the final rule's approach applies the change in modeled 2017 state-level emission rates (the budget-setting base case 2017 projected rates minus the cost threshold modeling 2017 projected rates) to historical 2015 state-level NO_X emission rates,[147] such that the emission budgets assume the potential of each state to improve its historical NO_X rate by the same degree that it is projected to improve its NO_X rate when moving between the budget-setting base case 2014 projection and cost threshold projection.

This approach uses the EPA's IPM EGU NO_X reduction potential modeling in a relative sense by applying the projected 2017 change in state-level EGU NO_X emission rates to 2015 historical data. This approach is similar to the EPA's method for projecting ambient air quality concentrations described in section V. The EPA is finalizing this refinement to the proposed approach in response to comment received on the proposal. The primary improvement of this approach relevant to comment received is that it circumvents quantifying in emission budgets any modeled EGU NO_X reduction potential (*e.g.,* modeled retirements) that occurs in the budget-setting base case projection.

However, this approach also circumvents quantifying in emission budgets any known EGU NO_X reduction activities (*e.g.,* announced new SCR at existing EGUs, announced coal-to-gas conversions, or announced retirements) occurring between the historical 2015 data and the modeled projection 2017 data.

To account for known changes in the final rule budget-setting methodology, the EPA developed an adjusted historical dataset. This adjusted historical data starts with 2015 state-level monitored and reported EGU NO_X emissions and heat input. The dataset is then adjusted for three categories of known changes in the power sector occurring between 2015 and 2017: Announced new SCR at existing EGUs; announced coal-to-gas conversions; and announced retirements. These important adjustments ensure that the emission budgets established by this rule reflect EGU NO_X reductions both from already announced power sector changes and further EGU NO_X reductions quantified in the EPA's EGU NO_X reduction potential analysis. Accounting for known EGU NO_X reduction activities in establishing emission budgets ensures that the emission budgets reflect the best available information in terms of achievable EGU NO_X reductions and remaining emission levels. To account for announced new SCR at existing EGUs, the EPA adjusts the 2015 emissions at the relevant units as though the new SCR had been operating at that time (assuming no change in heat input [148] at those units). Similarly, to account for announced coal-to-gas conversions, the EPA adjusts the 2015 emissions at the relevant units as though the conversion had already taken place (assuming no change in heat input at those units). To account for announced retirements, the EPA subtracts the 2015 emissions from these units and replaces them by adding assumed emissions for an equivalent amount of generation using state-wide average emission rates after accounting for the retirement. Preserving some emissions associated with the generation from retired units, assuming that generation will be replaced by other EGUs in the state, ensures that the budget-setting approach accounts for known retirements but estimates the emission impact using generation replacement assumptions with conservatively high NO_X emission rates. In other words, the EPA assumes that the retired generation is replaced by the average remaining EGU composition within the state rather than by newer lower-emitting generation.

Comment: Commenters supported the EPA's consideration of historical monitored data to quantify emission budgets and advocated that the EPA

[144] 77 FR 34830 (June 12, 2012) and 77 FR 10324 (February 21, 2012).

[145] The original CSAPR proposal set proposed emission budgets by using an approach that considered monitored state-level heat input and modeled state-level emission rates. (75 FR 45291).

[146] The EPA notes that historical state-level ozone season EGU NO_X emission rates are publicly available and quality assured data. They are monitored using continuous emissions monitors (CEMs) data and are reported to the EPA directly by power sector sources.

[147] The EPA used 2014 historical data at proposal because that was the latest available at that time. Since then, 2015 historical data is available and the EPA is using 2015 data in the final rule because it best reflects the current state of the power sector.

[148] In this analysis the EPA used heat input as a proxy for electricity generation.

further utilize historical data in its budget-setting methodology. For example, some commenters proposed an alternative budget-setting methodology that was grounded entirely in historical data, with NO_X control assumptions applied. Commenters also suggested that the budget-setting base case projection emission rates were unduly influenced by model-projected changes for the 2017 analysis year and that this created emission budgets that did not reflect achievable NO_X emission levels.

Response: In response to these comments, the agency considered approaches to isolate model-projected changes in the power sector occurring in the budget-setting base case projection and model-projected changes that result from the application of uniform cost threshold analysis. As discussed previously, for the final rule, the EPA is refining its method for calculating emission budgets in response to these comments. In doing so, the EPA is also finalizing a budget-setting methodology that further relies on historical data, which is further aligned with comment received on the proposal.

The approach for applying this budget-setting methodology to the EPA's EGU NO_X reduction potential analysis uses a three step process, applied to each control stringency level. First, the EPA uses the state-level modeled EGU NO_X emission rate from the 2017 budget-setting base case projection and subtracts the state-level modeled EGU NO_X emission rate from the 2017 cost threshold projection (*e.g.,* $1,400 per ton).[149] This yields the EPA's assessment of policy-related EGU NO_X reduction potential in the form of a reduction in state-level NO_X emission rate. Second, the EPA subtracts this modeled change in state-level NO_X emission rate from the adjusted historical state-level EGU NO_X emission rate. This yields a cleaner state-level EGU NO_X emission rate that is grounded in historical data and reflects policy-related EGU NO_X reduction potential. Third, the EPA multiplies the resulting EGU NO_X emission rate by 2015 historical heat input. This multiplication yields state-specific ozone season EGU NO_X emission budgets for 2017 that are grounded in historical data and reflect EGU NO_X reduction potential modeled in IPM. Similar to the proposal, the final CSAPR Update establishes emission budgets as the lower of the calculated emission budget or the 2015 historical (unadjusted) state-level emissions.

In conducting the IPM modeling of each cost threshold, the EPA limited IPM's evaluation of NO_X mitigation strategies to those that can be implemented for the 2017 ozone season, which is the compliance timeframe for this rulemaking. The agency analyzed levels of uniform EGU NO_X control using IPM, where each level is represented by marginal NO_X costs listed in Table VI.C–1 in this preamble. The analysis applied these uniform levels of control to EGUs in the 48 contiguous United States and the District of Columbia, starting with 2017. The analysis included EGUs with a capacity (electrical output) greater than 25 MW, which reflects the CSAPR Update rule applicability criteria. The Ozone Transport Policy Analysis Final Rule TSD, which is in the docket for this rule, provides further details of the EPA's analysis of ozone season NO_X emission reductions occurring at each level of uniform control stringency for the 2017 ozone season.

As described in in Section V, air quality data for the CSAPR Update indicates that the District of Columbia contributes at or above the 1 percent threshold to a downwind maintenance receptor in Harford County, Maryland. Moreover, in Step 3 of the CSAPR framework, the EPA's analysis finds that there are no EGUs in the District of Columbia that meet the CSAPR Update applicability criteria (*i.e.,* EGUs with a capacity greater than 25 MW). Therefore, the EPA does not calculate or finalize an EGU NO_X ozone season emission budget for the District.

The 2015 historical data, adjusted historical data, and EGU NO_X ozone season emission budgets calculated using each cost threshold identified in the final emission budget-setting approach can be found in Tables VI.C–1 and VI.C.2.

TABLE VI.C–1—EVALUATED EGU NO_X OZONE SEASON EMISSION BUDGETS, REFLECTING EGU NO_X REDUCTIONS

[Ozone season NO_X tons]

State	2015 emissions	Adjusted historical emissions	$800 per ton emission budgets	$1,400 per ton emission budgets	$3,400 per ton emission budgets
Alabama	20,369	15,179	14,332	13,211	12,620
Arkansas	12,560	12,560	12,048	9,210	9,048
Illinois	15,976	14,850	14,682	14,601	14,515
Indiana	36,353	31,382	28,960	23,303	21,634
Iowa	12,178	11,478	11,477	11,272	11,065
Kansas	8,136	8,031	8,030	8,027	7,975
Kentucky	27,731	26,318	24,052	21,115	21,007
Louisiana	19,257	19,101	19,096	18,639	18,452
Maryland	3,900	3,871	3,870	3,828	3,308
Michigan	21,530	19,811	19,558	17,023	15,782
Mississippi	6,438	6,438	6,438	6,315	6,243
Missouri	18,855	18,443	17,250	15,780	15,299
New Jersey	2,114	2,114	2,100	2,062	2,008
New York	5,593	5,531	5,220	5,135	5,006
Ohio	27,382	27,382	23,659	19,522	19,165
Oklahoma	13,922	13,747	13,746	11,641	9,174
Pennsylvania	36,033	35,607	20,014	17,952	17,928
Tennessee	9,201	7,779	7,736	7,736	7,735
Texas	55,409	54,839	54,521	52,301	50,011
Virginia	9,651	9,367	9,365	9,223	8,754
West Virginia	26,937	26,874	25,984	17,815	17,380
Wisconsin	9,072	7,939	7,924	7,915	7,790

[149] Each state-level emission rate is calculated as the total emissions from affected sources within the state divided by the total heat input from these sources.

TABLE VI.C–1—EVALUATED EGU NO_X OZONE SEASON EMISSION BUDGETS, REFLECTING EGU NO_X REDUCTIONS—Continued

[Ozone season NO_X tons]

State	2015 emissions	Adjusted historical emissions	$800 per ton emission budgets	$1,400 per ton emission budgets	$3,400 per ton emission budgets
22 State Region	398,596	378,641	350,062	313,626	301,899

TABLE VI.C–2—EVALUATED EGU NO_X OZONE SEASON EMISSION BUDGETS, REFLECTING EGU NO_X REDUCTIONS

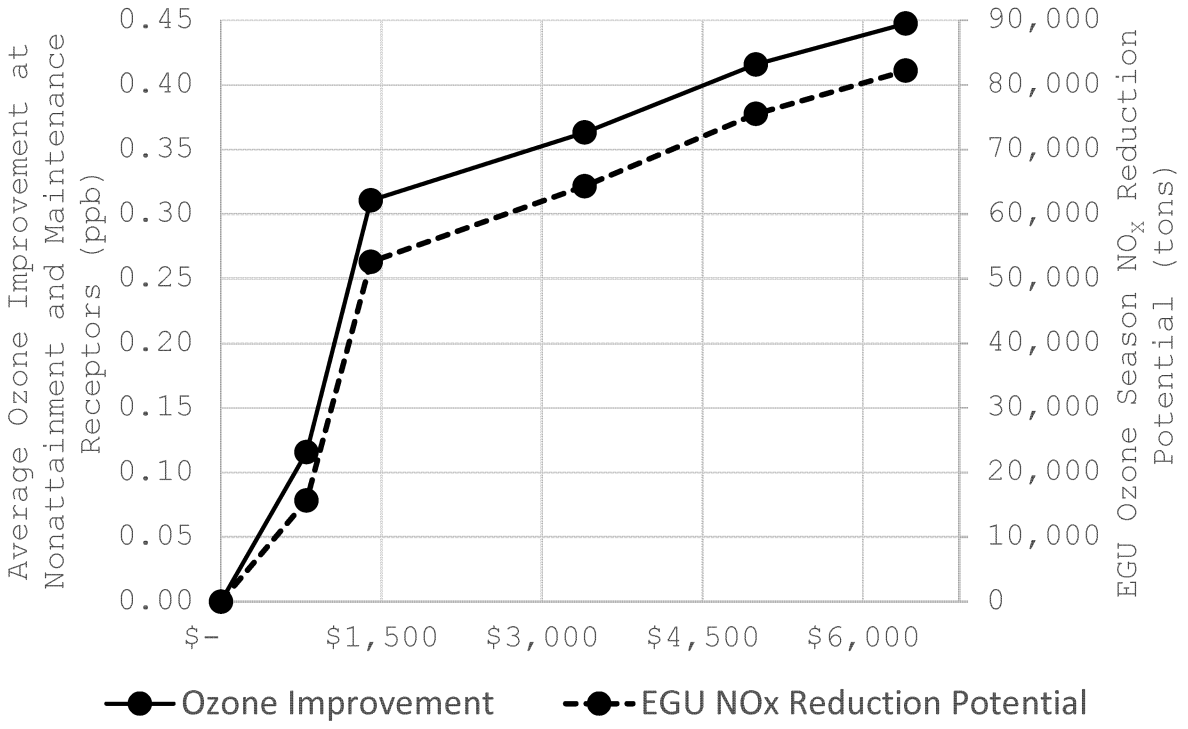
[Ozone season NO_X tons]

State	2015 emissions	Adjusted historical emissions	$5,000 per ton emission budgets	$6,400 per ton emission budgets
Alabama	20,369	15,179	11,928	11,573
Arkansas	12,560	12,560	8,518	8,050
Illinois	15,976	14,850	14,248	14,054
Indiana	36,353	31,382	19,990	18,720
Iowa	12,178	11,478	10,891	10,491
Kansas	8,136	8,031	7,962	7,767
Kentucky	27,731	26,318	20,273	19,496
Louisiana	19,257	19,101	18,442	18,426
Maryland	3,900	3,871	2,938	2,926
Michigan	21,530	19,811	13,110	12,612
Mississippi	6,438	6,438	6,203	6,205
Missouri	18,855	18,443	14,673	14,555
New Jersey	2,114	2,114	1,867	1,879
New York	5,593	5,531	4,746	4,594
Ohio	27,382	27,382	18,561	18,348
Oklahoma	13,922	13,747	8,790	8,439
Pennsylvania	36,033	35,607	17,621	17,374
Tennessee	9,201	7,779	7,724	7,729
Texas	55,409	54,839	48,795	47,994
Virginia	9,651	9,367	8,619	8,416
West Virginia	26,937	26,874	17,388	17,373
Wisconsin	9,072	7,939	7,435	7,023
22 State Region	398,596	378,641	290,722	284,044

D. Multi-Factor Test Considering Costs, EGU NO_X Reductions, and Downwind Air Quality Impacts

Next, the EPA applied the multi-factor test to consider cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency, feasible for 2017, that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. This test evaluates these factors to determine the appropriate stopping point for quantifying upwind state obligations to address interstate ozone transport, including whether the identified downwind ozone problems (*i.e.,* nonattainment or maintenance problems) are resolved.

Figure VI.1. EGU Ozone Season NO_X Reduction Potential in 22 Linked States and Corresponding Total Reduction in Downwind Ozone Concentrations at Nonattainment and Maintenance Receptors for each Emission Budget Level Evaluated



Combining costs, EGU NO_X reductions, and corresponding improvements in downwind ozone concentrations results in a ''knee in the curve'' at a point where emission budgets reflect a control stringency with an estimated marginal cost of $1,400 per ton. This level of stringency in emission budgets represents the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other emission budget levels evaluated. Further, more stringent emission budget levels (*e.g.,* emission budgets reflecting $3,400 per ton or greater) yield fewer additional emission reductions and fewer air quality improvements relative to the increase in control costs. This evaluation shows that significant EGU NO_X reductions are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors for the final rule.

To assess downwind air quality impacts for each nonattainment or maintenance receptor identified in this rulemaking, the EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU NO_X emission budgets quantified for each uniform NO_X control stringency level. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is used to evaluate over-control.

In order to assess the air quality impacts of the various control stringencies, the EPA evaluated changes resulting from the application of the emission budgets to states that are linked to each receptor as well as the state containing the receptor. By applying each budget level to the state containing the receptor, the EPA ensures that it is accounting for the downwind state's fair share. For states that were not linked to that receptor, the air quality change at that receptor was evaluated assuming emissions equal to the adjusted historic emission level, including Pennsylvania RACT. This method holds each upwind state responsible for its fair share of the downwind problems to which it is linked. Reductions made by other states in order to address air quality problems at other receptors do not increase or decrease this fair share. This approach removes state equity considerations from this component of the multi-factor test and preserves the apportionment of upwind responsibility to the assessment of uniform control stringency represented by cost, which the Supreme Court found to be ''an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' 134 S. Ct. at 1607.

For this assessment, the EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emission levels. This tool is similar to the AQAT tool used in the original CSAPR to evaluate changes in $PM_{2.5}$ concentrations. The ozone AQAT uses simplifying assumptions regarding the relationship between each state's change in EGU NO_X emissions and the corresponding change in ozone concentrations at nonattainment and maintenance receptors to which that state is linked. This method is calibrated using two CAMx air quality modeling scenarios that fully account for the non-linear relationship between emissions and air quality associated with atmospheric chemistry. *See* the Ozone Transport Policy Analysis Final Rule TSD for additional details.

For each emission budget level and for each receptor, the EPA evaluated the magnitude of the change in concentration and determined whether the estimated concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values below 76 ppb, respectively.

As an example, the EPA evaluated the Harford County, Maryland receptor with all linked states and Maryland meeting emission budgets reflecting controls available at $800 per ton of NO_X emissions reduced. Adding up the state-by-state changes in air quality contributions resulting from the changes in emissions, this assessment showed a 0.1 ppb reduction in expected ozone design values. After subtracting this air quality improvement from the design values quantified in section V of this preamble, the residual design values at this site are still expected to exceed the 2008 ozone NAAQS with an average design value of 79.0 ppb and a maximum design value of 81.6 ppb. Next, the EPA evaluated this receptor with all linked states and Maryland meeting emission budgets reflecting controls available at $1,400 per ton. This assessment showed a 0.4 ppb reduction in expected ozone design values. At emission budgets reflecting $1,400 per ton, the residual design values at this site are expected to continue to exceed the 2008 ozone NAAQS with an average design value of 78.7 ppb and a maximum design value of 81.3 ppb. Next, the EPA evaluated this receptor with all linked states and Maryland meeting emission budgets reflecting controls available at $3,400 per ton. This assessment showed a 0.6 ppb reduction in expected ozone design values. At emission budgets reflecting $3,400 per ton, the residual design values at this site are expected to continue to exceed the 2008 ozone NAAQS with an average design value of 78.5 ppb and a maximum design value of 81.2 ppb. Next, the EPA evaluated this receptor with all linked states and Maryland meeting emission budgets reflecting controls available at $5,000 per ton. This assessment showed a 0.7 ppb reduction in expected ozone design values. At emission budgets reflecting $5,000 per ton, the residual design values at this site are expected to continue to exceed the 2008 ozone NAAQS with an average design value of 78.4 ppb and a maximum design value of 81.1 ppb. Next, the EPA evaluated this receptor with all linked states and Maryland meeting emission budgets reflecting controls available at $6,400 per ton. This assessment showed a 0.7 ppb reduction in expected ozone design values. At emission budgets reflecting $6,400 per ton, the residual design values at this site are expected to continue to exceed the 2008 ozone NAAQS with an average design value of 78.4 ppb and a maximum design value of 81.0 ppb.

Generally, the EPA evaluated the air quality improvements at each monitoring site for the emission budgets associated with each progressively more stringent emission budget. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Final Rule TSD.

As part of this analysis, the EPA evaluates potential over-control with respect to whether (1) the expected ozone improvements would be sufficient or greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* resolving nonattainment or maintenance problems) or (2) the expected ozone improvements would reduce upwind state ozone contributions to below the screening threshold (*i.e.,* one percent of the NAAQS).

In *EME Homer City,* the Supreme Court held that the EPA cannot ''require[] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in *every* downwind State to which it is linked.'' 134 S. Ct. at 1608. On remand from the Supreme Court, the D.C. Circuit held that this means that the EPA might overstep its authority ''when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.'' *EME Homer City II,* 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this ''does not mean that every such upwind State would then be entitled to less stringent emission limits. Some of those upwind States may still be subject to the more stringent emissions limits so as not to cause *other* downwind locations to which those States are linked to fall into nonattainment.'' *Id.* at 14–15. As the Supreme Court explained, ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' 134 S. Ct. at 1609. The Court noted that ''a degree if imprecision is inevitable in tackling the problem of interstate air pollution.'' *Id.* ''Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.'' *Id.*

Consistent with these instructions from the Supreme Court and the D.C. Circuit, the EPA first evaluated whether reductions resulting from the $800 per ton emission budgets can be anticipated to resolve any downwind nonattainment or maintenance problems (as defined in section V) and by how much. This assessment shows that the emission budgets reflecting $800 per ton would resolve maintenance problems at one downwind maintenance receptors—Philadelphia, Pennsylvania (maximum design value of 75.8 ppb). The EPA's assessment shows that no state included in the CSAPR Update is linked solely to the Philadelphia receptor that is resolved at the $800 per ton level of control stringency.

Next, the EPA evaluated whether reductions resulting from the $1,400 per ton emission budgets can be anticipated to resolve any further downwind nonattainment or maintenance problems. For the 22 CSAPR Update states, the EPA assessed further EGU NO_X reductions of emission budgets reflecting $1,400 per ton and found that the emission budgets reflecting $1,400 per ton would resolve nonattainment and maintenance problems at one downwind nonattainment receptors—Jefferson County, Kentucky (maximum design value of 75.7 ppb)—and would resolve maintenance problems at one additional downwind maintenance receptor—Hamilton County, Ohio (maximum design value of 75.1 ppb). The EPA's assessment shows that this control level does resolve the only identified nonattainment or maintenance problems to which Tennessee is linked—the Hamilton County, Ohio and Philadelphia, Pennsylvania receptors. However, no other no state included in the CSAPR Update is linked solely to these receptors that are resolved at the $1,400 per ton level of control stringency.

In light of the improvements at the maintenance receptors to which Tennessee is linked, the EPA evaluated the magnitude of those improvements and whether the air quality problems could have been resolved at a lower level of control stringency. At the emission budgets reflecting $1,400 per ton, the EPA's assessment demonstrates that the receptors to which Tennessee is linked would just be maintaining the standard, with maximum design values of 75.5 (Philadelphia) and 75.1 ppb (Hamilton County), which the EPA truncates to compare against the 2008 ozone standard. Consistent with the manner in which the EPA truncates design values to evaluate NAAQS attainment, these concentrations are equal to the level of the 2008 ozone

NAAQS at 75 ppb. Therefore, the emission reductions that would be achieved by emission budgets reflecting $1,400 per ton would not result in air quality improvements at these receptors significantly better than the standard such that emission reductions might constitute over-control as to the receptors. On the contrary, the emission reductions achieved in upwind states by emission budgets reflecting $1,400 per ton are necessary to bring the maximum design value at the receptors into alignment with the standard. The EPA finds that, based on the information supporting this final rule, the $1,400 per ton emission budget level would not constitute over-control for Tennessee or for any other state included in the CSAPR Update.

In *EME Homer City,* the Supreme Court also held that ''EPA cannot require a State to reduce its output of pollution . . . at odds with the one percent threshold the Agency has set.'' 134 S. Ct. at 1608. The Court explained that ''EPA cannot demand reductions that would drive an upwind State's contribution to every downwind State to which it is linked below one percent of the relevant NAAQS.'' *Id.* Accordingly, the EPA evaluated the potential for over-control with respect to the one percent threshold applied in this rulemaking at each relevant emission budget level. Specifically, the EPA evaluated whether the emission budget levels would reduce upwind EGU emissions to a level where the contribution from any upwind state would be below the one percent threshold that linked the upwind state to the downwind receptors. If the EPA found that any state's emission budget would decrease its contribution below the one percent threshold to every downwind receptor to which it is linked, then it would adjust the state's reduction obligation accordingly. The EPA's assessment reveals that there is not over-control with respect to the one percent threshold at any of the evaluated uniform cost emission budget levels in any upwind state. Most relevant, the EPA finds that under the $800 per ton and $1,400 per ton emission budgets, all 22 eastern states that contributed greater than or equal to the one percent threshold in the base case continued to contribute greater than or equal to one percent of the NAAQS to at least one downwind nonattainment or maintenance receptor. For more information about this assessment, refer to the Ozone Transport Policy Analysis Final Rule TSD.

Considering the EPA's findings with respect to application of the multi-factor test and over-control, the EPA is finalizing ozone season EGU NO_X emission budgets reflecting $1,400 per ton of EGU NO_X control for all CSAPR Update states. The EPA finds that the finalized Tennessee emission budget fully addresses Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS. For the remaining CSAPR Update states, final emission budgets reflecting $1,400 per ton of EGU NO_X control represent a partial solution for these states' good neighbor obligation with respect to the 2008 ozone NAAQS.

In establishing emission budgets reflecting $1,400 per ton of EGU NO_X control, the EPA notes that combustion controls are the only EGU NO_X reduction strategy that the EPA generally considers feasible for the 2017 ozone season in quantifying emission budgets for the final CSAPR Update and that also requires new construction. For this unique reason, in developing each state emission budget, the EPA specifically considered the number of EGUs with NO_X reduction potential from installing state-of-the-art combustion controls, 2015 reliance on these EGUs for electricity generation in the state, and the magnitude of reductions relative to the resulting emission budgets.

These data indicate that nearly all of the EGU NO_X reduction potential for one state, Arkansas, comes from installing state-of-the-art combustion controls. The EPA's analysis for the final rule finds that two units at White Bluff and two units at Independence power plants in Arkansas have significant EGU NO_X reduction potential from the installation of state-of-the-art combustion controls. The NO_X reduction potential from these units is uniquely significant relative to Arkansas' resulting emission budget. The agency's analysis finds approximately 3,000 tons of ozone season NO_X reduction potential from these 4 units in Arkansas. If the EPA were to calculate a 2017 emission budget for Arkansas that includes reductions attributable to combustion controls, these reductions would be equivalent to 33 percent of Arkansas' resulting emission budget. The NO_X reduction potential from installing combustion controls has an outsized effect on Arkansas' resulting emission budget relative to other states. Arkansas is unique with respect to emission reduction potential achievable from combustion controls relative to its corresponding emission budget. In all other states covered by this rule, reduction potential from combustion controls relative to the CSAPR Update rule emission budgets is 11 percent or less. While the EPA does not anticipate that sources in any other state would have difficulty installing upgraded combustion controls for the 2017 ozone season, for the reasons described earlier, the relatively low number of expected emissions reductions from those controls means that failure of any of these sources to install such controls would not lead the state to exceed the assurance levels and incur CSAPR assurance penalties.

Further, these units at White Bluff and Independence power plants in Arkansas, combined, accounted for nearly 40 percent of the state's 2015 heat input. Compared to other CSAPR Update states, Arkansas is also uniquely situated in this regard. In all other states covered by this rule, the percentage of state-level heat input from units with reduction potential from installation of combustion controls is 20 percent or less. The CSAPR allowance trading program allows Arkansas' utilities the option to choose alternative compliance paths. However, the EPA considers that if their compliance path included combustion controls for these units, then it may be difficult to schedule outage time to upgrade all four of the Arkansas units to state-of-the-art combustion controls for the 2017 ozone season and supply adequate electricity to meet demand in the state.

If, due to the unique feasibility concerns discussed earlier, the Arkansas units could not install upgraded controls for the 2017 ozone season, Arkansas utilities could exceed the CSAPR assurance level in 2017.[150] In such circumstances, Arkansas utilities would not only need to purchase allowances for compliance, but they would also face the CSAPR assurance provision penalty, meaning that for emissions exceeding the assurance level, utilities would need to surrender three allowances for each ton of emissions.

In light of these unique circumstances, the EPA believes that it is prudent and appropriate to finalize for Arkansas a 2017 ozone season emission budget for Arkansas that does not account for EGU NO_X reduction potential from combustion controls and a 2018 ozone season emission budget for Arkansas that does account for EGU NO_X reduction potential from combustion controls. This approach provides utilities an extra year to upgrade combustion controls in the event that this is their chosen CSAPR Update compliance path. This extra year

[150] More information about CSAPR Update Rule assurance levels can be found in section VII of this document.

allows for upgrades to be made across four shoulder seasons (fall 2016, spring 2017, fall 2017, and spring 2018).

The emission budgets that the EPA is finalizing in FIPs for the CSAPR Update rule are summarized in table VI.E–2.

TABLE VI.E–2—FINAL 2017 EGU NO_X OZONE SEASON EMISSION BUDGETS FOR THE CSAPR UPDATE RULE

[Ozone season NO_X tons]

State	2015 emissions	Adjusted historical emissions	CSAPR update rule 2017* emission budgets
Alabama	20,369	15,179	13,211
Arkansas	12,560	12,560	12,048/9,210
Illinois	15,976	14,850	14,601
Indiana	36,353	31,382	23,303
Iowa	12,178	11,478	11,272
Kansas	8,136	8,031	8,027
Kentucky	27,731	26,318	21,115
Louisiana	19,257	19,101	18,639
Maryland	3,900	3,871	3,828
Michigan	21,530	19,811	17,023
Mississippi	6,438	6,438	6,315
Missouri	18,855	18,443	15,780
New Jersey	2,114	2,114	2,062
New York	5,593	5,531	5,135
Ohio	27,382	27,382	19,522
Oklahoma	13,922	13,747	11,641
Pennsylvania	36,033	35,607	17,952
Tennessee	9,201	7,779	7,736
Texas	55,409	54,839	52,301
Virginia	9,651	9,367	9,223
West Virginia	26,937	26,874	17,815
Wisconsin	9,072	7,939	7,915
22 State Region	398,596	378,641	316,464/313,626

*The EPA is finalizing CSAPR EGU NO_X ozone season emission budgets for Arkansas of 12,048 tons for 2017 and 9,210 tons for 2018 and subsequent control periods.

The EPA's selection of emission budgets for this rule is specific to, and appropriate for, defining near-term achievable upwind obligations with respect to the 2008 ozone NAAQS in states where a FIP is necessary. The EPA does not intend—nor does it believe it would be justified in doing so in any event—that the cost-level-based determinations in this rule impose a constraint for selection of cost levels in addressing transported pollution with respect to future NAAQS and/or any revisions to these FIPs for any other future transport rules that the EPA may develop to address any potential remaining obligation as to the current NAAQS, for which different cost levels may be appropriate.

In addition to 22 states identified previously, the EPA also assessed the potential for EGU NO_X reductions in Delaware and the District of Columbia. This assessment finds that the District of Columbia does not have any affected EGUs. As a result, despite the District of Columbia's linkage to the Harford County, Maryland receptor, the District does not have any EGU NO_X reduction potential. The EPA also has not taken action to approve or disapprove a pending good neighbor SIP addressing the 2008 ozone NAAQS. Given that the District of Columbia does not have any affected sources and the District's SIP is still before the agency, the EPA is not finalizing a FIP for the District in this action. Also, the EPA's assessment of EGU NO_X reduction potential shows zero reductions available in Delaware in 2017 at any evaluated cost threshold because they are already equivalently controlled. Given this information and the fact that Delaware's SIP is also still pending before the agency, we are not promulgating a FIP for Delaware in this rule. The EPA will consider the information developed for this rule, as appropriate, in evaluating the good neighbor SIPs for these areas,[151] and if the EPA ultimately disapproves those SIPs, the EPA will address any resulting FIP obligation separately.

The proposed CSAPR Update sought comment on whether or not to include Wisconsin in the final CSAPR Update considering that the modeling data for the proposal showed zero NO_X reduction potential for Wisconsin under the proposed EGU NO_X control stringency. Unlike our analysis at proposal, the EGU NO_X emission reduction potential analysis for the final rule shows that EGUs in Wisconsin and all 22 CSAPR Update states have EGU emission reductions available using the uniform control stringency represented by $1,400 per ton. Further, ozone season emission budgets that the EPA is finalizing in the CSAPR Update represent reductions from 2015 emission levels for Wisconsin and all 22 CSAPR Update states. The EPA is therefore including each of the 22 CSAPR Update states in the final CSAPR Update to ensure that each state achieves NO_X emission reductions to address significant contribution to nonattainment or interference with maintenance of downwind pollution with respect to the 2008 ozone NAAQS.

[151] As noted earlier, the EPA has not taken final action to approve or disapprove Delaware's good neighbor SIP addressing the 2008 ozone NAAQS.

VII. Implementation Using the Existing CSAPR NO_X Ozone Season Allowance Trading Program and Relationship to Other Rules

A. Introduction

This section addresses step four of the CSAPR framework by describing how the EPA will implement and enforce the EGU emission budgets quantified in section VI, which represent the remaining EGU emissions after reducing

those amounts of each state's emissions that significantly contribute to downwind nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. *See* Table VI.E–2 for final emission budgets. The EPA is finalizing FIPs with respect to the 2008 ozone NAAQS for each of the 22 states covered by this rule. The FIPs will require affected EGUs to participate in the CSAPR NO_X ozone season trading program subject to the final emission budgets. The EPA is updating the CSAPR NO_X ozone season program requirements in 40 CFR part 97 to reflect these CSAPR NO_X ozone season emission budgets and final CSAPR Update Rule trading program requirements.

The CSAPR NO_X ozone season trading program is a market-based approach that implements emission reductions needed to meet the CAA's good neighbor requirements. The emission budgets establish state-level aggregate emission caps that specify the quantity of emissions authorized from affected EGUs. The EPA creates individual authorizations (''allowances'') to emit a specific quantity (*i.e.,* 1 ton) of ozone season NO_X. The total number of allowances equals the level of the emission budgets, which partially address interstate emission transport under the good neighbor provision for the 2008 ozone NAAQS. To be in compliance, each participant must hold allowances equal to its actual emissions for each control period. It may buy or sell (trade) them with other market participants. Each affected EGU can design its own compliance strategy—emission reductions and allowance purchases or sales—to minimize its compliance cost. And it can adjust its compliance strategy in response to changes in technology or market conditions. The compliance flexibility provided by the CSAPR NO_X ozone season trading program does not prescribe unit-specific and technology-specific NO_X mitigation. While the EPA establishes emission budgets that reflect emission reductions that can be achieved by certain near-term and cost effective EGU NO_X mitigation strategies (*e.g.,* turning on idled SCRs), no particular EGU NO_X reduction strategy is required for any specific EGU to demonstrate compliance with the CSAPR Update rule.

In order to ensure that each upwind state addresses its significant contribution to nonattainment or interference with maintenance and to accommodate inherent year-to-year variability in state-level EGU operations, the CSAPR NO_X ozone season trading program includes variability limits and assurance provisions. These provisions are unchanged from those established in the original CSAPR with the exception of each CSAPR Update state having a revised variability limit and assurance level that corresponds with its revised emission budget. The CSAPR assurance provisions require additional allowance surrender penalties (a total of 3 allowances per ton of emissions) [152] on emissions that exceed a state's CSAPR NO_X ozone season assurance level, or 121 percent of the emission budget.

When the EPA finalized the original CSAPR in 2011, the rule established regional trading programs designed to cost-effectively reduce transported emissions of SO_2 and NO_X from power plants in eastern states that affect air quality in downwind states. *See* 76 FR 48272 and 48273 (August 8, 2011). The EPA envisioned that this approach to implementing necessary emission reductions could be used to address transport obligations under other existing NAAQS and future NAAQS revisions. *See* 76 FR 48211 and 48246 (August 8, 2011). The EPA is finalizing implementation of the CSAPR Update emission budgets using the CSAPR NO_X ozone season allowance trading program, with certain updates. Using the familiar CSAPR trading program to implement these near-term EGU reductions for the 2008 ozone standard provides many significant advantages, including certainty in emission reductions achieved by dint of caps on emissions and air quality-assured allowance trading, ease of transition to the new emission budgets, the economic and administrative efficiency of trading approaches, and the flexibility afforded to sources regarding compliance.

The first control period for the requirements finalized in these FIPs is the 2017 ozone season (May 1, 2017–September 30, 2017). Affected EGUs within each covered state must demonstrate compliance with FIP requirements for the 2017 ozone season and each subsequent ozone season unless and until the state submits a SIP that the EPA approves as replacing the FIP, or the EPA promulgates another federal rule replacing or revising the FIP.

In this section of the preamble, the following topics are addressed: New and revised FIPs; updates to CSAPR NO_X ozone season trading requirements, including trading program structure and treatment of banked allowances; feasibility of compliance; key elements of the CSAPR trading programs; replacing the FIP with a SIP; title V permitting; and the relationship of this rule to other emission trading and ozone transport programs (NO_X SIP Call, CSAPR trading programs, CPP).

B. New and Revised FIPs

As explained in section III in this preamble, the EPA is finalizing new or revised FIP requirements only for those states where the EPA has the authority and obligation to promulgate a FIP addressing the state's interstate transport obligation pursuant to CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. That is, the EPA is finalizing new or revised FIP requirements for certain states where the EPA either found that the state failed to submit a complete good neighbor SIP or disapproved a good neighbor SIP for that state. Moreover, the EPA is only finalizing new or revised FIP requirements for those states identified in sections V and VI of this preamble, whose emissions significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other eastern states. For those states that contribute below the one percent threshold applied in section V of this preamble, the EPA concludes that the state's emissions do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS. There is therefore no need to impose further emission limits on sources within those states through issuance of new or revised FIP requirements.

Of the 22 states required to participate in the CSAPR NO_X ozone season trading program under this CSAPR Update, 21 states [153] already comply with the original CSAPR NO_X ozone season requirements with respect to the 1997 ozone NAAQS. For those 21 states, the EPA is revising their existing FIP requirements to require compliance with updated budgets at the levels in Table VI.E–2. One state, Kansas, has newly added CSAPR NO_X ozone season compliance requirements in this action. For Kansas, the agency is establishing new FIP requirements to require compliance with a budget at the level in Table VI.E–2.

One state, Georgia, has a continued compliance requirement under the original CSAPR NO_X ozone season program with respect to the 1997 ozone NAAQS and is not found to significantly contribute to

[152] Each excess ton above the assurance level must be met with one allowance for normal compliance plus two additional allowances to satisfy the penalty.

[153] Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. Therefore, Georgia's CSAPR NO_X ozone season requirements (including its emission budget) continue unchanged pursuant to the state's previously-defined obligation that was quantified to address the 1997 ozone NAAQS, and the EPA is not making any changes to the existing FIP requirements for Georgia contained in 40 CFR part 52.

Three states (Florida, North Carolina, and South Carolina) are currently subject to the CSAPR NO_X ozone season trading program with respect to the 1997 ozone NAAQS under the original CSAPR. However, as described in section IV of this preamble, the phase 2 NO_X ozone season budgets [154] for these three states were remanded to the EPA for reconsideration by the D.C. Circuit in *EME Homer City II,* 795 F.3d at 138. In this final rule, the EPA finds that emissions from Florida, North Carolina, and South Carolina do not significantly contribute to nonattainment or interfere with maintenance of either the 1997 ozone NAAQS or the 2008 ozone NAAQS in other states. Accordingly, starting with the 2017 ozone season, these three states will no longer be subject to CSAPR NO_X ozone season trading program requirements and EGUs in these states will not be allocated further allowances nor obligated to demonstrate compliance with CSAPR NO_X ozone season requirements. The EPA is revising 40 CFR part 52 to remove CSAPR NO_X ozone season program requirements for these three states.

C. Updates to CSAPR NO_X Ozone Season Trading Program Requirements

For the CSAPR Update rule, the EPA is finalizing certain updates to the CSAPR NO_X ozone season trading program to transition the existing original CSAPR NO_X ozone season trading program, designed to address the 1997 ozone NAAQS, to address new requirements as to interstate emission transport for the 2008 ozone NAAQS. These changes will be effective for the 2017 ozone season control period. In this context, the EPA determines the extent to which allowances issued under emission budgets established to address interstate transport with respect to the 1997 ozone NAAQS would or would not be eligible for compliance under this rule for affected EGUs with emission budgets established to address interstate transport for the 2008 ozone NAAQS. In developing approaches to transition the CSAPR trading program, the EPA weighed several factors, including achieving the environmental goal of the CSAPR Update (*i.e.,* achieving necessary emission reductions to address interstate transport with respect to the 2008 ozone NAAQS) and feasibility of implementing the CSAPR Update rule. The EPA proposed and took comment on several approaches regarding this transition of the original CSAPR NO_X ozone season program to address interstate emission transport for the more recent 2008 ozone NAAQS.

The EPA considered whether CSAPR NO_X ozone season allowances issued in 2017 and thereafter to affected EGUs in original CSAPR states without updated CSAPR NO_X ozone season trading program budgets (*i.e.,* Georgia) can be used for compliance in the 22 CSAPR Update states and vice versa. As described later on, this final rule prohibits the use of allowances for compliance between Georgia and the CSAPR Update states because of the differences in air quality goals (*i.e.,* the 1997 ozone NAAQS versus the 2008 ozone NAAQS) and the different NO_X control stringency used to establish emission budgets necessary to achieve those air quality goals. The EPA is implementing this prohibition by establishing two distinct trading groups with distinct allowances within the CSAPR NO_X ozone season allowance trading program. The EPA provides an option for Georgia to voluntarily adopt via SIP a commensurate CSAPR Update emission budget that would obviate this prohibition by including Georgia in the trading group with the CSAPR Update states.

The EPA also considered whether, and to what extent, banked [155] 2015 and 2016 CSAPR NO_X ozone season allowances issued under original CSAPR NO_X ozone season emission budgets should be eligible for compliance in CSAPR Update states in 2017 and beyond. As described later on, this rule establishes a one-time allowance conversion that transitions a limited number of banked 2015 and 2016 allowances (approximately 99,700 allowances) for compliance use in CSAPR Update states. This allowance conversion is designed to limit the potential use of banked allowances to no more than one year of the CSAPR variability limits in order to ensure that implementation of the trading program will result in NO_X emission reductions sufficient to address significant contribution to nonattainment or interference with maintenance of downwind pollution with respect to the 2008 ozone NAAQS. However, the conversion also facilitates compliance with the CSAPR Update by carrying over some allowances that can be used for compliance.

1. Relationship of Allowances and Compliance for CSAPR Update States and States With Ongoing Original CSAPR Requirements

The final rule establishes two trading groups within the CSAPR NO_X ozone season allowance trading program. Group 2 is newly established and is comprised of the 22 CSAPR Update states. Group 1, at this time, consists of Georgia. The CSAPR Update rule ozone season Group 1 and Group 2 trading programs are codified under 40 CFR part 97, subparts BBBBB for Group 1 and EEEEE for Group 2, to enact the EGU NO_X ozone season emission budgets for the 2008 ozone NAAQS. Section 52.38(b) has been amended to update which sources are subject to the requirements of the respective subparts of part 97 for control periods after 2016.

The EPA will issue distinct allowances for these trading groups, CSAPR NO_X ozone season Group 1 allowances and CSAPR NO_X ozone season Group 2 allowances, for the 2017 ozone season control period and subsequent control periods. Covered entities may transfer, trade (buy and sell), and bank (save) these allowances. Pursuant to the CSAPR trading program regulations, compliance is demonstrated by holding and surrendering one allowance for each ton of ozone season NO_X emitted during the control period (*i.e.,* ozone season). The CSAPR Update finalizes provisions governing compliance that prohibit the use of Group 1 allowances for compliance in Group 2 states or the use of Group 2 allowances for compliance in Group 1 states.[156] Aside from revised emission budgets for CSAPR NO_X ozone season Group 2 states and the prohibition of using Group 1 allowances for compliance in Group 2 states, and vice versa, the CSAPR Update rule NO_X ozone season trading programs' implementation requirements (*e.g.,* monitoring, reporting, assurance provisions) are substantively identical to the original CSAPR NO_X ozone season trading program.

[154] CSAPR phase 1 NO_X ozone season emission budgets are effective for 2015 and 2016 while phase 2 NO_X ozone season emission budgets would be effective starting with the 2017 ozone season.

[155] Allowances that were not used for compliance and were saved for use in a later compliance period.

[156] There are limited exceptions for circumstances where a source becomes subject to a requirement to hold additional Group 1 allowances after Group 1 allowances have been converted to Group 2 allowances, as discussed in section IX in this preamble.

In the original CSAPR SO_2 annual allowance trading program, the EPA discussed its concern with permitting the use of allowances for compliance between groups of states linked to air pollution problems that are more easily resolved and groups of states linked to air pollution problems that are more persistent. The EPA was concerned that allowance trading between these groups of states could undermine the capacity of the rule to achieve the emission reductions required by the good neighbor provision of the CAA. Specifically, trading between these groups could lead to greater emission reductions in states linked to more easily resolved air pollution problems and fewer emission reductions in states linked to more persistent air pollution problems. This concern arose, in part, because the EPA identified different levels of significant contribution to nonattainment or interference with maintenance for these groups of states. As a result, these groups' emission budgets were established using different levels of control stringency. Allowing trading between groups of states with emission budgets representing substantially different uniform costs could lead to allowance transfers from EGUs in states with less stringent emission budgets to EGUs in states with more stringent emission budgets.[157] The EPA was concerned that allowing trading between such groups of states could increase the risk of emissions within a state exceeding the CSAPR emission budget or assurance level. For these reasons, the original CSAPR rulemaking prohibited the use of CSAPR SO_2 Group 1 allowances in SO_2 Group 2 states and vice versa.

In similar fashion, in order to ensure that the CSAPR NO_X ozone season trading program implements emission reductions needed to meet the CAA's good neighbor requirements for the CSAPR Update states, the EPA is finalizing a prohibition on allowance usage between Georgia and the CSAPR Update states. Specifically, for the final CSAPR Update rule, the EPA determines that allowances issued in 2017 and thereafter under the original CSAPR will not be eligible for compliance in the 22 CSAPR Update states, and vice versa. The EPA is finalizing this prohibition because states participating in the original CSAPR NO_X ozone season program (*i.e.,* Georgia) are doing so to address interstate emission transport for the 80 ppb 1997 ozone NAAQS, while CSAPR Update States are addressing interstate emission transport for the 75 ppb 2008 ozone NAAQS. The air quality assessment performed for this rule shows that ozone pollution problems with respect to the 75 ppb standard are relatively more robust than ozone problems with respect to the 80 ppb standard. Further, due in part to these differences in ozone pollution risk represented by the two standards, the EPA has identified different levels of significant contribution to nonattainment or interference with maintenance for these groups and the corresponding emission budgets and assurance levels reflect different levels of EGU NO_X control stringency. The original CSAPR NO_X ozone season emission budgets and assurance levels reflect $500 per ton of NO_X emissions reduced while the CSAPR Update emission budgets and assurance levels reflect $1,400 per ton of NO_X emissions reduced. The EPA finds this substantial difference in uniform cost could lead to allowance transfers from EGUs in Georgia to EGUs in CSAPR Update states. Specifically, the EPA notes that the ratio of marginal cost of ozone season NO_X control reflected in these emission budgets is nearly three-to-one, which is similar to the three-to-one assurance provision allowance surrender penalty that is incurred on emissions that exceed any state's assurance level (121 percent of the emission budget). The EPA finds that allowing trading between Georgia and the CSAPR Update states could increase the risk that emissions in CSAPR Update states exceed their emission budget or their assurance level.

The EPA does not expect that the prohibition of using CSAPR Update rule NO_X ozone season Group 2 allowances for compliance in Group 1 states will create significant concern regarding feasibility of compliance for Group 1 states. Georgia's ozone season emissions have been well below its original CSAPR NO_X ozone season emission budget for several years. The EPA anticipates that units within the state will continue to meet compliance obligations even without the ability to use CSAPR Update rule NO_X ozone season Group 2 allowances for compliance. Further, the EPA is quantifying an optional CSAPR Update rule EGU NO_X ozone season emission budget for Georgia, using the same methods and uniform cost as budgets for CSAPR Update states. This emission budget reflects protection of downwind air quality under the 2008 ozone NAAQS. If Georgia chooses to adopt this emission budget via a revised SIP submittal, then the EPA believes that such a SIP submission may be approvable and Georgia may thereby opt into the CSAPR Update rule NO_X ozone season Group 2 trading program and use the CSAPR Update rule NO_X ozone season Group 2 allowances for compliance.

Comment: Commenters suggested that if states subject to the original CSAPR for the 1997 ozone NAAQS are not found to significantly contribute to nonattainment or interfere with maintenance for the 2008 ozone NAAQS, then allowances issued in those states should not be part of the remedy, since there is no physical connection between NO_X allowances issued for those states and the downwind ozone nonattainment or maintenance problem that another state's reductions must address for a different NAAQS.

Response: In light of the specific differences in ozone pollution problems addressed, level of significant contribution to nonattainment or interference with maintenance, and marginal cost of NO_X reduction used to establish emission budgets for the original CSAPR and the CSAPR Update rule, the EPA agrees that it is reasonable to prohibit the use of CSAPR Update rule NO_X ozone season Group 1 allowances for compliance in Group 2 states and vice versa, as described previously.

Comment: Commenters suggested that there should not be a prohibition on using allowances between these groups of states and that the CSAPR assurance provisions are sufficient to ensure that emission reductions are made in upwind states.

Response: The assurance provisions provide limited flexibility around the finalized emission budgets developed using uniform control stringency to accommodate inherent variability in average power sector operations. For example, assurance levels are intended to accommodate specific unusual events, such as sudden and unexpected outages of a unit, or severe weather. The assurance level is intended to function as a not-to-exceed cap that includes both the state budget—established to reduce significant contribution to and interference with maintenance of the 2008 ozone NAAQS in downwind states—and the variability limit. The flexibility provided by the assurance provisions is not designed to address interstate trading in the case of two groups of states that are addressing different ozone pollution problems, levels of significant contribution to nonattainment or interference with maintenance, or levels of EGU NO_X reduction stringency in emission budgets. Further, as described previously, the EPA finds that were it to

[157] 76 FR at 48263–64.

authorize use of allowances issued to EGUs in Georgia for compliance in CSAPR Update states, the risk of emissions in a CSAPR Update state exceeding its emission budget or assurance level would increase.

2. Use of Banked Vintage 2015 and 2016 CSAPR NO_X Ozone Season Trading Program Allowances for Compliance in CSAPR Update States

In this subsection, the EPA describes its approach to transition a limited number of allowances that were banked in 2015 and 2016 under the original CSAPR EGU NO_X ozone season emission budgets into the allowances that can be used for compliance in CSAPR Update states in 2017 and thereafter. As proposed, the EPA is finalizing a limit on the number of banked allowances carried over based on the need to assure that the CAA objective of the CSAPR Update is achieved. This approach transitions some allowances for compliance to further ensure feasibility of implementing the CSAPR Update rule.

Specifically, the EPA is including in this final rule a method for ensuring that emissions in the CSAPR Update region do not exceed a specified level—this is, emissions up to the sum of the states' seasonal emissions budgets and variability limits—as a result of the use of banked allowances. The method is captured in a formula or ratio, the numerator of which is the total number of banked allowances at the end of the 2016 ozone season and the denominator of which is 1.5 times the aggregated variability limits finalized in this rule. The ratio is then applied to the banked vintage 2015 and 2016 allowances in each account to yield the number of banked allowances available to each account holder in 2017.[158]

When proposing this approach, the EPA described how sources in states with new or updated budgets could use all of their banked allowances, but at a turn-in ratio significantly higher than one under which only one allowance would be used to cover each ton of emissions (*e.g.,* a four-for-one or a two-for-one turn-in ratio). The EPA proposed to use turn-in ratios calculated using the proposed formula described above—essentially the same formula that the EPA is including in this final rule. At proposal, the EPA explained that the ratio of the banked vintage 2015 and 2016 allowances to the aggregated ozone season variability limits was designed to limit the magnitude of the emission impact of sources' use of banked allowances to that of the emissions level that would result from all states emitting up to the sum of their budgets and their variability limits for one or two years. (*See* 80 FR 75747.) The formulaic ratio when applied to the actual bank and emissions levels would yield a conversion factor for banked allowances that would be used to implement the proposed emissions limitation.

The final approach described in this section—a one-time conversion of aggregated banked vintage 2015 and 2016 allowances to 2017 vintage allowances equivalent to 1.5 years of the aggregated CSAPR Update variability limits—is virtually identical to the approach we laid out in the NPRM. In particular, it is identical to the proposal in terms of the formula used to assess the number of banked allowances relative to the CSAPR Update variability limits. Further, the value for the principal input to this formula that the EPA is updating in this final rule—the aggregated variability limits—is very similar to the value for this input at proposal.[159] The EPA has refined this approach to converting the banked allowances based on comments we received that urged us to simplify implementation. The final approach limits the influence of banked allowances via a one-time conversion, which has the same impact on the allowance bank as an ongoing turn-in ratio, but provides simplified implementation of the CSAPR Update rule. Further, because the EPA will perform the conversion at one time and each allowance going forward will equate to one ton of emissions, the EPA does not find it necessary to finalize rounding the conversion ratio to the nearest whole number.

The denominator in the conversion formula—1.5 times the states' aggregated variability limits—represents the number of banked allowances that will be available for use toward compliance with the CSAPR Update. Under the CSAPR implementation framework, variability limits are established to allow the units in a state to emit above the state's emission budget in a single control period when necessary because of year-to-year variability in power sector operations. The variability limits operate in conjunction with, but are distinct from, the state emission budgets. The purpose of the state emission budgets is to ensure that each state achieves necessary emission reductions, as required under CAA section 110(a)(2)(D)(i)(I). The purpose of the variability limits, and the assurance provisions that require additional allowances to be surrendered when emissions from covered sources within a state exceed those limits, is to ensure that the requirement for each state to reduce emissions necessary to address its downwind air quality impacts is implemented in a manner consistent with normal year-to-year variability in power sector operations while keeping any emissions above the budget within acceptable limits.

In the proposal, the EPA requested comment on a range of turn-in ratios for banked allowances derived from the formula described previously, including a four-for-one ratio based on the sum of covered states' variability limits for one year and a two-for-one ratio based on the sum of covered states' variability limits for two years. Commenters expressed a wide range of views, from those advocating for no use of banked allowances to those advocating for the use of all banked allowances with no turn-in ratio, as well others advocating for turn-in ratios between these extremes. However, commenters generally did not address the specific topic of whether one, two, or a different number of years of variability limits would represent an appropriate quantity of banked allowances to allow to be used for compliance with the CSAPR Update.

The EPA has determined that it is appropriate to use as the formula denominator the sum of covered states' variability limits for 1.5 years. As noted above, the purpose of the variability limits is to accommodate year-to-year variability in power sector operations at the state level. In theory, a bank based on the sum of all covered states' variability limits would be sufficient to accommodate such variability for all states simultaneously—in other words, the maximum amount of permissible emissions consistent with the purpose and design of the variability limits—for one year. Because it is unlikely that normal year-to-year power sector variability would cause all states to need to exceed their emissions budgets in the same year, the EPA considers the sum of the states' variability limits for one year a reasonable maximum for the number of allowances that would ever need to be used for compliance to address potential variability in power sector operations. However, the EPA's experience with implementing market-based trading programs is that in

[158] As discussed in section IX of the preamble, banked allowances held in compliance accounts for sources in Georgia will not be converted and will be excluded from the conversion ratio calculation.

[159] At proposal, the aggregated variability limits totaled approximately 60,000 tons and in the final rule the aggregated variability limits total approximately 65,000 tons.

historical practice most sources typically do not use every available allowance for compliance, but instead keep some in reserve in order to ensure compliance (*e.g.,* to avoid penalties in the event of unforeseen emissions and/or problems with preliminary data calculations). The EPA believes that using the states' variability limits for 1.5 years instead of one year provides sources with sufficient allowances to accommodate maximum year-to-year variability in power sector operations while also addressing the manner in which allowance holdings are actually managed and used. Thus, the EPA believes that providing allowances equivalent to 1.5 years of covered states' variability limits fulfills the primary purpose we described in our proposal—limiting the use of banked allowances to no more than one year of states' aggregated variability limits—while acknowledging the historical practice in market-based trading programs of sources keeping some allowances in reserve from year to year in order to provide planning and operating flexibility over multi-year periods. The EPA believes that this ratio provides an appropriate balance of these considerations, while providing a bank any larger would be inconsistent with the rule's purpose of achieving emission reductions required by CAA section 110(a)(2)(D)(i)(I).

The numerator in the conversion formula is the number of banked allowances to be converted. At proposal, the EPA anticipated, based on 2014 emissions data, that there would be approximately 210,000 banked allowances following the 2015 and 2016 ozone seasons. As commenters correctly predicted, based on more recent data, the size of the anticipated bank is now larger. Based on 2015 emissions data, the EPA anticipates that there will be approximately 350,000 banked allowances entering the CSAPR NO_X ozone season trading program by the start of the 2017 ozone season control period.[160] As explained in more detail below, this anticipated total of banked allowances reflects the fact that the seasonal NO_X emissions budgets established in CSAPR are to a significant extent not acting to constrain actual NO_X emission levels during the ozone season. Affected units overall are emitting less than their budgeted levels by a substantial margin and therefore do not have to use all of their allowances to comply with the requirements of CSAPR; as a result, the bank is growing substantially, especially relative to the emissions reductions that this rule is designed to achieve.

This amount of anticipated banked allowances is greater than the sum of all the state emission budgets established in this CSAPR Update and is roughly five times the total emission reduction potential that informs the emission budgets imposed by this rule. This number of anticipated banked allowances is also approximately five times larger than the aggregated CSAPR Update variability limits. Without imposing a limit on the transitioned vintage 2015 and 2016 banked allowances, the number of banked allowances would increase the risk of emissions exceeding the CSAPR Update emission budgets or assurance levels and would be large enough to let all affected sources emit up to the CSAPR Update assurance levels for five consecutive ozone seasons.

In prior ozone season emissions trading programs, such as the Ozone Transport Commission's NO_X Budget Program and the NO_X Budget Trading Program implemented in conjunction with the NO_X SIP Call, allowance deduction provisions (in some cases known as ''flow control'') were included in order to prevent banked allowances from being used in a single ozone season in quantities that would result in excess total emissions. Similarly under the CSAPR Update rule, the conversion ratio together with the assurance provisions will address the large size of the existing CSAPR bank with respect to the 2017 ozone season.

Limiting the influence of the banked allowances is critical to achieving the goal of reducing ozone formation, because reduction in ozone depends on reductions in precursor emissions contemporaneous with the meteorological conditions conducive to the formation of ozone. Hence the rule is designed with ozone season-specific budgets intended to achieve emission reductions by the 2017 ozone season in order to assist downwind states with meeting the July 2018 Moderate area attainment date for the 2008 ozone NAAQS. *See North Carolina,* 531 F.3d at 911–12 (instructing the EPA to coordinate upwind state emission reductions with downwind attainment deadlines). Other Clean Air Act programs designed to address public health and environmental problems that result from cumulative emissions permit sources to comply by over-controlling emissions in earlier years and using the resulting banked reductions to offset emissions in later years. In contrast, states, and when acting to meet its FIP obligations, the EPA, must ensure that the goal of improved air quality will be achieved and can do so only if emissions are reduced to specified levels during each ozone season.

This approach to limiting the influence of banked allowances also serves the goal of ensuring that emission reductions are achieved in each state. A bank of allowances that is five times the CSAPR Update variability limit would increase the risk of EGUs exceeding their states' CSAPR assurance levels, and thereby impede the ability of the assurance provisions to meaningfully limit emissions in each state. These circumstances would undermine compliance with CAA section 110(a)(2)(D)(i)(I), which requires that ''[e]ach state must eliminate its own significant contribution to downwind pollution.'' *North Carolina,* 531 F.3d at 921. The assurance provisions, as finalized in the original CSAPR rulemaking, were designed to address this requirement by imposing a penalty in the event that EGUs exceed the state assurance levels. 76 FR at 48294–98. If EGUs' incentive to constrain emissions is compromised by the availability of a large bank of allowances, the EPA could no longer ensure that appropriate state-level emissions reductions are achieved.

While the bank of allowances reflects actions taken by sources in CSAPR to reduce emissions, it also reflects other factors unique to the regulatory history of CSAPR. In particular, the CSAPR budgets were established based on information available in 2010 and 2011. As promulgated in 2011, CSAPR required the budgets to be implemented in 2012 (Phase 1) and 2014 (Phase 2). As a result of litigation, the emissions budgets did not take effect until 2015. Between 2011 and 2015, the power sector responded to increases in natural gas supply, declines in natural gas prices, and increasing penetration of wind and other low- or zero-emitting renewable energy resources. Consequently, by the time the CSAPR ozone season budgets were implemented in the 2015 ozone season, they were no longer binding on state emission levels, even though they were anticipated to be binding when developed in 2011. The original CSAPR emission budgets for the 2015 ozone season were about 628,000 tons in aggregate, but actual emissions were about 451,000 tons, resulting in a substantial bank of allowances after the 2015 ozone season. In addition, based on emissions data for May and June of 2016 (*i.e.,* the first two months of the

[160] This allowance bank size was quantified as the observed allowance bank at the conclusion of 2015 plus an estimate of allowances likely to be banked in 2016, assuming that 2016 emissions would be unchanged from 2015 levels. These data rely on 40 CFR part 75 emission reporting and are available in the EPA's Air Markets Program Data, available at *http://ampd.epa.gov/ampd/.*

2016 ozone season under the trading program), ozone season NO_X emissions have declined 15 percent compared to the comparable period in 2015, which we anticipate will lead to a yet larger bank of allowances. In this final rule, the 2017 emission budgets plus the 21 percent variability limits total about 381,000 tons in aggregate, compared to 2015 emissions from the relevant states of about 399,000 tons. The bank of CSAPR allowances fostered in part by the unique circumstances of CSAPR's implementation is thus of a size that is so large relative to the budgets under this final CSAPR Update rule that, if all of the banked allowances were used without restriction, all states would exceed their emissions budgets for several successive ozone seasons. In that case, use of the bank would impede the achievement of the reductions needed to reduce ozone levels and assist downwind states with attainment and maintenance of the NAAQS by the 2017 ozone season. For these reasons, the implementation of the conversion ratio derived from the formula that is established in the final rule is necessary to limit the use of banked allowances and assure that reductions will actually occur and contribute to improved air quality in time to assist downwind states with meeting their attainment dates.

Some commenters objected to any limitation on the use of banked allowances, in part noting the additional compliance flexibility that banked allowances provide. But as explained above, without limitation, the number of banked allowances could undermine the capacity of the rule to achieve the emission reductions required by the good neighbor provision of the CAA—timely emission reductions in upwind areas that are necessary to avoid significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in downwind areas. Specifically, the CSAPR Update establishes emission budgets that represent the remaining EGU emissions after reducing those amounts of each state's emissions that significantly contribute to downwind nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, as required under CAA section 110(a)(2)(D)(i)(I). In other words, the CSAPR Update establishes an emission budget for each state that is its good neighbor obligation. If made available in its entirety for compliance with the CSAPR Update, then the anticipated 350,000 banked allowances would inherently increase the risk of states exceeding their emission budget by providing a total number of allowances for compliance in 2017 that is more than double the 22 state sum of emission budgets. The CSAPR allowance trading program already provides some flexibility in the form of the CSAPR variability limits and corresponding assurance levels to allow states to meet their good neighbor obligation while respecting inherent variability in electricity generation. However, the anticipated 350,000 banked allowances, if fully available for compliance, would also increase the risk of EGUs exceeding their states' CSAPR assurance level by providing allowances for compliance greater than five times the CSAPR variability limit. These excess allowances could be used for compliance irrespective of the need to achieve the CAA good neighbor obligation while complying with typical year-to-year variability on which the assurance levels are based. The allowance bank would thereby further undermine the capacity of the rule to achieve the emission reductions required by the good neighbor provision of the CAA by increasing the risk that emissions would exceed not only the emission budgets, but also the assurance levels.

The EPA believes that allowing for banking of excess emission reductions is a positive element of a trading-based program such as this one. Banking encourages early reductions, provides certainty, and creates flexibility in order to achieve the public health goal more cost-effectively and reliably. When use of banked allowances can undermine the environmental goal rather than help to achieve it, however, it is reasonable and appropriate to restructure the use of banked allowances. For these reasons, when the EPA finalized the original CSAPR provisions, the agency explicitly reserved its authority to eliminate or revise allowances issued in a given compliance year. The existing regulations for the current NO_X ozone season trading program explain that an allowance is ''a limited authorization to emit one ton of NO_X during the control period in one year.'' 40 CFR 97.506(c)(6). The regulations continue by providing the Administrator the ''authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.'' *Id.* 97.506(c)(6)(ii). The regulations also clearly state that such allowances do not constitute property rights. *Id.* 97.506(c)(7). The EPA also notes that banked allowances were accrued against 2015 and 2016 implementation of seasonal emission budgets that were established to address interstate emission transport for the 80 ppb 1997 ozone NAAQS. Banked compliance instruments with respect to the 1997 ozone NAAQS in 2015 or 2016 are not inherently interchangeable with emission reductions needed to address interstate emission transport for the 75 ppb 2008 ozone NAAQS starting in 2017.

However, provided that it can do so without jeopardizing the good neighbor objectives of the CSAPR Update rule, the EPA believes that permitting some allowances banked under the original CSAPR to be used to meet compliance with the CSAPR Update can facilitate compliance with the requirements of the latter. As described in section VI, the EPA is establishing emission budgets that it finds to be feasible for the 2017 ozone season. As a result, the EPA believes that it is feasible to implement the final CSAPR Update rule emission budgets that the EPA is promulgating in this action, even without availability of banked allowances for compliance. However, in order to ensure implementation feasibility, the EPA is finalizing an approach that transitions a limited number of banked allowances into the CSAPR NO_X ozone season Group 2 program for compliance starting with the 2017 ozone season. By providing for the use of some banked allowances for compliance with the CSAPR Update rule, the EPA provides immediate but limited compliance flexibility that will support the feasibility of meeting emission budgets for the 2017 ozone season and variation in power sector operations. The CSAPR Update assurance level reflects the upper bound variation in power sector generation that the EPA would expect in any given year. Thus, the carryover of converted banked allowances equal to 1.5 years' worth of variability limits provides the affected fleet with the ability to accommodate potential variation from the mean in its load and emission patterns in the initial year of the program and also maintain a small reserve of allowances, while balancing the need to ensure that emissions are reduced, on average, to the level of the budgets and within the assurance levels in subsequent years. For a further discussion of additional implementation feasibility provided by this approach, see section VII.C.

Considering these factors—especially the EPA's obligation to achieve the NO_X emission reductions needed to address transport with respect to the 2008 NAAQS—the EPA believes it is reasonable—even required—to restrict

the number of banked allowances carried over.

To enable the use of banked 2015 and 2016 vintage allowances for compliance with the CSAPR Update, the EPA is finalizing a one-time conversion that transitions a number of allowances equivalent to 1.5 years of the sum of states' CSAPR NO_X ozone season Group 2 variability limits (the variability limits are 21 percent of the regional total emission budgets), or approximately 99,700 allowances. The one-time conversion of the 2015 and 2016 banked allowances will be made using a calculated ratio, or equation, to be applied in early 2017 once compliance reconciliation (or ''true-up'') for the 2016 ozone season program is completed. The EPA will use an equation to derive the ratio by dividing the number of all 2015 and 2016 post-true-up banked CSAPR NO_X ozone season allowances being converted by 1.5 times the sum of the 2017 CSAPR Update variability limits quantified in Table VII.C–2 in this preamble. As soon as practicable and not later than March 1, 2018, which is the compliance deadline for the 2017 control period, and pending notification of all allowance holders, the EPA will freeze allowance accounts and convert the original CSAPR NO_X ozone season 2015 and 2016 banked allowances to the 2017 vintage CSAPR Update rule NO_X ozone season Group 2 allowances. These allowances may then be used in 2017 and thereafter on a 1-to-1 (one allowance to one ton of ozone season emissions) basis for compliance in Group 2 states.

Dividing the bank by 1.5 times the collective variability limits results in the ratio that the EPA will apply to convert each source's banked 2015 and 2016 original CSAPR NO_X ozone season allowances to 2017 CSAPR Update rule NO_X ozone season Group 2 allowances. The resulting post-conversion bank will be equivalent to 1.5 times the sum of states' CSAPR NO_X ozone season Group 2 variability limits, or approximately 99,700 allowances. Based on current data, the EPA notes that this conversion ratio would be approximately 3.5 to 1, but the ratio could be lower or higher depending on 2016 emissions. By instituting the one-time conversion of banked 2015 and 2016 allowances, the EPA is limiting the use of such allowances for purposes of assuring that emission reductions necessary to address interstate transport with respect to the 2008 ozone standard are achieved.

As of the conversion date (see 40 CFR 97.526(c)(1)), the EPA will convert all 2015 and 2016 allowances held in any account, other than a Georgia source's compliance account, to Group 2 allowances. This includes banked 2015 and 2016 allowances held in accounts in non-CSAPR Update states (*i.e.,* Florida, North Carolina, and South Carolina). The ratio will be determined by dividing the number of allowances held in all such accounts (*i.e.,* every general account and every compliance account except for a compliance account for a Georgia source) by 1.5 times the sum of the variability limits for all states other than Georgia. Starting with the 2017 ozone season control period, only CSAPR NO_X ozone season Group 2 allowances can be used for compliance with the CSAPR Update rule ozone season program. Any remaining CSAPR NO_X ozone season 2015 and 2016 allowances that are not converted to Group 2 allowances may only be used for compliance by affected sources in states that are subject to the original CSAPR ozone season program to meet obligations for the 1997 ozone NAAQS (the only such state is Georgia).

A source in the state of Georgia that chooses to have some or all of its banked 2015 and 2016 allowances converted to Group 2 allowances may move any of its 2015 and 2016 banked allowances out of a compliance account and into a general account. These allowances in the general account will then be subject to conversion to Group 2 allowances.

The EPA proposed and took comment on a range of options for how to treat the use of banked 2015 and 2016 CSAPR NO_X ozone season allowances by EGUs in the 22 CSAPR Update states. As described previously, the EPA proposed that sources in states with new or updated budgets could use all of their banked allowances, but at a ratio significantly higher than one allowance to cover each ton (*e.g.,* at a four-for-one turn-in ratio). Additionally, the proposed CSAPR Update solicited comment on less and more restrictive approaches to address use of the CSAPR EGU NO_X ozone allowance bank. Specifically, the EPA sought comment on: (1) Allowing banked 2015 and 2016 CSAPR NO_X ozone allowances to be used for compliance with the CSAPR Update for the 2008 ozone NAAQS starting in 2017 at a one-for-one ratio, or (2) completely disallowing the use of banked 2015 and 2016 CSAPR NO_X ozone allowances for compliance with the CSAPR Update for the 2008 ozone NAAQS starting in 2017. The EPA also solicited comment on whether and how the assurance provision penalty might be increased, in conjunction with any of the above approaches, to address the relationship of the allowance bank to emissions occurring under this revised program from 2017 onward. At this time, the EPA is not changing the assurance provision penalty or its application.

Comment: Some commenters suggested that implementation by way of ongoing turn-in ratios would be cumbersome and complicated because it requires affected EGUs to hold allowances for compliance that are equivalent to differing ratios of tons of emissions.

Response: The EPA agrees with the commenters who observed that an allowance trading program in which a CSAPR NO_X ozone season allowance issued in 2017 and thereafter would be worth one ton of emissions while a CSAPR NO_X ozone season allowance issued in 2015 or 2016 would be worth less than one ton of emissions is overly complex. These differing emission equivalents of otherwise similar compliance tools (*i.e.,* allowances) would add a layer of complexity to ongoing compliance demonstrations. Implementing a ratio by way of a one-time conversion, instead, has the same impact on emission reductions as an ongoing turn-in ratio in that the emissions equivalent of the banked allowances will be reduced consistent with the ratio, but the implementation of the ratio through a one-time conversion simplifies implementation of the CSAPR Update rule, which supports efficient and accurate compliance planning.

Comment: Some commenters requested that the EPA not limit the use of banked vintage 2015 and 2016 CSAPR NO_X ozone season allowances in the final CSAPR Update, suggesting that the EPA had not demonstrated that use of these allowances would undermine the goals of the CSAPR Update. These commenters suggested that the assurance levels are adequately protective of the CSAPR Update emission reduction requirements.

Response: The EPA disagrees with these comments. As discussed previously, the EPA anticipates a large number of banked allowances entering the 2017 CSAPR ozone season control period. Allowing unlimited use of this magnitude of vintage 2015 and 2016 CSAPR NO_X ozone season allowances in the 2017 control period and going forward would put the emission reduction requirements of the CSAPR Update rule in jeopardy and undermine the realization of the emission reductions needed under the good neighbor provisions of the CAA to avoid significant contribution to nonattainment and interference with

maintenance of the 2008 ozone NAAQS in downwind areas.

Comment: Some commenters recommended that the EPA completely disallow the use of banked 2015 and 2016 CSAPR NO_X ozone allowances for compliance with the CSAPR Update for the 2008 ozone NAAQS starting in 2017.

Response: A key feature of allowance trading programs is that they provide sources an economically efficient strategy for integrating current and future compliance. Banking of allowances for later use also creates incentives to make early emission reductions, which often result in improved air quality earlier than otherwise required. The EPA has seen early reductions and banking in implementing other trading programs over the past 20 years, such as the Acid Rain Program and the NO_X SIP Call. The EPA believes such an economic incentive, and the associated environmental benefits, is conditioned on the expectation that the resulting banked allowances will have some value in the future of that program. The approach that the EPA is finalizing provides a means for the existing 2015 and 2016 CSAPR NO_X ozone season allowances to retain some value, while appropriately mitigating the potential adverse impact of the allowance bank on the emission-reducing actions needed from affected EGUs in states with obligations to address interstate transport for the 2008 ozone NAAQS.

Comment: Commenters contend that discounting allowances by a turn-in ratio essentially penalizes sources for early action.

Response: Commenters did not provide quantitative analysis that the turn-in ratio would reduce the overall economic value of the allowance holdings nor even address the question of whether or how the diminution of the number of allowances available would affect the value of each individual allowance or that of the overall bank—especially in view of the fact that the NO_X emissions budgets are more constraining. Because the allowance bank value is a product of both allowance quantity and allowance price, the conclusion that any reduction in quantity inherently reduces the bank value is flawed because it ignores the likely increase in price. Similarly, it merits noting the high likelihood that some portion of the banked allowance price reflects larger dynamics in the power markets, such as lower natural gas prices in recent years, as opposed to explicit early actions.

D. Feasibility of Compliance

In practice, the EGU emission budgets that the EPA is finalizing in this action are achievable for each of the 22 states through operating and optimizing existing SCR controls, operating existing SNCR controls, installing state-of-the-art combustion controls, shifting generation to lower NO_X–emitting or non-emitting units, using allowances that the EPA has allocated to EGUs (including banked allowances), or obtaining allowances on the allowance market. The EPA believes that this rule provides sufficient lead time to comply with the 2017 ozone season requirements.[161]

To further examine the compliance feasibility of the state NO_X ozone season budgets, the EPA performed an analysis of state-level achievable NO_X ozone season emissions for 2017 that is independent of the IPM-based assessment used to establish the emission budgets. This analysis relied on the most recent ozone season data for 2015. For the covered states, these data were adjusted to account for announced retirements, announced new SCR at existing units, and announced coal-to-gas conversions at existing units.[162] The EPA then applied certain control assumptions directly to the reported unit-level data. Specifically, this analysis applied EGU NO_X reductions for turning on idled SCR, optimizing all SCR to historically demonstrated NO_X emission rates, installing state-of-the-art combustion controls, and turning on idled SNCR.

The EPA evaluated the feasibility of turning on idled SCRs for the 2017 ozone season. Based on past practice, the EPA finds that idled controls can be restored to operation in no more than a few months. This timeframe is informed by many electric utilities' previous, long-standing practice of utilizing SCRs to reduce EGU NO_X emissions during the ozone season while putting the systems into protective lay-up during non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the NO_X Budget Trading Program. It was quite typical for SCRs to be turned off following the September 30 end of the ozone season control period. These controls would then be put in protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season. In the 22 state CSAPR Update region, 2005 EGU NO_X emission data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining seven non-ozone season months of the year.[163] Based on EGUs' past experience and the frequency of this practice, the EPA finds that idled SCRs can be restored to operation in no more than a few months. Further, because turning on idled SCRs requires inherently more steps than fully operating existing operating SCR or turning on idled SNCR, the EPA finds that these additional EGU NO_X reduction strategies are also feasible within a few months. The lead-time for compliance with this rule is longer than this timeframe. More details on these analyses can be found in the EGU NO_X Mitigation Strategies Final Rule TSD.

The EPA also finds that, generally,[164] state-of-the-art combustion controls require a short installation time—typically, four weeks to install along with a scheduled outage (with order placement, fabrication, and delivery occurring beforehand). Feasibility of installing combustion controls was examined by the EPA in the original CSAPR where industry demonstrated the ability to install LNB controls on a large unit (800 MW) in under six months. More details on these analyses can be found in the EGU NO_X Mitigation Strategies Final Rule TSD.

As described in section VI, to establish emission budgets, the EPA made a data-informed assumption with respect to the reasonable achievable SCR NO_X rate (0.10 lbs/mmBtu) for units that are not operating SCR optimally. In order to independently evaluate whether emission budgets that rely on this assumption are achievable, the EPA used actual SCR rates for existing units that reflect demonstrated unit-level achievable SCR performance. Specifically, the EPA used the lower of 2015 NO_X rates (the most recent demonstrated achievable SCR NO_X rate) and each unit's third lowest historical ozone season NO_X rate. This approach

[161] As described in Section VI, the EPA is finalizing for Arkansas a 2017 ozone season emission budget that does not account for EGU NO_X reduction potential from combustion controls and a 2018 ozone season emission budget for Arkansas that does account for EGU NO_X reduction potential from combustion controls. This approach provides utilities an extra year to upgrade combustion controls in the event that this is their chosen CSAPR Update compliance path. This extra year allows for upgrades to be made across 4 shoulder seasons (fall 2016, spring 2017, fall 2017, and spring 2018).

[162] These adjustments are performed in the same way as the adjusted historic emissions described in section VI.

[164] This is true with one exception. The EPA finds that for Arkansas it is reasonable to delay EGU NO_X reduction potential for certain new combustion controls until 2018 and therefore gives Arkansas a 2017 budget that does not reflect these controls and a 2018 budget that does reflect these controls. This issue is discussed further in Section VI.

reflects SCR units operating in a manner consistent with demonstrated SCR performance capability at each unit. This analysis does not account for further EGU NO_X reduction potential from shifting generation to lower NO_X–emitting or non-emitting units. As discussed in section VI and further in the EGU NO_X Mitigation Strategies Final Rule TSD, the EPA believes shifting generation to lower NO_X-emitting or non-emitting units is feasible to implement for the 2017 ozone season but the agency has not developed an approach to assess generation shifting that is independent of the IPM-based assessment discussed previously.

The EPA's analysis showed that, with known fleet changes and accounting for NO_X reduction potential from SCR, SNCR, and combustion controls, all CSAPR Update rule states would be at or below their 2017 CSAPR Update rule assurance level while continuing to otherwise operate consistent with 2015 behavior. The analysis showed that, with known changes occurring prior to 2017, optimizing SCR and SNCR, and installing combustion controls, the 22 states would lower their emissions to approximately 306,000 tons—approximately 3 percent below their aggregated CSAPR Update rule budgets, and each state would be below its assurance level. Moreover, this analysis does not reflect the NO_X reduction potential from generation shifting that is also available for compliance planning. The state-level summary of this 2017 analysis is provided in Table VII.D–1. For further discussion of implementation feasibility, see the EGU NO_X Mitigation Strategies Final Rule TSD.[165]

TABLE VII.D–1—FINAL 2017 EGU NO_X OZONE SEASON EMISSION BUDGETS, ASSURANCE LEVEL, AND COMPLIANCE FEASIBILITY ANALYSIS

[Tons]

State	Final 2017 * EGU NO_X emission budgets	Final 2017 EGU NO_X assurance level	Compliance feasibility analysis
Alabama	13,211	15,985	13,673
Arkansas	12,048	14,578	8,362
Illinois	14,601	17,667	13,892
Indiana	23,303	28,197	25,325
Iowa	11,272	13,639	11,070
Kansas	8,027	9,713	7,845
Kentucky	21,115	25,549	21,269
Louisiana	18,639	22,553	18,250
Maryland	3,828	4,632	3,815
Michigan	17,023	20,598	17,960
Mississippi	6,315	7,641	6,296
Missouri	15,780	19,094	16,326
New Jersey	2,062	2,495	2,048
New York	5,135	6,213	5,406
Ohio	19,522	23,622	16,481
Oklahoma	11,641	14,086	13,039
Pennsylvania	17,952	21,722	17,262
Tennessee	7,736	9,361	6,569
Texas	52,301	63,284	52,647
Virginia	9,223	11,160	8,670
West Virginia	17,815	21,556	12,236
Wisconsin	7,915	9,577	7,813
22 State Region	316,464	.....	306,252

* The EPA is finalizing CSAPR EGU NO_X ozone season emission budgets for Arkansas of 12,048 tons for 2017 and 9,210 tons for 2018 and subsequent control periods.

The allowance trading program used to implement the emission reductions in this rulemaking further promotes compliance feasibility. With this approach, an individual source has the flexibility to forgo any physical changes to its combustion or post-combustion process and simply acquire allowances from another source for compliance. Therefore, any unit-specific limitations in regard to permitting, installing, and/or modifying controls or other elements of plant operation do not jeopardize compliance, as the sources have alternative compliance options.[166] Allowance markets are well established, liquid, and will carry a number of already available banked allowances. Regarding market liquidity, the EPA observes that as of August 15, 2016 (part way through the second CSAPR NO_X ozone season compliance period) more than 1,200 private transfers have taken place involving more than 260,000 CSAPR NO_X ozone season allowances.[167] In particular, the combined flexibility of a bank and a liquid market ensures that any unit with unique circumstances regarding its control configuration can continue to operate in its current fashion. Trading flexibility further enhances system reliability because affected units may cover emissions from any reliability-relevant operations with allowances available in the marketplace.

Stakeholders have a history and familiarity with trading programs. Congress has enacted, and the EPA has promulgated, many rules that allow EGUs and other sources to meet their emission limits by trading allowances

[165] The EPA notes that a state can instead require non-EGU NO_X emission reductions through a SIP, if they choose to do so.

[166] The EPA does not anticipate that restarting an existing and permitted idled post-combustion NO_X control device would trigger any new permitting requirements.

[167] Allowance transaction data are available in EPA's Air Markets Program Data, at *http://ampd.epa.gov/ampd/*.

with other sources. In a trading program, the EPA authorizes a source to meet its emission limit by purchasing emission allowances generated from other sources, typically ones that implement or enhance their pollution control devices to reduce emissions to the point where they are able to sell allowances. As a result, the availability of trading reduces overall costs to the industry by using the marketplace to incentivize particular sources that have the lowest control costs to implement and operate pollution controls.

The combination of control optimization feasibility, recent trends in emission reductions, on-the-way emission reductions, allowance trading, a pre-existing bank, and assurance levels support the feasibility of the CSAPR Update rule 2017 emission budgets finalized in this action.

Further supporting the feasibility of this rule's compliance obligation is the trend in recent emission reductions. While 2014 ozone season NO_X emissions for the 22 covered states were approximately 466,000 tons, they dropped by 14 percent in 2015 to 400,000. Moreover, the 2016 ozone season emissions are anticipated to be approximately 380,000 tons. This pace of reduction illustrates the speed and adaptability in the fleet's response to market conditions. It shows a trend in emission reductions that is consistent with the level of reductions anticipated by the CSAPR Update rule budgets.

Comment: The EPA received comment highlighting the significant drop in the CSAPR Update rule budgets for 2017 relative to the CSAPR phase 1 and phase 2 budgets finalized in the original CSAPR rulemaking to address the 1997 ozone standard. Some commenters asserted this significant percent difference between the two illustrated a feasibility concern.

Response: The EPA views a comparison of the original CSAPR phase 1 and 2 budgets as a poor metric for assessing feasibility of sources' compliance with the budgets being finalized in the CSAPR Update rule. As noted previously, states are already well below their current CSAPR budgets: Reported 2015 emissions for the 21 states subject to the NO_X ozone season trading program pursuant to both the original CSAPR rulemaking and the CSAPR Update rule total 390,000 tons in aggregate. For these 21 states, CSAPR phase 1 budgets aggregate to 535,000 tons and phase 2 budgets aggregate to 502,000 tons. Thus, aggregate 2015 emissions from these states are already more than 100,000 tons below the original CSAPR budgets. Based upon the first two quarters of emissions data, 2016 emissions are anticipated to be even lower. These actual emissions make a more appropriate assessment of what emission reductions are feasible for the 2017 ozone season. Moreover, CSAPR Update rule states have limited flexibility to exceed the emission budgets if needed for compliance feasibility by using banked allowances.

E. FIP Requirements and Key Elements of the CSAPR Trading Programs

The original CSAPR established a NO_X ozone season allowance trading program that allows affected sources within each state to use allowances from other sources within the same trading group for compliance, pursuant to certain monitoring requirements as codified in 40 CFR part 75. In the CSAPR NO_X ozone season trading program, sources are required to hold one CSAPR ozone season allowance for each ton of NO_X emitted during the ozone season. The EPA is utilizing that same regional trading approach, with updated emission budgets, trading groups, and certain additional revisions described later on, as the compliance remedy implemented through the FIPs to address interstate transport for the 2008 ozone NAAQS. The EPA is using the existing NO_X ozone season allowance trading system that was established under CSAPR in 40 CFR part 97, subpart BBBBB for Group 1, and as promulgated in Subpart EEEEE for Group 2, to implement the emission reductions identified and quantified in the FIPs for this action.

1. Applicability

In this rule, the EPA is finalizing the same applicability provisions as the original CSAPR, without change. Under the general CSAPR applicability provisions, a covered unit is any stationary fossil-fuel-fired boiler or combustion turbine serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW, which is producing electricity for sale, with the exception of certain cogeneration units and solid waste incineration units. *See* 76 FR 48273 (August 8, 2011), for a discussion on applicability in the final CSAPR rule. The EPA is finalizing the same applicability provisions as the original CSAPR for the CSAPR Update rule NO_X ozone season trading program Groups 1 and 2. *See* 40 CFR 97.504 and 40 CFR 97.804. The EPA is codifying these provisions as described in section IX.

2. State Budgets

The EPA is promulgating CSAPR NO_X ozone season emission budgets, as provided in table VII.E–1 in this preamble and in 40 CFR 97.810, for the 22 states in this final rule.[168] This includes the NO_X ozone season emission budgets, new unit set-asides, and Indian country new unit set-asides for 2017 and beyond.

The EPA is establishing new or revised CSAPR NO_X ozone season emission budgets for the 22 eastern states subject to FIPs in this final rule to address interstate transport for the 2008 ozone NAAQS. For the 21 of these 22 states that are currently covered by the original CSAPR ozone season program, the requirement to comply with the budgets established to address the 2008 ozone NAAQS will replace the current requirement to comply with the budgets established to address the 1997 ozone NAAQS.[169] For Kansas, which is newly brought into the CSAPR NO_X ozone season program, the EPA is finalizing a new EGU NO_X ozone season emission budget designed to address interstate transport for the 2008 ozone standard.

The EPA is implementing the emission budgets finalized in this rule by allocating allowances to sources in those states equal to the budgets for compliance starting in 2017. The EPA is finalizing allowance allocations for existing units for CSAPR NO_X ozone season Group 2 states through this rulemaking. Portions of the state budgets will be set aside for new units, and the EPA will use the processes set forth in the CSAPR regulations to annually allocate allowances to the new units in each state from the new unit set-asides.

3. Allocations of Emission Allowances

For states participating in the CSAPR NO_X ozone season Group 2 program, the

[168] The 22 states are: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

[169] As discussed in section IV.C, Iowa, Maryland, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia, and Wisconsin will no longer be subject to an obligation to reduce emissions to address the 1997 ozone NAAQS after 2016, so for these states the requirement to comply with the budgets established under this rule will succeed the current requirement to comply with the budgets established to address the 1997 ozone NAAQS. Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee remain subject to an obligation to reduce emissions to address the 1997 ozone NAAQS, but because the budgets established in this rule are established with regard to the more stringent 2008 ozone NAAQS, the EPA is coordinating compliance requirements and allowing compliance with the budgets established under this rule to serve the purposes of meeting these states' interstate transport obligations with regard to both the 1997 ozone NAAQS and the 2008 ozone NAAQS.

EPA will issue CSAPR NO_X ozone season Group 2 allowances to be used for compliance starting with the 2017 ozone season. This section explains that, for most states, the EPA is allocating these allowances up to each state's budget to existing units and new units in that state by applying the same allocation methodology finalized in the original CSAPR. This methodology considers both a unit's historical heat input and its maximum historical emissions. *See* 76 FR 48284, August 8, 2011. A different approach is taken for Alabama, Missouri, and New York, as described later on. This section also describes allocation to the new unit set-asides and Indian country new unit set-asides in each state; allocation to units that are not operating; and the recordation of allowance allocations in source compliance accounts.

a. *Allocations to existing units.* The EPA will implement each state's EGU NO_X ozone season emission budget in the CSAPR NO_X ozone season Group 2 trading program by allocating the number of emission allowances to covered units [170] within that state equal to the tonnage of that specific state's budget, as calculated in section VI. *See* Table VI.E–2. The portion of a state budget allocated to existing units in that state is the state budget minus the state's new unit set-aside and minus the state's Indian country new unit set-aside. The new unit set-asides are portions of each budget reserved for new units that might locate in each state or in Indian country in the future. For the existing source level allocations, see the TSD called, ''Unit Level Allocations and Underlying Data for the CSAPR for the 2008 Ozone NAAQS,'' in the docket for this rulemaking. The only allowance allocations that are being updated in this final rule are allocations of NO_X ozone season allowances under the CSAPR NO_X ozone season Group 2 program. This final rule does not change allowance allocations for the CSAPR NO_X ozone season Group 1 trading program or allocations of CSAPR SO_2 or NO_X annual allowances.

For the purpose of allocations, the original CSAPR regulations defined an ''existing unit'' as one that commenced commercial operation prior to January 1, 2010. For the 22 states subject to FIPs in this rulemaking, the EPA is modifying the definition of an ''existing unit'' for purposes of the NO_X ozone season Group 2 program to include those units that commenced commercial operation prior to January 1, 2015. This change will allow these units to be directly allocated allowances from each state's budget as existing units and will allow the new unit set-asides to be fully reserved for any future new units locating in covered states or Indian country. The EPA did not propose, and is not finalizing, any change in the definition of ''existing units'' for sources located in states subject to the original CSAPR regulations (*i.e.,* sources located in Georgia with respect to allocation of the CSAPR NO_X ozone season Group 1 allowances, and sources located in all covered states with respect to allocations of CSAPR SO_2 or NO_X annual allowances).

The EPA proposed to apply the methodology finalized in the original CSAPR for allocating emission allowances to existing units. This methodology allocates allowances to each unit based on the unit's share of the state's heat input, limited by the unit's maximum historical emissions. As discussed in the original CSAPR final rule (*See* 76 FR 48288–9, August 8, 2011), the EPA finds this allowance allocation approach to be fuel-neutral, control-neutral, transparent, based on reliable data, and similar to allocation methodologies previously used in the NO_X SIP Call and Acid Rain Program. The EPA is therefore finalizing the continued application of this methodology for allocating allowances to existing sources in this final rule (except as otherwise noted later on with respect to existing sources in Alabama, Missouri, and New York).

This final rule uses the average of the three highest years of heat input data out of a consecutive five-year period to establish the heat input baseline for each unit. These heat input data are used to calculate each unit's proportion of state-level heat input (the unit's three year average heat input divided by the state's average heat input). As a first step, the EPA applies this proportion to the total amount of existing unit allowances to be allocated to quantify unit-level allocations. However, the EPA constrains the unit-level allocations so as not to exceed the maximum historical baseline emissions, calculated as the highest year of emissions out of a consecutive eight-year period.[171] The proposal evaluated 2010–2014 heat input data and 2007–2014 emissions data, which was the most recent data available at that time. The final rule relies on 2011–2015 heat input data and 2008–2015 emission data, which is currently the most recent complete dataset.[172]

For the states of Alabama, Missouri, and New York, the EPA is not applying the methodology described previously. Instead, for these states only, the EPA is allocating allowances to existing units in the state according to methodologies for allocating ozone season NO_X allowances under the current CSAPR NO_X Ozone Season Trading Program that have been adopted into state regulations and submitted to the EPA for approval as SIP revisions, but with the states' methodologies applied to the final budgets established in this rule. This approach is consistent with the proposal, in which the EPA indicated that where a state had adopted state regulations to govern the allocation of allowances under the current CSAPR NO_X ozone season program and had included those regulations in an approved SIP revision, if the state regulations by their terms would govern allocations under a revised budget, or if it was clear how the state's approved methodology could be used by the EPA to compute allocations using the revised budget, the state's regulations or methodology would be used to govern the allowance allocations under the final rule. These three states have adopted state regulations regarding the allocation of CSAPR allowances for ozone season NO_X emissions and have made SIP submittals seeking incorporation of the regulations into their SIPs. Although the EPA has not acted on those SIP submittals (because they concern the current NO_X ozone season trading program to which the sources in these three states will no longer be subject after 2016), the EPA has determined that it is clear how the allocation methodologies reflected in the state-adopted regulations can be used to compute allocations under the final budgets for this rule. The EPA took comment in the proposal on this topic. As explained in the proposal, these possible approaches could avert the need for a state to submit another SIP revision to implement the same allocation provisions under this rule that the state has already implemented or sought to implement under CSAPR before adoption of this rule. Since the agency received no adverse comments on using this modified allocation approach for states with an EPA-approved SIP revision under the current rule, the EPA is finalizing this approach

[170] As described previously in applicability criteria.

[171] The EPA's allocation methodology also considers whether unit-level allocations should be limited because they would otherwise exceed emission levels that are permissible under the terms of consent decrees. However, in this instance the EPA's analysis indicates that consideration of consent decree limits does not alter the unit-level allocations.

[172] *See* the CSAPR Allowance Allocations Final Rule TSD for further description of the allocation methodology.

for these three states.[173] Further discussion of how these three states' methodologies were used to determine the allocations of allowances to existing units in the states is included in the CSAPR Allowance Allocations Final Rule TSD.

As discussed later on, states have several options under CSAPR to submit SIP revisions which, if approved, may result in the replacement of the EPA's default allocations with state-determined allocations for control periods in 2018 or later years. The provisions described previously will not preclude any state from submitting an alternative allocation methodology for later compliance years through a SIP revision. *See* section VII.F for further details on the development of approvable SIP submissions.

b. *Allocations to new units.* Consistent with the revision to the definition of ''existing unit'' described earlier, for purposes of the final rule a ''new unit'' that is eligible to receive allocations from the ''new unit set-aside'' for a state includes any covered unit that commences commercial operation on or after January 1, 2015, as well as a unit that becomes covered by meeting applicability criteria subsequent to January 1, 2015; a unit that relocates to a different state covered by a FIP promulgated by this final rule; and an ''existing'' covered unit that stops operating for two consecutive years but resumes commercial operation at some point thereafter. To the extent that states seek approval of SIPs with different allocation provisions than those provided by CSAPR, these SIPs may also define new units differently.

The EPA is also finalizing allocations to a new unit set-aside (NUSA) for each state equal to a minimum of 2 percent of the total state budget, plus the projected amount of emissions from planned units in that state. For instance, if planned units in a state are projected to emit 3 percent of the state's NO_X ozone season emission budget, then the new unit set-aside for the state would be set at 5 percent, the sum of the minimum 2 percent set-aside plus an additional 3 percent for planned units. This is the same approach currently used to implement the NUSA for all CSAPR trading programs. *See* 76 FR 48292. Pursuant to the CSAPR regulations, new units may receive allocations starting with the first year they are subject to the allowance-holding requirements of the rule. If the allowances in the NUSA remain unallocated to new units, the allowances from the set-asides are redistributed to existing units before each compliance deadline. For more detail on the CSAPR new unit set-aside provisions, *see* 40 CFR 97.811(b) and 97.812.

TABLE VII.E–1—FINAL EGU NO_X OZONE SEASON NEW UNIT SET-ASIDE AMOUNTS, REFLECTING FINAL EGU EMISSION BUDGETS

[Tons]

State	Final 2017* EGU NO_X emission budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons) [1]	Indian country new unit set-aside amount (tons)
Alabama	13,211	2	255	13
Arkansas*	12,048/9,210	2/2	240/185	.....
Illinois	14,601	2	302	.....
Indiana	23,303	2	468	.....
Iowa	11,272	3	324	11
Kansas	8,027	2	148	8
Kentucky	21,115	2	426	.....
Louisiana	18,639	2	352	19
Maryland	3,828	4	152	.....
Michigan	17,023	4	665	17
Mississippi	6,315	2	120	6
Missouri	15,780	2	324	.....
New Jersey	2,062	9	192	.....
New York	5,135	5	252	5
Ohio	19,522	2	401	.....
Oklahoma	11,641	2	221	12
Pennsylvania	17,952	3	541	.....
Tennessee	7,736	2	156	.....
Texas	52,301	2	998	52
Virginia	9,223	6	562	.....
West Virginia	17,815	2	356	.....
Wisconsin	7,915	2	151	8
22 State Region	316,464/313,626	.....	.....	.....

[1] New-unit set-aside amount (tons) does not include the Indian country new unit set-aside amount (tons).

* The EPA is finalizing CSAPR EGU NO_X ozone season emission budgets for Arkansas of 12,048 tons for 2017 and 9,210 tons for 2018 and subsequent control periods.

c. *Allocations to new units in Indian Country.* Clean Air Act programs on Indian reservations and other areas of Indian country over which a tribe or the EPA has demonstrated that a tribe has jurisdiction are implemented either by a tribe through an EPA-approved tribal implementation plan (TIP) or the EPA through a FIP. Tribes may, but are not required to, submit TIPs. Under the EPA's Tribal Authority Rule (TAR), 40 CFR 49.1–49.11, the EPA is authorized

[173] In the case of Missouri, the allocations also reflect the state's comments regarding the use of the state's methodology to establish the allocations.

to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit and get EPA approval of a TIP. *See* 40 CFR 49.11(a); see also 42 U.S.C. 7601(d)(4). To date, no tribes have sought approval of a TIP implementing the good neighbor provision at CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The EPA has therefore determined that it is necessary and appropriate for EPA to implement the FIPs in any affected Indian reservations or other areas of Indian country over which a tribe has jurisdiction. There are no existing units that would qualify as ''covered units'' under the final CSAPR Update in Indian country located in the states covered by this rule.

The EPA is finalizing its proposal to apply the CSAPR approach for allocating allowances to any new units locating in Indian country. Under the CSAPR approach, allowances to possible future new units locating in Indian country are allocated by the EPA from an Indian country new unit set-aside established for each state with Indian country. *See* 40 CFR 97.811(b)(2) and 97.812(b). The EPA reserves 0.1 percent of the total state budget for new units in Indian country within that state (5 percent of the minimum 2 percent new unit set-aside, without considering any increase in a state's new unit set-aside amount for planned units). Because states generally have no SIP authority in these areas, the EPA will continue to allocate such allowances to sources locating in such areas of Indian country within a state over which a tribe or EPA has demonstrated that a tribe has jurisdiction, even if the state submits a SIP to replace the applicable FIP. 40 CFR 52.38(b)(9)(vi) and (vii) and 52.38(b)(10). Unallocated allowances from a state's Indian country new unit set-aside are returned to the state's new unit set-aside and allocated according to the methodology described previously.

d. *Allocations to units that do not operate and the new unit set-aside.* The EPA is finalizing its proposal to apply the CSAPR approach for allocating to units that do not operate and to the new unit set-aside. The EPA is codifying the existing CSAPR provision under which a covered unit that does not operate for a period of two consecutive years will receive allowance allocations for a total of up to five years of non-operation. 40 CFR 97.811(a)(2). This approach mitigates concerns that loss of allowance allocations could be an economic consideration that would cause a unit, which would otherwise retire, to continue operations in order to retain ongoing allowance allocations. Pursuant to this provision, starting in the fifth year after the first year of non-operation, allowances allocated to such units will instead be allocated to the new unit set-aside for the state in which the non-operating unit is located. This approach allows the balance of allowance allocations to shift over time from existing units to new units, aligned with transition of the EGU fleet from older generating resources to newer ones. Allowances in the new unit set-aside that are not used by new units are reallocated to existing units in the state. The EPA proposed to retain this timeline for allowance allocation for non-operating units and it is finalizing that proposal.

4. Variability Limits, Assurance Levels, and Penalties

In the original CSAPR, the EPA developed assurance provisions, including variability limits and assurance levels (with associated compliance penalties), to ensure that each state will meet its pollution control obligations and to accommodate inherent year-to-year variability in state-level EGU operations.

The original CSAPR budgets, and the updated CSAPR emission budgets finalized in this document, reflect EGU operations in an ''average year.'' However, year-to-year variability in EGU operations occurs due to the interconnected nature of the power sector and from changing weather patterns, changes in electricity demand, or disruptions in electricity supply from other units or from the transmission grid. Recognizing this, the trading program provisions finalized in the original CSAPR rulemaking include variability limits, which define the amount by which an individual state's emissions may exceed the level of its budget in a given year to account for this variability in EGU operations. A state's budget plus its variability limit equals a state's assurance level, which acts as a cap on each state's NO_X emissions during a control period (that is, during the May-September ozone season in the case of this rule). The new NO_X ozone season trading program provisions established for affected sources in the 22 states subject to this rule contain equivalent assurance provisions.

These variability limits ensure that the trading program can accommodate the inherent variability in the power sector while also ensuring that each state eliminates the amount of emissions within the state, in a given year, that must be eliminated to meet the statutory mandate of section 110(a)(2)(D)(i)(I). Moreover, the structure of the program, which achieves required emission reductions through limits on the total number of allowances allocated, assurance provisions, and penalty mechanisms, ensures that the variability limits only allow the amount of temporal and geographic shifting of emissions that is likely to result from the inherent variability in power generation, and not from decisions to avoid or delay the installation of necessary controls.

To establish the variability limits in the original CSAPR, the EPA analyzed historical state-level heat input variability as a proxy for emissions variability, assuming constant emission rates. *See* 76 FR 48265, August 8, 2011. The variability limits for ozone season NO_X in the original CSAPR were calculated as 21 percent of each state's budget, and these variability limits for the NO_X ozone season trading program were then codified in 40 CFR 97.510 along with the state budgets. The EPA performed an updated analysis to ensure the 21 percent variability limits used in the original CSAPR rule were also valid for purposes of implementing the new and revised budgets finalized in this rule. The EPA's updated analysis demonstrates that variability considering recent data remains consistent (*i.e.,* within 1 percent) with the assessment conducted for the original CSAPR rulemaking. This analysis may be found in the TSD called, Power Sector Variability Final CSAPR Update TSD, in the docket for this rulemaking. The EPA is therefore setting variability limits for the 22 states covered by this rule calculated as 21 percent of each state's new or revised budget and codifying these variability limits in 40 CFR 97.810.

Table VII.E–2 shows the final EGU NO_X ozone season Group 2 emission budgets, variability limits, and assurance levels for each state.

TABLE VII.E–2—FINAL EGU NO_X OZONE SEASON EMISSION BUDGETS REFLECTING EGU NO_X MITIGATION AVAILABLE FOR 2017 AT $1,400 PER TON, VARIABILITY LIMITS, AND ASSURANCE LEVELS

[Tons]

State	EGU 2017* NO_X ozone season group 2 emission budgets	EGU NO_X ozone season group 2 variability limits	EGU NO_X ozone season group 2 assurance levels
Alabama	13,211	2,774	15,985
Arkansas	12,048/9,210	2,530/1,934	14,578/11,144
Illinois	14,601	3,066	17,667
Indiana	23,303	4,894	28,197
Iowa	11,272	2,367	13,639
Kansas	8,027	1,686	9,713
Kentucky	21,115	4,434	25,549
Louisiana	18,639	3,914	22,553
Maryland	3,828	804	4,632
Michigan	17,023	3,575	20,598
Mississippi	6,315	1,326	7,641
Missouri	15,780	3,314	19,094
New Jersey	2,062	433	2,495
New York	5,135	1,078	6,213
Ohio	19,522	4,100	23,622
Oklahoma	11,641	2,445	14,086
Pennsylvania	17,952	3,770	21,722
Tennessee	7,736	1,625	9,361
Texas	52,301	10,983	63,284
Virginia	9,223	1,937	11,160
West Virginia	17,815	3,741	21,556
Wisconsin	7,915	1,662	9,577
22 State Region	316,464/313,626	.....	.....

*The EPA is finalizing CSAPR EGU NO_X ozone season emission budgets for Arkansas of 12,048 tons for 2017 and 9,210 tons for 2018 and subsequent control periods.

The assurance provisions include penalties that are triggered when the state emissions as a whole exceed the state's assurance level. The original CSAPR provided that, when the EGUs in a state exceed that state's assurance level in a given year, some of those sources will be assessed a 3-to-1 allowance surrender on the excess tons, as described later on. Each excess ton above the assurance level must be met with one allowance for normal compliance plus two additional allowances to satisfy the penalty. The penalty is designed to deter state-level emissions from exceeding assurance levels. This was described in the original CSAPR as air quality-assured trading that accounts for variability in the electricity sector but also ensures that the necessary emission reductions occur within each covered state.[174] If the EGU emissions in a state do not exceed the state's assurance level, no penalties are incurred by any source. Establishing assurance levels with compliance penalties therefore responds to the court's holding in *North Carolina* requiring the EPA to ensure that sources in each state are required to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state.[175]

To assess the penalty under the assurance provisions, the EPA evaluates whether any state's total EGU emissions in a control period exceeded the state's assurance level, and if so, the EPA then determines which owners and operators of units in the state exceeded the common designated representative's (DR) share of the state assurance level and, therefore, will be subject to an allowance surrender requirement. Since a DR often represents multiple sources, the EPA evaluates which groups of units at the common DR level had emissions exceeding the respective common DR's share of the state assurance level. This provision is triggered only if two criteria are met: (1) The group of sources and units with a common DR are located in a state where the total state EGU emissions for a control period exceed the state assurance level; and (2) that group with the common DR had emissions exceeding the respective DR's share of the state assurance level. The EPA is finalizing equivalent assurance provisions, modified only as necessary to allow the provisions to work in the same way despite the presence of factors that could otherwise alter their operation, such as converted banked allowances, the possible election by Georgia to bring its sources into the Group 2 program through a SIP revision, and the possible election by other states to bring non-EGUs and additional allowances into the program through SIP revisions. These differences are discussed in section IX in this preamble. For more information on the CSAPR assurance provisions generally, *see* 76 FR 48294 (August 8, 2011).

[174] *See* 76 FR 48266, August 8, 2011: ''Far from excusing any state from addressing emissions within the state that significantly contribute to nonattainment or interfere with maintenance in other states, these variability limits ensure that the system can accommodate the inherent variability in the power sector while ensuring that each state eliminates the amount of emissions within the state, in a given year, that must be eliminated to meet the statutory mandate of section 110(a)(2)(D)(i)(I). Moreover, the structure of the program, which achieves required emission reductions through limits on the total number of allowances allocated, assurance provisions, and penalty mechanisms, ensures that the variability limits only allow the amount of temporal and geographic shifting of emissions that is likely to result from the inherent variability in power generation, and not from decisions to avoid or delay the installation of necessary controls. Under the remedy, an individual state can have emissions up to its budget plus the variability limit. However, the requirement that all sources hold allowances covering emissions, and the fact that those allowances are allocated based on state-specific budgets *without* variability, ensure that the total emissions from the states do not exceed the sum of the state budgets. The remedy, therefore, ensures both that total emissions do not exceed the total of the state budgets and that the required emission reductions occur in each state.''

[175] 531 F.3d at 908.

5. Compliance Deadlines

As discussed in sections II.A., III.B., and IV.A., the rule requires sources to comply with the new and revised NO_X emission budgets for the 2017 ozone season (May 1 through September 30) in order to ensure that necessary NO_X emissions reductions are made as expeditiously as practicable to assist downwind states' attainment and maintenance of the 2008 ozone NAAQS. The compliance deadline is coordinated with the attainment deadline for that standard and the rule includes provisions to ensure that all necessary reductions occur at sources within each individual state. Thus, under the new CSAPR NO_X Ozone Season Group 2 Trading Program established by this rule at subpart EEEEE of 40 CFR part 97, the first control period is the 2017 ozone season (*i.e.,* May 1, 2017 through September 30, 2017).

The deadline by which sources must hold Group 2 allowances in their compliance accounts at least equal to their emissions during the control period is March 1 of the year following the control period, which is the same as the deadline for holding allowances under the CSAPR annual trading programs. This is a change from the current CSAPR NO_X Ozone Season Trading Program provisions, which set a deadline of December 1 of the year of the control period, and is intended to simplify compliance and program administration and thereby reduce costs for both regulated parties and the EPA. Under these coordinated deadlines, the date by which Group 2 sources will be required to hold Group 2 allowances for compliance for purposes of the 2017 control period is March 1, 2018.

6. Monitoring and Reporting and the Allowance Management System

Monitoring and reporting in accordance with the provisions of 40 CFR part 75 are required for all units subject to the CSAPR NO_X ozone season trading programs and for all units covered under this final rule for the 2008 ozone NAAQS requirements. The EPA finalizes that the monitoring system certification deadline by which monitors are installed and certified for compliance use generally will be May 1, 2017, the beginning of the first control period in this rule, with potentially later deadlines for units that commence commercial operation less than 180 days before that date. Similarly, the EPA is finalizing that the first period in which emission reporting is required would be the quarter that includes May 1, 2017 (the second quarter of the year that covers April, May, and June). These monitoring and reporting deadlines are analogous to the current deadlines under the original CSAPR.

Under part 75, a unit has several options for monitoring and reporting, including the use of a CEMS; an excepted monitoring methodology based in part on fuel-flow metering for certain gas- or oil-fired peaking units; low-mass emissions monitoring for certain non-coal-fired, low emitting units; or an alternative monitoring system approved by the Administrator through a petition process. In addition, sources can submit petitions to the Administrator for alternatives to specific CSAPR and part 75 monitoring, recordkeeping, and reporting requirements. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits (RATAs) and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied and result in a conservative estimate of emissions for the period involved.

Further, part 75 requires electronic submission of a quarterly emissions report to the Administrator, in a format prescribed by the Administrator. The report will contain all of the data required concerning ozone season NO_X emissions.

Units currently subject to CSAPR NO_X ozone season or CSAPR NO_X annual trading program requirements monitor and report NO_X emissions in accordance with part 75, so most sources will not have to make any changes to monitoring and reporting practices. In fact, only units in Kansas, which are currently subject to the CSAPR NO_X annual trading program but not the CSAPR NO_X ozone season trading program, will need to start newly reporting ozone season NO_X mass emissions. These emissions are already measured under the annual program, so the change will be a minor reporting modification and the sources will not be required to install new monitoring systems. Units in the following states monitor and report NO_X emissions under the CSAPR NO_X ozone season trading program and will continue to do so without change under the CSAPR ozone update for the 2008 NAAQS: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

7. Recordation of Allowances

The EPA is establishing deadlines for recording allocations of ozone season NO_X allowances to sources affected under this rule that generally parallel the recordation deadlines under the existing CSAPR trading programs, but with later deadlines reflecting the fact that this program is starting two years later than the existing CSAPR trading programs. Specifically, allocations to existing units for the first two control periods under the new program (2017 and 2018) will be recorded by January 9, 2017. This recordation deadline is four months before the start of the first control period for the new program (May 1, 2017) and 14 months before the date by which sources are required to hold allowances sufficient to cover their emissions for that first control period (March 1, 2018, as discussed previously), giving sources ample time to engage in allowance trading activities consistent with their preferred compliance strategies. Allowance allocations for 2019 and 2020 will be recorded by July 1, 2018; allocations for 2021 and 2022 will be recorded by July 1, 2019; and allocations for 2023 and 2024 will be recorded by July 1, 2020. Allowances for each succeeding control period will be recorded by July 1 of the fourth year before the year of the control period, matching the recordation schedule for the existing CSAPR trading programs. These deadlines apply to recordation of both allocations based on the default allocation provisions under 40 CFR 97.811 and 97.812 and allocations provided by states pursuant to approved SIP revisions. As under the CSAPR annual programs, allocations to new units from the NUSAs and Indian country NUSAs are made in two rounds, with first-round allocations recorded by August 1 of the year of the control period and second-round allocations recorded by February 15 of the year after the year of the control period. (In a change from the current CSAPR NO_X Ozone Season Trading Program provisions, the second-round recordation deadline is now coordinated with the analogous deadline for the CSAPR annual programs.) For 2018 allocations, the EPA will defer recordation if a state submits a timely letter indicating an intent to submit a SIP revision that if approved would substitute state-determined allocations for the default allocations determined by the EPA. The recordation provisions for the new program are codified in 40 CFR 97.821.

Consistent with the first recordation deadline described previously for allocations to existing units under the new trading program, the EPA is also delaying the deadline in 40 CFR 97.521(c) for recordation of allowances

for the 2017 and 2018 control periods under the existing NO_X ozone season trading program (*i.e.,* allocations for sources in Georgia) to January 9, 2017. As explained in the proposal, the reason for extending this deadline was to avoid the possible need to take back allowances recorded under the existing NO_X ozone season trading program in cases where state budgets might have been reduced under that program by this final rule.

F. Submitting a SIP

Any state may replace the FIP finalized in this rule with a SIP at any time if approved by the EPA. ''Abbreviated'' and ''full'' SIP options finalized in the original CSAPR rulemaking continue to be available. An abbreviated SIP allows a state to submit a SIP that would provide for state-based allocation provisions in the CSAPR NO_X ozone season trading program that are then incorporated into the FIP the EPA has established for that state. A second approach, referred to as a full SIP, allows a state to adopt state provisions that would require sources in the state to continue to use the EPA-administered CSAPR trading program through an approved SIP, rather than a FIP. In addition to the abbreviated and full SIP options, as under the original CSAPR rulemaking, the EPA provides states with an opportunity to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2018 control period—through streamlined SIP revisions. *See* 76 FR 48208 at 48326–48332 (August 8, 2011) for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b). Once the state has made a SIP submission, the EPA will evaluate the submission(s) for completeness. The EPA's criteria for determining completeness of a SIP submission are codified at 40 CFR part 51, appendix V.

1. 2018 SIP Option

The EPA will allow a state to submit a SIP revision establishing allowance allocations for existing units for the second compliance year (2018) for the new and revised budgets in order to replace the FIP-based allocations finalized in this rule. The process will be the same as under the original CSAPR rulemaking with deadlines shifted roughly 2 years: A state that wishes to take advantage of this option must submit a letter to EPA by December 27, 2016, indicating its intent to submit a complete SIP revision by April 1, 2017. The SIP must provide in an EPA-prescribed format a list of existing units and their allocations for the 2018 control period. If a state does not submit a letter of intent to submit a SIP revision, FIP allocations will be recorded by January 9, 2017. If a state submits a timely letter of intent but fails to submit a SIP revision, FIP allocations will be recorded by April 15, 2017. If a state submits a timely letter of intent followed by a timely SIP revision that is approved, the approved SIP allocations will be recorded by October 1, 2017.

2. 2019 and Beyond SIP Option

For the 2019 control period and later, the EPA is finalizing revisions to the regulations at 40 CFR 52.38(b) that provide additional options to submit abbreviated or full SIP revisions to modify or replace the FIP allowance allocations in 2019 or later years. The deadline for SIP submittals to modify or replace the FIP allocations for 2019 and 2020 is December 1, 2017. The deadline for the state to then submit state allocations for 2019 and 2020 is June 1, 2018 and the deadline for the EPA to record those allocations is July 1, 2018. A state may submit by December 1, 2018, a SIP revision applicable to control periods starting in 2021 or 2022, with state allocations due June 1, 2019, and allocation recordation by July 1, 2019. *See* section IV of this preamble and 76 FR 48208 at 48326–48332 (August 8, 2011) for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

3. SIP Revisions That Do Not Use the CSAPR Trading Program

Each state has the authority under the CAA to replace the FIP finalized in this rule by submitting a transport SIP revision that does not use the CSAPR NO_X ozone season trading program. The EPA will evaluate such SIPs to determine whether they include adequate and enforceable provisions ensuring that the emission reductions will be achieved based on the particular control strategies selected by each state. The SIP revision could include the following general elements: (1) A comprehensive baseline statewide NO_X emission inventory (which includes growth and existing control requirements); (2) a list and description of control measures to satisfy the state emission reduction obligation and a demonstration showing when each measure will be in place by the time the SIP is approved and replaces the CSAPR FIP; (3) fully-adopted state rules providing for such NO_X controls during the ozone season; (4) for EGUs greater than 25 MWe and large boilers and combustion turbines with a rated heat input capacity of 250 mmBtu per hour or greater, Part 75 monitoring, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP; and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emission reductions in a timely manner considering ozone NAAQS attainment dates.[176] The SIPs must meet the requirements for public hearing, be adopted by the appropriate board or authority, and establish by a practically enforceable regulation a permit schedule and date for each affected source or source category to achieve compliance. For further information on replacing a FIP with a SIP, see the discussion in the final CSAPR rulemaking (76 FR 48326, August 8, 2011).

4. Submitting a SIP To Participate in CSAPR for States Not Included in This Rule

There could be circumstances where a state that is not obligated to reduce NO_X emissions in order to address interstate transport requirements (such as Florida, North Carolina, or South Carolina for purposes of this final rule) may wish to participate in the CSAPR NO_X ozone season trading program in order to serve a different regulatory purpose. For example, the state may have a pending request for redesignation of an area to attainment that relies on participation in the trading program as part of the state's demonstration that emissions will not exceed certain levels; or the state may wish to rely on participation in the trading program for purposes of a SIP revision to satisfy certain obligations under the Regional Haze Rule. Further, as discussed previously, Georgia may wish to join the CSAPR NO_X ozone season Group 2 trading program in order to trade with other Group 2 states.

The EPA took comment on whether the EPA should revise the CSAPR regulations to allow the EPA to approve a SIP revision in which a state seeks to participate in the NO_X ozone season trading program for a purpose other than addressing ozone transport obligations.

The EPA is finalizing revisions to CSAPR regulations to allow Georgia to opt-in to the CSAPR NO_X ozone season Group 2 trading group if it adopts, as part of a SIP revision, a NO_X ozone season emission budget no higher than the emission budget that reflects EGU NO_X mitigation strategies represented by a uniform cost of $1,400 per ton for EGUs in Georgia. Such an emission

[176] The EPA notes that the SIP is not required to include modeling.

budget is provided by this final rule. As discussed previously, Georgia submitted comments indicating an interest in allowing its sources to trade with other states, although without any change to its budget. The EPA has already discussed the reasons for rejecting the specific option most favored by Georgia in comments. By providing Georgia with the option to bring the state's sources into the Group 2 program through a SIP revision, the EPA is allowing Georgia to implement its expressed preference for broader trading if that preference continues to apply even when conditioned on adoption of a more stringent budget.

The EPA also took comment on whether the EPA should revise the CSAPR regulations to allow the EPA to approve a SIP revision in which a state seeks to participate in the NO_X ozone season trading program for a purpose other than addressing ozone transport obligations. The EPA received no comments indicating that states had an interest in this option at this time, and the EPA is therefore not finalizing this option at this time.

G. Title V Permitting

This rule, like CSAPR, does not establish any permitting requirements independent of those under title V of the CAA and the regulations implementing title V, 40 CFR parts 70 and 71.[177] All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with the applicable requirements of the CAA, including the requirements of the applicable State Implementation Plan. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The ''applicable requirements'' that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of ''applicable requirement'')).

The EPA anticipates that, given the nature of the units subject to this transport rule and given that many of the units covered here are already subject to CSAPR, most of the sources at which the units are located are already subject to title V permitting requirements. For sources subject to title V, the interstate transport requirements for the 2008 ozone NAAQS that are applicable to them under the final FIPs are ''applicable requirements'' under title V and therefore must be addressed in the title V permits. For example, requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the assurance provisions, and liability are ''applicable requirements'' that must be addressed in the permits.

Title V of the CAA establishes the basic requirements for state title V permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established by CSAPR and updated by this ozone interstate transport rule. 42 U.S.C. 7661a(b).

In CSAPR, the EPA established standard requirements governing how sources covered by the rule would comply with title V and its regulations.[178] 40 CFR 97.506(d). Under this rule, those same requirements would continue to apply to sources already in the CSAPR NO_X ozone season trading program and to any newly affected sources that have been added to address interstate transport of the 2008 ozone NAAQS. For example, the title V regulations provide that a permit issued under title V must include ''[a] provision stating that no permit revision shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.'' 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in CSAPR, the EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.806(d)(1). This provision is also included in each title V permit for an affected source. This final rule maintains the approach taken under CSAPR that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this final rule also continues to support the means by which sources in the CSAPR NO_X ozone season trading program can use the title V minor modification procedure to change their approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under CSAPR (*i.e.,* approaches using a continuous emission monitoring system, an excepted monitoring system under appendices D and E to part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. *See* 40 CFR 97.806(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). As described in the EPA's 2015 guidance, the agency suggests in its template that sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under the rule, and the applicable requirements governing each of those approaches. Inclusion of the table in a source's title V permit therefore allows a covered unit that seeks to change or add to their chosen monitoring and recordkeeping approach to easily comply with the regulations governing the use of the title V minor modification procedure.

Under CSAPR, in order to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to the EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to the EPA. These applications and petitions are subject to EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. The EPA's responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on the EPA's Web site.[179] The EPA maintains the same approach in this final rule.

Consistent with the EPA's approach under CSAPR, the applicable requirements resulting from these FIPs must be incorporated into affected sources' existing title V permits either pursuant to the provisions for reopening for cause (40 CFR 70.7(f) and 40 CFR 71.7(f)) or the standard permit renewal provisions (40 CFR 70.7(c) and

[177] Part 70 addresses requirements for state title V programs, and Part 71 governs the federal title V program.

[178] The EPA also issued a guidance document and template that includes instructions describing how to incorporate the CSAPR applicable requirements into a source's title V permit. *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_Title_V_Permit_Guidance.pdf.*

[179] *https://www.epa.gov/airmarkets/part-75-petition-responses.*

71.7(c)).[180] For sources newly subject to title V that are affected sources under the final FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As in CSAPR, the approach to title V permitting under the FIPs imposes no independent permitting requirements and should reduce the burden on sources already required to be permitted under title V and on permitting authorities.

H. Relationship to Other Emission Trading and Ozone Transport Programs

1. Interactions With Existing CSAPR Annual Programs, Title IV Acid Rain Program, NO_X SIP Call, and Other State Implementation Plans

a. *CSAPR Annual Programs.*[181] Nothing in this rule affects any CSAPR NO_X annual or CSAPR SO_2 Group 1 or CSAPR SO_2 Group 2 requirements.[182] The CSAPR annual program requirements were premised on the 1997 and 2006 $PM_{2.5}$ NAAQS that are not being addressed in this rulemaking. The CSAPR NO_X annual trading program and the CSAPR SO_2 Group 1 and Group 2 trading programs remain in place and will continue to be administered by the EPA.

The EPA acknowledges that, in addition to the ozone budgets discussed previously, the D.C. Circuit has remanded for reconsideration the CSAPR SO_2 budgets for Alabama, Georgia, South Carolina, and Texas. *EME Homer City II,* 795 F.3d at 138. This rule does not address the remand of these CSAPR phase 2 SO_2 emission budgets. On June 27, 2016, the EPA released a memorandum outlining the agency's approach for responding to the D.C. Circuit's July 2015 remand of the CSAPR phase 2 SO_2 annual emission budgets for Alabama, Georgia, South Carolina and Texas. The memorandum can be found at *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO2_Remand_Memo.pdf.*

b. *Title IV Interactions.* This rule will not affect any Acid Rain Program requirements. Acid Rain Program SO_2 and NO_X requirements are established in Title IV of the Clean Air Act, and will continue to apply independently of this rule's provisions. Any Title IV sources that are subject to provisions of this rule are still required to comply with Title IV requirements, including the requirement to hold Title IV allowances to cover SO_2 emissions at the end of a compliance year.

c. *NO_X SIP Call Interactions.* States subject to both the NO_X SIP Call and the final CSAPR Update will be required to comply with the requirements of both rules. The final CSAPR Update rule requires NO_X ozone season emission reductions from EGUs greater than 25 MW in most NO_X SIP Call states and at levels greater than required by the NO_X SIP Call. Therefore, compliance with the budgets established under the CSAPR Update would satisfy the requirements of the NO_X SIP Call for these large EGU units.

The NO_X SIP Call states used the NO_X Budget Trading Program (NBP) model rule to comply with the NO_X SIP Call requirements for EGUs serving a generator with a nameplate capacity greater than 25 MW and large non-EGUs with a maximum rated heat input capacity greater than 250 mmBTU/hr. (In some states, EGUs smaller than 25 MW were also part of the NBP as a carryover from the Ozone Transport Commission NO_X Budget Trading Program.) When the EPA promulgated CAIR and the CAIR FIPs, it allowed states, via SIP, to adopt SIP revisions modifying the applicability provisions of the CAIR NO_X Ozone Season Trading Program to include all NO_X Budget Trading Program units in that program as a way to continue to meet the requirements of the NO_X SIP Call for these sources.

In CSAPR, however, the EPA allowed states, via SIP, to expand applicability of the trading program to EGUs smaller than 25 MW but did not allow the expansion of applicability to include large non-EGU sources. The EPA explained that the reason for excluding large non-EGU sources was based on a concern that emissions from these sources were generally much lower than the portion of each state's NO_X SIP Call budget amount attributable to these large non-EGUs, and we were therefore concerned that surplus allowances created as a result of an overestimation of baseline emissions (the main basis for the non-EGU portion of the NO_X Budget Trading Program budget) and subsequent shutdowns of these large non-EGUs (since 1999 when the NO_X SIP Call was promulgated) would prevent needed reductions by the EGUs to address significant contribution to downwind air quality impacts. *See* 76 FR 48323 (August 8, 2011).

Since then, states have had to find appropriate ways to ensure that their rules continue to show compliance with emissions reduction obligations of the NO_X SIP Call, particularly for large non-EGUs.[183] Most states that used the CAIR NO_X Ozone Season Trading Program as a means of complying with the NO_X SIP Call obligations for large non-EGUs are still working to find suitable solutions now that CSAPR has replaced CAIR.[184]

Therefore, the EPA is finalizing provisions to allow any NO_X SIP Call state subject to a FIP promulgated by this rule to voluntarily submit a SIP revision with a revised budget level that is environmentally neutral to address the state's NO_X SIP Call requirement for ozone season NO_X reductions. The SIP revision could include a provision to expand the applicability of the CSAPR NO_X ozone season trading program in that state to include all NO_X Budget Trading Program units, including large non-EGUs. Analysis shows that these units (mainly large non-EGU boilers, combustion turbines, and combined cycle units with a maximum rated heat input capacity greater than 250 mmBtu/hr) continue to emit well below their portion of the NO_X SIP Call budget. In order to ensure that the necessary amount of EGU emission reductions occur for purposes of addressing interstate transport with respect to the 2008 ozone NAAQS in covered states that submit such a SIP revision, the corresponding state ozone season emission budget amount could be increased by no more than the lesser of the highest ozone season NO_X emissions in the last 3 years from those units or the portion of the NO_X Budget Trading Program Budget attributable to large non-EGUs.[185] The environmental

[180] A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. *See* 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I).

[181] Reflecting the nomenclature updates adopted in this rule, the CSAPR Annual Programs are referred to in regulations as the CSAPR NO_X Annual Trading Program (40 CFR 97.401–97.435), the CSAPR SO_2 Group 1 Trading Program (40 CFR 97.601–97.635) and the CSAPR SO_2 Group 2 Trading Program (40 CFR 97.701–97.735). (Prior to this rule, the regulations used the acronym ''TR'' instead of the acronym ''CSAPR''.)

[182] As discussed in section IX in this preamble, the EPA is making technical corrections to the regulations concerning CSAPR's annual programs, but these corrections do not substantively alter any existing requirements.

[183] Compliance with CSAPR by the EGUs in a state will generally ensure that aggregate emissions from the state's EGUs will not exceed the amount of the state's NO_X SIP Call budget for the source category because the CSAPR cap is lower than the EGU portion of the NO_X SIP Call emission levels.

[184] Affected sources continue to report ozone season emissions using part 75 as required by the NO_X SIP Call and reported emissions have been below NO_X SIP Call non-EGU budget levels.

[185] For further information regarding the determination of the maximum amounts of additional allowances that could be issued by these states, see the memo entitled ''Maximum amounts of additional ozone season NO_X allowances that may be issued under SIP revisions expanding

Continued

impact would be neutral using this approach. This approach addresses requests by states for help in determining an appropriate way to address the continuing NO_X SIP Call requirement as to non-EGU sources.

The variability limits established for EGUs remain unchanged as a result of including these non-EGUs. The assurance provisions apply to EGUs, and emissions from non-EGUs would not affect the assurance levels. The provisions of the new Group 2 trading program exclude the emissions and allowance allocations of any non-EGUs participating in the program from any determination of whether a state exceeds its assurance level or whether any group of sources exceeds its share of the responsibility for any exceedance of a state's assurance level. Similarly, the provisions limit the total allocations that can be taken into account for such purposes by all the EGUs in the state to the state budget and thereby prevent any additional allowances issued by the state as a result of expanded program applicability from unduly influencing determinations of shares of responsibility for any exceedance of the state's assurance level. For additional discussion of the specific regulatory provisions involved, see section IX of this preamble.

The NO_X SIP Call generally requires that states choosing to rely on large EGUs and large non-EGUs for meeting NO_X SIP Call emission reduction requirements must establish a NO_X mass emissions cap on each source and require part 75, subpart H monitoring. As an alternative to source-by-source NO_X mass emission caps, a state may impose NO_X emission rate limits on each source and use maximum operating capacity for estimating NO_X mass emissions or may rely on other requirements that the state demonstrates to be equivalent to either the NO_X mass emission caps or the NO_X emission rate limits that assume maximum operating capacity. Collectively, the caps or their alternatives cannot exceed the portion of the state budget for those sources. *See* 40 CFR 51.121(f)(2) and (i)(4). If a state chooses to expand the applicability of the CSAPR NO_X ozone season trading program to other sources in the state through a voluntary SIP revision to include all the NO_X Budget Trading Program units in the CSAPR NO_X ozone season trading program, the cap requirement would be met through the new budget and the monitoring requirement would be met through the trading program provisions, which require part 75 monitoring. The EPA will work with states to ensure that NO_X SIP Call obligations continue to be met.

d. *Other State Implementation Plans.* The EPA has not conducted any technical analysis to determine whether compliance with this rule will satisfy other requirements for EGUs in any attainment or nonattainment areas (*e.g.,* RACT or BART). For that reason, the EPA is not making determinations nor establishing any presumptions that compliance with the final rule satisfies any other requirements for EGUs. Based on analyses that states conduct on a case-by-case basis, states may be able to conclude that compliance with the rule for certain EGUs fulfills other SIP requirements. The EPA encourages states to work with their regional office on these issues.

2. Other Federal Rulemakings

a. *Clean Power Plan.* On August 3, 2015, the EPA finalized the Clean Power Plan (CPP).[186] The Clean Air Act—under section 111(d)—creates a partnership between the EPA, states, tribes and U.S. territories—with the EPA setting a goal and states and tribes choosing how they will meet it. The CPP follows that approach. The CPP establishes interim and final CO_2 emission performance rates for certain existing power plants, under CAA section 111(d). States then develop and implement plans that ensure that the affected power plants in their state—either individually, together, or in combination with other measures—achieve these rates or equivalent state rate- or mass-based goals. The CPP includes interim emission performance rates (or equivalent state goals) to be achieved over the years 2022 to 2029 and the final CO_2 emission performance rates (or equivalent state goals) to be achieved in 2030 and after.

On February 9, 2016, the Supreme Court granted applications to stay the Clean Power Plan, pending judicial review of the rule in the D.C. Circuit, including any subsequent review by the Supreme Court.[187] The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit plans to EPA, and EPA will not take any action to impose or enforce any such obligations. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the CPP is finally adjudicated.

Because mandatory emission reductions under the CPP would not begin until several years after the 2017 implementation of the CSAPR Update rule, the EPA does not anticipate significant interactions with the CPP and the near-term (*i.e.,* starting in 2017) ozone season EGU NO_X emission reduction requirements under this rule. *See* section V.B of the preamble for further information on this point. However the EPA notes that actions taken to reduce CO_2 emissions (*e.g.,* deployment of zero-emitting generation) may also reduce ozone season NO_X emissions. The EPA is also cognizant of the potential influence of addressing interstate ozone transport on CO_2 emissions. As states and utilities undertake the near- and longer-term planning to reduce emissions of these pollutants, they will have the opportunity to consider how compliance with this rule can anticipate, or be consistent with, greenhouse gas mitigation. Some EGU NO_X mitigation strategies, most notably shifting generation from higher NO_X-emitting coal-fired units to existing low NO_X-emitting units or zero-emitting units, can potentially also reduce CO_2 emissions. As the EPA has structured the interstate transport obligations that would be established by this rule as requirements to limit aggregate affected EGU emissions and the EPA is not enforcing source-specific emission reduction requirements, EGU owners have the flexibility to plan for compliance with the interstate ozone transport requirements in ways that are consistent with state and EGU strategies to reduce CO_2 emissions.

b. *2015 Ozone Standard.* On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS to 70 ppb, based on extensive scientific evidence about ozone's effects on public health and welfare.[188] This rule updating the CSAPR NO_X ozone season trading program to address interstate emission transport with respect to the 2008 ozone NAAQS is a separate and distinct regulatory action and is not meant to address the CAA's good neighbor

CSAPR trading program applicability to large non-EGUs'', available in the docket.

[186] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 FR 64661 (Oct. 23, 2015).

[187] *West Virginia et al.* v. *EPA*, No. 15A773 (U.S. Feb. 9, 2016).

[188] 80 FR 65291 (October 26, 2015).

provision with respect to the strengthened 2015 ozone NAAQS.

The EPA is mindful of the need to address ozone transport for the 2015 ozone NAAQS. The statutory deadline for the EPA to finalize area designations is October 1, 2017. Further, good neighbor SIPs from states are due on October 1, 2018. The steps taken under this rule to reduce interstate ozone transport will help states make progress toward attaining and maintaining the 2015 ozone NAAQS. Moreover, to facilitate the implementation of the CAA good neighbor provision with respect to the 2015 ozone NAAQS, the EPA intends to provide additional information regarding steps 1 and 2 of the CSAPR framework in the fall of 2016. In particular, the EPA expects to conduct and release modeling necessary to assist states to identify projected nonattainment and maintenance receptors with respect to the 2015 ozone NAAQS and identify the upwind state emissions that contribute significantly to these receptors.

VIII. Costs, Benefits, and Other Impacts of the Final Rule

The EPA evaluated the costs, benefits, and impacts of compliance with the final EGU NO_X ozone season emission budgets developed using uniform control stringency represented by $1,400 per ton. In addition, the EPA also assessed compliance with one more and one less stringent alternative EGU NO_X ozone season emission budgets, developed using uniform control stringency represented by $3,400 per ton and $800 per ton, respectively. The EPA evaluated the impact of implementing these emission budgets to reduce interstate transport for the 2008 ozone NAAQS in 2017. More details for this assessment can be found in the Regulatory Impact Analysis (RIA) in the docket for this final rule.

The EPA notes that its analysis of the regulatory control alternatives (*i.e.,* the final rule and more and less stringent alternatives) is illustrative in nature, in part because the EPA will implement the EGU NO_X emission budgets via a regional NO_X ozone season allowance trading program. This implementation approach provides utilities with the flexibility to determine their own compliance path. The EPA's assessment develops and analyzes one possible scenario for implementing the NO_X budgets finalized by this action and one possible scenario for implementing the more and less stringent alternatives. Furthermore, the emission budgets evaluated for the CSAPR Update regulatory control alternative in this benefit and cost analysis are illustrative because they differ somewhat from the budgets finalized in this rule. (The budgets for the more and less stringent alternative also differ somewhat from the budgets represented by $3,400 per ton and $800 per ton reported in Table VI.C–1). However, the RIA also reports the costs and emissions changes associated with the finalized budgets. Further details on the illustrative nature of this analysis can be found in the RIA in the docket for this rule.

For this final rule, the EPA analyzed the costs to the electric power sector and emissions changes using IPM. The IPM is a dynamic linear programming model that can be used to examine the economic impacts of air pollution control policies throughout the contiguous United States for the entire power system. Documentation for IPM can be found in the docket for this rulemaking or at *www.epa.gov/powersectormodeling.*

Table VIII.1 provides the projected 2017 EGU emissions reductions for the evaluated regulatory control alternatives.

TABLE VIII.1—PROJECTED 2017 EMISSIONS REDUCTIONS OF NO_X AND CO_2 WITH THE FINAL NO_X EMISSION BUDGETS AND MORE OR LESS STRINGENT ALTERNATIVES

[Tons] [1] [2]

	Final rule	More stringent alternative	Less stringent alternative
NO_X (annual)	−75,000	−79,000	−27,000
NO_X (ozone season)	−61,000	−66,000	−27,000
CO_2 (annual)	−1,600,000	−2,000,000	−1,300,000

[1] NO_X emissions are reported in English (short) tons; CO_2 is reported in metric tons.
[2] All estimates are rounded to two significant figures.

The EPA estimates the costs associated with compliance with the illustrative regulatory control alternative for the final CSAPR Update to be approximately $68 million annually. These costs represent the private compliance cost of reducing NO_X emissions to comply with the final rule and does not include monitoring, recordkeeping, and reporting costs. Table VIII.2 provides the estimated costs for the evaluated regulatory control scenarios, including the final rule and more and less stringent alternatives. Estimates are in 2011 dollars.

TABLE VIII.2—COST ESTIMATES FOR COMPLIANCE WITH THE FINAL RULE NO_X EMISSION BUDGETS AND MORE AND LESS STRINGENT ALTERNATIVES

[2011$] [1] [2]

	Final rule	More stringent alternative	Less stringent alternative
Costs	68,000,000	82,000,000	8,000,000

[1] Costs are annualized over the period 2017 through 2020 using the 4.77 discount rate used in IPM's objective function of minimizing the net present value of the stream of total costs of electricity generation. These costs do not include monitoring, recordkeeping, and reporting costs, which are reported separately. See Chapter 4 of the RIA for this final rule for details and explanation.
[2] All estimates are rounded to two significant figures.

In this analysis, the EPA monetized the estimated benefits associated with reducing population exposure to ozone and $PM_{2.5}$ from reductions in NO_X emissions and co-benefits of decreased emissions of CO_2, but was unable to

quantify or monetize the potential co-benefits associated with reducing exposure to NO_2 as well as ecosystem effects and reduced visibility impairment from reducing NO_X emissions. Among the benefits it could quantify, the EPA estimated combinations of health benefits at discount rates of 3 percent and 7 percent (as recommended by the EPA's *Guidelines for Preparing Economic Analyses* [U.S. EPA, 2014] and OMB's *Circular A–4* [OMB, 2003]) and climate co-benefits of CO_2 reductions at discount rates of 5 percent, 3 percent, 2.5 percent, and 3 percent (95th percentile) (as recommended by the interagency working group). The EPA estimates the monetized ozone-related benefits [189] of the final rule to be $370 million to $610 million (2011$) in 2017 and the $PM_{2.5}$-related co-benefits [190] of the final rule to be $93 million to $210 million (2011$) using a 3 percent discount rate and $83 million to $190 million (2011$) using a 7 percent discount rate. Further, the EPA estimates CO_2-related co-benefits of $54 to $87 million (2011$). Additional details on this analysis are provided in the RIA for this final rule. Tables VIII.3 and VIII.5 summarize the quantified monetized human health and climate benefits of the rule and the more and less stringent control alternatives. Table VIII.4 summarizes the estimated avoided ozone- and $PM_{2.5}$-related health incidences for the final rule and the more and less stringent control alternatives.

TABLE VIII.3—ESTIMATED HEALTH BENEFITS OF PROJECTED 2017 EMISSIONS REDUCTIONS FOR THE FINAL RULE, AND MORE OR LESS STRINGENT ALTERNATIVES

[Millions of 2011$] [1] [2]

	Final rule	More stringent alternative	Less stringent alternative
NO_X (as ozone)	$370 to $610	$400 to $650	$160 to $270
NO_X (as $PM_{2.5}$)	$93 to $210	$98 to $220	$34 to $75
3% Discount Rate	$83 to $190	$88 to $200	$30 to $67
7% Discount Rate			
Total:			
3% Discount Rate	$460 to $810	$500 to $870	$200 to $340
7% Discount Rate	$450 to $790	$490 to $850	$190 to $330

[1] The health benefits range is based on adult mortality functions (*e.g.,* from Krewski et al. (2009) with Smith et al. (2009) to Lepeule et al. (2012) with Zanobetti and Schwartz (2008)).
[2] All estimates are rounded to two significant figures.

TABLE VIII.4—SUMMARY OF ESTIMATED AVOIDED OZONE-RELATED AND $PM_{2.5}$-RELATED HEALTH INCIDENCES FROM PROJECTED 2017 EMISSIONS REDUCTIONS FOR THE FINAL RULE AND MORE OR LESS STRINGENT ALTERNATIVES [1]

	Final rule	More stringent alternative	Less stringent alternative
Ozone-Related Health Effects			
Avoided Premature Mortality:			
Smith *et al.* (2009) (all ages)	21	23	9
Zanobetti and Schwartz (2008) (all ages)	60	65	26
Avoided Morbidity:			
Hospital admissions—respiratory causes (ages >65)	59	64	26
Emergency room visits for asthma (all ages)	240	250	100
Asthma exacerbation (ages 6–18)	67,000	73,000	30,000
Minor restricted-activity days (ages 18–65)	170,000	180,000	75,000
School loss days (ages 5–17)	56,000	60,000	25,000
$PM_{2.5}$-Related Health Effects			
Avoided Premature Mortality:			
Krewski *et al.* (2009) (adult)	10	11	3.7
Lepeule *et al.* (2012) (adult)	23	25	8.4
Woodruff *et al.* (1997) (infant)	<1	<1	<1
Avoided Morbidity:			
Emergency department visits for asthma (all ages)	6.1	6.5	2.2
Acute bronchitis (age 8–12)	15	15	5.2
Lower respiratory symptoms (age 7–14)	180	190	67
Upper respiratory symptoms (asthmatics age 9–11)	260	280	95
Minor restricted-activity days (age 18–65)	7,500	7,900	2,700
Lost work days (age 18–65)	1,300	1,300	450
Asthma exacerbation (age 6–18)	270	290	98
Hospital admissions—respiratory (all ages)	2.8	2.9	1.0
Hospital admissions—cardiovascular (age >18)	3.8	4.0	1.4
Non-Fatal Heart Attacks (age >18)	.....	.....	.....

[189] The ozone-related health benefits range is based on applying different adult mortality functions (*i.e.,* Smith et al. (2009) and Zanobetti and Schwartz (2008)).

[190] The $PM_{2.5}$-related health co-benefits range is based on applying different adult mortality functions (*i.e.,* Krewski et al. (2009) and Lepeule et al. (2012)).

TABLE VIII.4—SUMMARY OF ESTIMATED AVOIDED OZONE-RELATED AND $PM_{2.5}$-RELATED HEALTH INCIDENCES FROM PROJECTED 2017 EMISSIONS REDUCTIONS FOR THE FINAL RULE AND MORE OR LESS STRINGENT ALTERNATIVES [1]—Continued

	Final rule	More stringent alternative	Less stringent alternative
Peters *et al.* (2001)	12	13	4.3
Pooled estimate of 4 studies	1.3	1.4	0.46

[1] All estimates are rounded to whole numbers with two significant figures.

TABLE VIII.5—ESTIMATED GLOBAL CLIMATE CO-BENEFITS OF CO_2 REDUCTIONS FOR THE FINAL RULE AND MORE OR LESS STRINGENT ALTERNATIVES

[Millions of 2011$] [1]

Discount rate and statistic	Final rule	More stringent alternative	Less stringent alternative
5% (average)	$19	$25	$15
3% (average)	66	87	54
2.5% (average)	100	130	81
3% (95th percentile)	190	250	150

[1] The social cost of carbon (SC–CO_2) values are dollar-year and emissions-year specific. SC–CO_2 values represent only a partial accounting of climate impacts.

The EPA combined this information to perform a benefit-cost analysis for this final rule (shown in table VIII.6 and for the more and less stringent alternatives—shown in the RIA in the docket for this rule).

TABLE VIII.6—TOTAL COSTS, TOTAL MONETIZED BENEFITS, AND NET BENEFITS OF THE FINAL RULE IN 2017 FOR U.S.

[Millions of 2011$] [1]

Climate Co-Benefits	$66
Air Quality Health Benefits	$460 to $810 [2] and $450 to $790 [3]
Total Benefits	$530 to $880 [2] and $520 to $860 [3]
Annualized Compliance Costs	$68 [4]
Net Benefits	$460 to $810 [2] and $450 to $790 [3]
Non-Monetized Benefits	Non-monetized climate benefits. Reductions in exposure to ambient NO_2. Ecosystem benefits and visibility improvement assoc. with reductions in emissions of NO_X.

[1] All estimates are rounded to two significant figures.
[2] 3% discount rate.
[3] 7% discount rate.
[4] These costs do not include monitoring, recordkeeping, and reporting costs, which are reported separately. See Chapter 4 of the RIA for this final rule for details and explanation.

There are additional important benefits that the EPA could not monetize. Due to current data and modeling limitations, the EPA's estimates of the co-benefits from reducing CO_2 emissions do not include important impacts like ocean acidification or potential tipping points in natural or managed ecosystems. Unquantified benefits also include the potential co-benefits from reducing direct exposure to NO_X as well as from reducing ecosystem effects and visibility impairment by reducing NO_X emissions. Based upon the foregoing discussion, it remains clear that the benefits of this final action are substantial, and far exceed the costs. Additional details on benefits, costs, and net benefits estimates are provided in the RIA for this rule.

The EPA provides a qualitative assessment of economic impacts associated with electricity price changes to consumers that may result from this final rule. This assessment can be found in the RIA for this rule in the docket.

Executive Order 13563 directs federal agencies to consider the effect of regulations on job creation and employment. According to the Executive Order, ''our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science'' (Executive Order 13563, 2011). Although benefit-cost analyses that are consistent with standard economic theory have not typically included a separate analysis of regulation-induced employment impacts, regulatory impact analyses prepared by the EPA do include analysis of employment impacts. Employment impacts are of particular concern and questions may arise about their existence and magnitude.

States have the responsibility and flexibility to implement policies and practices as part of developing SIPs for compliance with the emission budgets found in this final rule. Given the wide range of approaches that may be used and industries that could be affected, quantifying the associated employment impacts is difficult. The EPA provides an analysis of employment impacts for the final rule in the RIA. The employment analysis includes quantitative estimation of employment changes related to installation and operation of new pollution control equipment, ongoing expenditures on

pollution control, changes in electricity generation and fuel use, and qualitative discussion of employment trends both for the electric power sector and in related fuel markets for the illustrative CSAPR update alternative.

IX. Summary of Changes to the Regulatory Text for the CSAPR FIPs and CSAPR Trading Programs

This section describes amendments to the regulatory text in the CFR for the CSAPR FIPs and the CSAPR NO_X ozone season trading program related to the findings and remedy discussed throughout this preamble. This section also describes other minor corrections to the existing CFR text for the CSAPR FIPs and the CSAPR trading programs more generally.

As a preliminary matter, it is worth noting that two of the changes made from the proposal to the final rule after consideration of comments dramatically simplify the final regulatory text as compared to the proposed amendments. First, because the final rule does not allow post-2016 allowances issued to sources in Georgia to be used for compliance by sources in other states, the final regulatory text establishes a new, separate CSAPR NO_X Ozone Season Group 2 Trading Program in a new subpart EEEEE of part 97 for sources subject to this rule instead of including those sources in the existing trading program in subpart BBBBB of part 97 (which is renamed the CSAPR NO_X Ozone Season Group 1 Trading Program and will now apply only to sources in Georgia). Second, the final text addresses the use of banked 2015 and 2016 allowances to meet compliance obligations under this rule by providing for a one-time conversion of Group 1 allowances to Group 2 allowances instead of creating an ongoing process of ''tonnage equivalent'' determinations. These two simplifying changes largely eliminate the need for substantive amendments to the existing Group 1 trading program regulations other than to address the one-time conversion of the banked allowances, as discussed in section IX.B of this preamble. Although the changes do result in the creation of new subpart EEEEE of part 97, the provisions of the new subpart parallel the existing subpart BBBBB provisions with only a small number of exceptions.

A. Amendments to the CSAPR FIPs in Part 52

The CSAPR FIPs related to ozone season NO_X emissions are set forth in § 52.38(b) as well as CFR sections specific to each covered state. The principal amendments to those FIPs made by this rule appear in § 52.38(b)(1) and (2) as well as the state-specific CFR sections. The amendments to § 52.38(b)(1) expand the overall set of CSAPR trading programs addressing ozone season NO_X emissions to include the new Group 2 trading program in subpart EEEEE of part 97 in addition to the current Group 1 trading program in subpart BBBBB of part 97. The amendments to § 52.38(b)(2) identify the states whose sources are required under the FIPs to participate in each of the respective trading programs with regard to their emissions occurring in particular years. More specifically, § 52.38(b)(2)(ii) ends the requirement to participate in the Group 1 program after the 2016 control period for sources in all states whose sources currently participate in that program except Georgia, and § 52.38(b)(2)(iii) establishes the requirement for the 22 states covered by this rule to participate in the Group 2 program starting with the 2017 control period. These changes in requirements are replicated, as applicable, in the state-specific CFR sections for the respective states.[191]

The options for states covered by this rule to modify or replace the FIPs implementing the emission reduction requirements under this rule are finalized substantially as proposed, but generally as new options to modify or replace subpart EEEEE requirements instead of as changes to the existing options to modify or replace subpart BBBBB requirements. Thus, new § 52.38(b)(7), (8), and (9) establish options to replace allowance allocations for the 2018 control period, to adopt an abbreviated SIP revision for control periods in 2019 or later years, and to adopt a full SIP revision for control periods in later years, respectively. These options generally replicate the analogous options in § 52.38(b) (3), (4) and (5) with regard to the subpart BBBBB program. To make use of the 2018 option, a state must notify the EPA by December 27, 2016 of its intent to submit to the EPA by April 1, 2017 a state-approved spreadsheet with allowance allocations to existing units. The submission deadline for an abbreviated or full SIP affecting 2019 or 2020 allocations is December 1, 2017. The revised FIPs also clarify that in cases where a FIP represents a partial rather than full remedy for the state's obligation to address interstate air pollution, an approved SIP revision replacing that FIP would also be a partial rather than full remedy for that obligation, unless provided otherwise in the EPA's approval. (As discussed in section VI of this preamble, for all covered states except Tennessee, the emission reduction requirements established in this rule represent partial rather than full remedies to the respective states' interstate transport obligations with regard to the 2008 ozone NAAQS.)

The abbreviated and full SIP options under the Group 2 program do have one important difference from the similar options under the Group 1 program, namely that § 52.38(b)(8)(ii) and (9)(ii) include an option for a state to expand applicability to include non-EGUs in the state that were previously subject to the NO_X Budget Trading Program. As discussed in section VII.F of this preamble, in conjunction with such an expansion, the state may also issue an additional amount of allowances. New § 52.38(b)(10)(ii) clarifies that a SIP revision requiring a state's sources—EGUs or non-EGUs—to participate in the Group 2 trading program would satisfy the state's obligations to adopt control measures for such sources under the NO_X SIP Call.

The option discussed in section VII.C.1 of this preamble for Georgia to replace the FIP requiring its sources to participate in the Group 1 program with a SIP revision requiring its sources to participate in the Group 2 program is set forth in § 52.38(b)(6). This option is generally similar to the full SIP option under § 52.38(b)(9) for states whose sources are already subject to the Group 2 program under a FIP. The provisions would allow Georgia to elect (subject to EPA approval) to allocate Group 2 allowances for future control periods under the SIP revision (even if the EPA had already commenced allocations of Group 1 allowances to Georgia sources for those control periods) instead of having the EPA convert the Group 1 allowances already allocated for future years into Group 2 allowances under § 97.526(c)(2), as described later on. Approval by the EPA of a Georgia SIP revision of this nature would also result in the conversion of all remaining Group 1 allowances banked from earlier control periods into Group 2 allowances under § 97.526(c)(3), as also described later on.

New § 52.38(b)(11)(ii) preserves the EPA's authority to carry out conversions of Group 1 allowances to Group 2

[191] *See* §§ 52.54(b) (Alabama), 52.184 (Arkansas), 52.540 (Florida), 52.731(b) (Illinois), 52.789(b) (Indiana), 52.840(b) (Iowa), 52.882(b) (Kansas), 52.940(b) (Kentucky, 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52,1284 (Mississippi), 52.1326(b) (Missouri), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1784(b) (North Carolina), 52.1882(b) (Ohio), 52.1930 (Oklahoma), 52.2040(b) (Pennsylvania), 52.2140(b) (South Carolina), 52.2240(e) (Tennessee), 52.2283(d) (Texas), 52.2440(b) (Virginia), 52.2540(b) (West Virginia), and 52.2587(e) (Wisconsin).

allowances in all compliance accounts (as well as all general accounts) following any SIP revision that would otherwise lead to automatic withdrawal of a CSAPR FIP with regard to particular sources.

Finally, new § 52.38(b)(12) and (13), respectively, contain updatable lists of states with approved SIP revisions to modify or replace the CSAPR FIPs requiring participation in either the Group 1 program or the Group 2 program. Similar updatable lists for states with SIPs related to the NO_X Annual, SO_2 Group 1, and SO_2 Group 2 programs are added at new §§ 52.38(a)(8) and 52.39(l) and (m), respectively. With the addition of these updatable lists, all previously approved and future CSAPR SIP revisions will be acknowledged in centralized CFR locations and will no longer be acknowledged through amendments to the individual states' FIPs.[192]

B. Amendments to the Group 1 Trading Program Provisions in Subpart BBBBB of Part 97

As noted previously, the EPA's determinations regarding the separation of Georgia allowances and the one-time conversion of banked allowances dramatically simplify the amendments in the final rule compared to the proposed amendments. Most significantly, in place of the proposed amendments designed to implement the concept of ''tonnage equivalents,'' which would have affected multiple sections of the Group 1 regulations throughout subpart BBBBB, the final regulatory text implements the one-time conversion of banked Group 1 allowances to Group 2 allowances through amendments limited to the Group 1 trading program banking provisions in § 97.526. Specifically, new § 97.526(c)(1) sets forth the schedule and mechanics for a default one-time conversion of most Group 1 allowances that remain banked following the completion of deductions for compliance for the 2016 control period. The conversion will be applied to banked Group 1 allowances held in any general account and in any compliance account except a compliance account for a source located in Georgia. The owner or operator of a Georgia source can retain banked Group 1 allowances for future use in the Group 1 program simply by keeping the allowances in the source's compliance account as of the conversion date or, alternatively, can elect to have banked allowances converted to Group 2 allowances simply by transferring the allowances from the source's compliance account to a general account prior to the conversion date. The conversion factor is determined based on the ratio of the total number of banked Group 1 allowances being converted to 1.5 times the sum of the variability limits for all states covered by the Group 2 program.

Two additional conversion provisions in § 97.526(c)(2) and (3) apply only if Georgia submits and the EPA approves a SIP revision requiring sources in Georgia to participate in the Group 2 program. In that case, under § 97.526(c)(2) the EPA would replace the allocations of Group 1 allowances to Georgia sources already recorded for future control periods with allocations of Group 2 allowances, using a conversion factor determined based on the ratio of Georgia's emissions budget under the Group 1 program to its emissions budget under the Group 2 program. Under § 97.526(c)(3) the EPA would convert any remaining banked Group 1 allowances from prior control periods using a conversion factor based on the ratio of the total number of Group 1 allowances being converted to 1.5 times Georgia's variability limit under the Group 2 program. Allowances would be converted under these provisions regardless of the accounts in which they were held.

Additional provisions of § 97.526(c) address special circumstances. Under § 97.526(c)(4), if Group 1 allowances are removed for conversion from the compliance account for a source located in Florida, North Carolina, or South Carolina, the owner or operator can identify to the EPA a different account to receive the Group 2 allowances. This provision is necessary because sources in these states will not be participating in the Group 2 program, and Group 2 allowances cannot be recorded in any compliance account other than a compliance account for a source with a unit affected under the Group 2 program.

Under § 97.526(c)(5), the EPA may group multiple general accounts under common ownership for purposes of performing conversion computations. Because allowances are only recorded as whole allowances, allowance conversion computations will necessarily be rounded to whole allowances. The purpose of the grouping provision is to ensure that, given rounding, the total quantities of Group 2 allowances issued are not unduly affected by how the Group 1 allowances are distributed across multiple general accounts under common ownership, with potentially adverse consequences to achievement of the emission reductions required under the rule.

There is a possibility under the Group 1 program that some new Group 1 allowances could be issued after the conversions to Group 2 allowances have already taken place. Under § 97.526(c)(6), the EPA may convert these allowances to Group 2 allowances as if they had been issued and recorded before the general conversions.

Owners and operators of non-Georgia sources generally will not be able to retain banked Group 1 allowances (except to the extent that they also own or operate sources in Georgia and choose to hold Group 1 allowances in the compliance accounts for those sources). However, new § 97.526(c)(7) authorizes the use of Group 2 allowances to satisfy obligations to hold Group 1 allowances that might arise after the conversion date, such as an obligation to hold additional allowances because of excess emissions or for compliance with the assurance provisions. When held for this purpose, a single Group 2 allowance may satisfy the obligation to hold more than one Group 1 allowance, as though the conversion were reversed.

Beyond the conversion provisions, additional amendments to the Group 1 program align certain deadlines under the Group 1 program with the comparable deadlines under the new Group 2 program and the CSAPR annual programs. Although these changes were not addressed in the proposal, the EPA expects them to be noncontroversial because they impose no additional burdens and are designed to simplify program compliance and administration, thereby tending to reduce costs for both regulated parties and the EPA. Specifically, the date as of which allowances equal to emissions in the preceding control period must be held in a source's compliance account under the Group 1 program is being amended from December 1 of the year of the control period to March 1 of the following year. This change is accomplished through an amendment to the definition of ''allowance transfer deadline'' in § 97.502. In addition, the deadlines for providing notices regarding the units that are eligible for

[192] As part of several 2015 actions approving SIP revisions to modify allocations of allowances for the 2016 control period to sources in Alabama, Kansas, Missouri, and Nebraska, the EPA added language acknowledging the approved SIP revisions to the state-specific CFR sections describing the CSAPR FIPs for these states. This rule removes those previous additions to the state-specific CFR sections. *See* §§ 52.54 and 52.55 (Alabama), 52.882 (Kansas), 52.1326 (Missouri), and 52.1428 and 52.1429 (Nebraska). The removed acknowledgements are replaced by similar acknowledgements in new §§ 52.38(a)(8)(i) and (b)(12)(i) and 52.39(m)(1), and the SIP revisions remain effective notwithstanding the removal of the previous acknowledgements.

second-round allocations of NUSA allowances and for allocating and recording those allowances are being amended from September 15 and November 15 of the year of the control period to December 15 of the year of the control period and February 15 of the following year, respectively. These changes are accomplished through amendments to §§ 97.511(b)(1)(iii) and (iv) and (2)(iii) and (iv), 97.512(a)(9)(i) and (b)(9)(i), and 97.521(i).

The final substantive revision to the Group 1 trading program in the final regulatory text is in § 97.521(c), where the deadline for the EPA to record Group 1 allowances for the control periods in 2017 and 2018 is amended to January 9, 2017, as discussed in section VII.E.7 of this preamble.

Additional proposed amendments to the Group 1 trading program regulations establishing new amounts for budgets, new unit set-asides, Indian country new unit set-asides, and variability limits and new deadlines for compliance, allowance recordation, monitor certification, and reporting are not being finalized because they concern budgets and sources under the new Group 2 trading program instead of the Group 1 trading program. The substance of the proposed amendments to deadlines is reflected in the new Group 2 trading program regulations in various subsections of new subpart EEEEE. Similarly, the amounts of the budgets, new unit set-asides, Indian country new unit set-asides, and variability limits as finalized in this rule are reflected in § 97.810 of the new Group 2 trading program regulations.

C. Group 2 Trading Program Provisions in Subpart EEEEE of Part 97

The Group 2 trading program regulations in new subpart EEEEE of part 97 generally parallel the existing Group 1 trading program regulations in subpart BBBBB of part 97 but reflect the amounts of the budgets, new unit set-asides, Indian country new unit set-asides, and variability limits established in this rule, all of which are set forth in § 97.810. That same section sets forth the amounts of a Group 2 budget, new unit set-aside, and variability limit which Georgia could adopt in a SIP revision that would be approvable under new § 52.38(b)(6).

Under § 97.806(c)(3)(i), the obligation to hold one Group 2 allowance for each ton of emissions during the control period begins with the 2017 control period, two years later than the analogous start date for the Group 1 program. The deadlines for certifying monitoring systems under § 97.830(b) and for beginning quarterly reporting under § 97.834(d)(1) are similarly two years later than the analogous Group 1 program deadlines. However, the start date for the assurance provisions for the Group 2 program under § 97.806(c)(3)(ii) is May 1, 2017. The allowance recordation deadlines under § 97.821 begin generally two years later than the comparable recordation deadlines under the Group 1 program but reach the same schedule by July 1, 2020, which is the deadline for recordation of allowances for the control period in 2024 under both programs.

Additional differences in the Group 2 program regulations relative to the Group 1 program regulations concern the use of converted Group 1 allowances. In general, the Group 2 regulations allow a Group 2 allowance that was allocated to any account as a replacement for removed Group 1 allowances to be used for all of the purposes for which any other Group 2 allowance may be used. This is accomplished by adding references to § 97.526(c)—the section under which the conversions are carried out—to the definitions of ''allocate'' and ''CSAPR NO_X Ozone Season Group 2 allowance'' in § 97.802 as well as the default order for deducting allowances for compliance purposes under § 97.824(c)(2).

Any Group 2 allowances allocated based on conversion of Group 1 allowances allocated for future years—specifically, the Group 2 allowances that could be allocated under § 97.526(c)(2) if the EPA approved a SIP revision from Georgia requiring Georgia sources to participate in the Group 2 program—would also be treated like any other Group 2 allowance for purposes of determining shares of responsibility for exceedances under the assurance provisions. New paragraph (2)(ii) of the definition of ''common designated representative's share'' in § 97.802 establishes this equivalence. However, allocations of Group 2 allowances converted from banked Group 1 allowances must be excluded for purposes of determining such shares of responsibility because such converted allowances do not represent allowances allocated from the current control period's emissions budgets. This exclusion is addressed in new paragraph (2)(i) of the definition of ''common designated representative's share'' in § 97.802.

Consistent with the proposal, the EPA has determined that, in order to facilitate NO_X SIP Call compliance, a state should be allowed to expand applicability of the Group 2 program to include any sources that previously participated in the NO_X Budget Trading Program, and that the state should be able to issue an amount of allowances beyond the CSAPR Update state budget if applicability is expanded. The EPA has further determined, again consistent with the proposal, that the assurance provisions should continue to apply only to emissions from the sources subject to the Group 2 program before any such expansion. Accordingly, the Group 2 program rules reflect certain revisions to the assurance provisions so as to exclude any additional units and allowances brought into the program through such a SIP revision.

In order to exclude the additional units, new definitions of ''base CSAPR NO_X Ozone Season Group 2 unit'' and ''base CSAPR NO_X Ozone Season Group 2 source'' are added in § 97.802 which exclude units that would not have been included in the program under § 97.804. All provisions related to the assurance provisions are amended to reference only such ''base'' units and sources. The amended provisions are §§ 97.802 (the definitions of ''assurance account'', ''common designated representative'', and ''common designated representative's share''), 97.806(c)(2) and (3)(ii), and 97.825.[193] The exclusion of the additional allowances from the determination of shares of responsibility for exceedances of the assurance provisions is accomplished through an amendment to paragraph (2) of the definition of ''common designated representative's share'' in § 97.802.

Finally, amendments to §§ 97.816, 97.818, and 97.820(c)(1) and (5) reduce the administrative compliance burden for sources in the transition from the Group 1 program to the Group 2 program by providing that certain one-time or periodic submissions made for purposes of compliance with the Group 1 program will be considered valid for purposes of the Group 2 program as well. The submissions treated in this manner are a certificate of representation or notice of delegation submitted by a designated representative and an application for a general account or notice of delegation submitted by an authorized account representative.

C. Administrative Appeal Procedures in Part 78

The final rule amends the administrative appeal provisions in part 78 in order to make the procedures of

[193] In the provisions in § 52.38(b)(9)(vii) concerning full CSAPR SIP revisions, the new definitions of ''base'' units and sources also have been included in the lists of trading program provisions that may be removed from a state's SIP revision and added to a FIP if and when a unit is located in Indian country within the state's borders.

that part applicable to determinations of the EPA Administrator under the new Group 2 program in subpart EEEEE of part 97 in the same manner as the procedures are applicable to similar determinations under the other CSAPR trading programs and previous EPA trading programs. These amendments concern the list in § 78.1(a)(1) of CFR sections (and analogous SIP revisions) generally giving rise to determinations subject to the part 78 procedures; the list in § 78.1(b) of certain determinations that are expressly subject to those procedures; the list in § 78.3(a) of the types of persons who may seek review under the procedures; the list in § 78.3(c) of the required contents of petitions for review; the list in § 78.3(d) of matters for which a right of review is not provided; and the requirements in § 78.4(a)(1) as to who must sign a filing.

In addition, consistent with the proposal, under new § 78.1(b)(14)(viii), determinations of the EPA Administrator under § 97.526(c) regarding the removal of Group 1 allowances from accounts and the allocation in their place of Group 2 allowances are added to the list of determinations expressly subject to the part 78 procedures.

D. Nomenclature Changes

The EPA is finalizing the proposal to change the nomenclature in the CFR from ''Transport Rule'' to ''Cross-State Air Pollution Rule'' and from ''TR'' to ''CSAPR''. The change affects subparts AAAAA, BBBBB, CCCCC, and DDDDD of part 97, part 78, and all the CSAPR FIP sections in part 52 of 40 CFR.

In order to minimize administrative burden associated with the nomenclature changes, the regulations for all of the CSAPR trading programs (including the new subpart EEEEE) include provisions allowing continued use of the acronym ''TR'' instead of the acronym ''CSAPR'' in SIP revisions and in submissions by regulated parties. Language for this purpose has been included in §§ 97.502 (introductory text), 97.516, and 97.520(c)(1) and (2).[194]

[194] For brevity, in this section and the following section only the citations to subpart BBBBB are listed. Unless otherwise indicated, the citations should also be understood as representing the analogous provisions in subparts AAAAA, CCCCC, DDDDD, and potentially EEEEE which would have the same section numbers as the citations shown but with ''4'', ''6'', ''7'', or ''8'' respectively, substituted for the initial ''5'' in the section number (*e.g.,* a reference to § 97.502 is intended to also refer to §§ 97.402, 97.602, 97.702, and 97.802).

E. Technical Corrections and Clarifications

The final rule also finalizes technical corrections and clarifications throughout the sections of parts 52, 78, and 97 implementing CSAPR, including the sections implementing CSAPR's other three emissions trading programs. The EPA received no adverse comments on any of the technical corrections that were discussed in the proposal. The final rule contains some additional technical corrections that the EPA considers similarly noncontroversial.

The most common category of these minor changes consists of corrections to cross-references that as originally published indicated incorrect locations because of typographical errors or indicated correct locations but did not use the correct CFR format. In virtually all cases, the intended correct cross-reference can be determined from context, but the corrections clarify the regulations. Besides the corrections to cross-references, most of the remaining corrections address typographical errors.

A small number of the CFR changes correct errors that are not cross-references or obviously typographical errors. While the EPA views these corrections as noncontroversial, and no adverse comments were received regarding the corrections described in the proposal, they merit a short explanation.

The phrase ''with regard to the State'' or ''the State and'' has been added in a number of locations in §§ 52.38 and 52.39 where it was inadvertently omitted. The added phrase clarifies that when the EPA approves a state's SIP revision as modifying or replacing provisions in a CSAPR trading program, the modification or replacement is effective only with regard to that particular state. Correcting the omissions of these phrases makes the language concerning SIP revisions consistent for all the types of SIP revisions under all the CSAPR trading programs.

The phrase ''in part'' has been removed from the existing FIP language in various sections of part 52 for certain states with Indian country to clarify that in order to replace a CSAPR FIP affecting the sources in these states, a SIP revision must fully, not ''in part,'' correct the SIP deficiency identified by the EPA as the basis for the FIP. The intended purpose of the words ''in part''—specifically, to indicate that approval of a state's SIP revision would apply only to sources in the state and would not relieve any sources in Indian country within the borders of the state from obligations under the FIP—is already served by other language in those FIPs, and is further clarified by addition of the phrase ''for those sources and units'' (referencing the units in the state). The corrections make the language in these CSAPR FIPs consistent with the FIP language for the remaining CSAPR FIPs that address states with Indian country. Analogous changes to the general CSAPR FIP language in §§ 52.38(a)(5) and (6) and (b)(5) and (6) and 52.39(f), (i), and (j) have removed the phrase ''in whole or in part'' (referencing states without Indian country and states with Indian country, respectively) while adding language distinguishing the effect that the EPA's approval of a SIP revision has on sources in the state from the lack of effect on any sources in Indian country within the borders of the state.

Language has been added to § 78.1 clarifying that determinations by the EPA Administrator under the CSAPR trading programs that are subject to the part 78 administrative appeal procedures are subject to those procedures whether the source in question participates in a CSAPR federal trading program under a FIP or a CSAPR state trading program under an approved SIP revision. This approach is consistent with the approach taken under CAIR FIPs and SIPs and with the EPA's intent in CSAPR, as evidenced by the lack of any proposal or discussion in the CSAPR rulemaking regarding deviation from the historical approach taken under CAIR. This approach is also consistent with provisions in §§ 52.38 and 52.39 prohibiting approvable SIP revisions from altering certain provisions of the CSAPR trading programs, including the provisions specifying that administrative appeal procedures for determinations of the EPA Administrator under the trading programs are set forth in part 78.

The phrase ''steam turbine generator'' has been changed to ''generator'' in the list of required equipment in the definition of a ''cogeneration system'' in § 97.502. Absent this correction, a combustion turbine in a facility that uses the combustion turbine in combination with an electricity generator and heat recovery steam generator, but no steam turbine, to produce electricity and useful thermal energy would not meet the definition of a ''cogeneration unit.'' The correction clarifies that a combustion turbine in such a facility should be able to qualify as a ''cogeneration unit'' (assuming it meets other relevant criteria) under the CSAPR trading programs, as it could under the CAIR trading programs. The consistency of this approach with the

EPA's intent in the CSAPR rulemaking is evidenced by the lack of any proposal or discussion in that rulemaking regarding the concept of narrowing the set of facilities qualifying for an applicability exemption as cogeneration units. To the contrary, as discussed in the preamble to the CSAPR proposal (75 FR 45307, August 2, 2010), the definition of ''cogeneration system'' was created in CSAPR to potentially broaden the set of facilities qualifying for the exemption, specifically by facilitating qualification as ''cogeneration units'' for certain units that might not meet the required levels of efficiency on an individual basis but that operate as components of multi-unit ''cogeneration systems'' that do meet the required levels of efficiency.

The deadline for recording certain allowance allocations under § 97.521(j) has been changed from ''the date on which'' the EPA receives the necessary allocation information to ''the date 15 days after the date on which'' the EPA receives the information. The EPA's lack of intention in the CSAPR rulemaking to establish the deadline as defined prior to the correction is evidenced by the impracticability of complying with such a deadline.

A change to a description of a required notice under the assurance provisions in § 97.525(b)(2)(iii)(B) has modified the phrase ''any adjustments'' to the phrase ''calculations incorporating any adjustments'' in order to clarify that the required notice will identify not only any adjustments made to previously noticed calculations, but also the complete calculations with (or without) such adjustments. The intended meaning is clear from the subsequent provisions that use this document as the point of reference for the complete calculations used in the succeeding administrative procedures.

The final rule also makes several additional technical corrections and clarifications. One set of corrections addresses the inconsistent treatment in the regulations of allowances initially distributed to sources by means of auction mechanisms instead of zero-cost allocation mechanisms. The original CSAPR regulations gave states the option to distribute allowances by auction under the provisions of an approved SIP revision, and some of the trading program provisions expressly accounted for that possibility. *See, e.g.,* §§ 52.38(b)(4) and (5); 97.502 (definitions of ''common designated representative's share'', ''CSAPR NO_X Ozone Season Group 1 allowance and ''record''), and 97.521. However, other trading program provisions, including some that define the allowances that can be used for compliance, failed to address the possible use of allowances acquired in an auction held pursuant to an approved SIP revision. The technical corrections have addressed this inadvertent omission principally by adding a definition of ''auction'' in § 97.502 and by adding references to auctioned allowances in provisions describing allowances available for use in compliance in §§ 97.506(c)(4)(i) and (ii), 97.524(a)(1) and (d), and 97.525(a). Additional changes recognizing the possible existence of auctioned allowances have been made in § 97.802 (definitions of ''Allowance Management System'' and Allowance Management System account'') and in §§ 97.523(b) and 97.524(c)(2)(i) and (ii).

Technical corrections have been made to the definitions of ''heat input'', ''heat input rate'', ''heat rate'', ''maximum heat input rate'', and ''potential electrical output capacity'' in § 97.502 in order to express the definitions in correct and clearly identified units of measurement. The corrections clarify the regulations and do not change any regulatory requirement for any unit.

In a provision in § 97.506(c)(2)(ii) stating the deadline to hold allowances for purposes of the assurance provisions, the phrase ''after such control period'' has been corrected to say ''after the year of such control period''. The change makes the deadline as described in this section consistent with the deadline as already described correctly in § 97.525(b)(4)(i).

In § 97.520(c)(5)(v), incorrect references to the ''designated representative'' have been replaced with references to the ''authorized account representative''. The EPA's intent to use the term ''authorized account representative'' is clear from the cross-references to other paragraphs of § 97.520(c)(5) where that term, rather than the term ''designated representative'', is used.

In § 97.521, a new paragraph (j) has been added to correct the inadvertent omission of any recordation deadline for second-round allocations of allowances from an Indian country NUSA. The deadlines in the new paragraph are identical to the recordation deadlines for second-round allocations of allowances from a NUSA. The EPA's intent for such deadlines to apply is evident from the provisions of §§ 97.511(b)(2) and 97.512(b) which establish schedules for the determination of allocations of allowances from Indian country NUSAs that are fully synchronized with the schedules for determination of allocations of allowances from other NUSAs.

The provisions concerning full CSAPR SIP revisions in §§ 52.38(a)(5)(iv) and (b)(5)(v) and 52.39(f)(4) and (i)(4) have been amended to include more comprehensive lists of the specific CSAPR trading program provisions that concern administration of Indian country NUSAs and that therefore should not be incorporated by a state into a full CSAPR SIP revision. The language has also been modified to clarify that mere ''references to'' units in Indian country within a state's borders are not impermissible in such SIP revisions, as long as the SIP revisions do not impose any obligations on any units in Indian country and as long as the SIP revisions remain substantively identical to the federal trading program regulations (except as otherwise expressly permitted) notwithstanding any references to units in Indian country.

In the state-specific sections of part 52, the EPA has corrected instances from the original CSAPR rulemaking where language to address sources and units in Indian country within a state's borders was inadvertently omitted from or included in the state-specific FIP language for certain states. Specifically, language addressing sources and units in Indian country has been added to the FIP language concerning annual NO_X and SO_2 emissions for Alabama in §§ 52.54(a)(1) and 52.55(a), respectively, and has been removed from the FIP language concerning annual NO_X and SO_2 emissions for Tennessee in §§ 52.2240(d)(1) and 52.2241(c)(1), respectively. These revisions make the state-specific FIP language consistent with the existing general FIP language in §§ 52.38(a)(2) and 52.39(b) and (c) making CSAPR FIP requirements applicable to any units in Indian country located within the borders of each state listed in those sections

In several provisions in part 78, cross-references that previously referred to part 97 in its entirety have been clarified to refer to only the portions of part 97 related to particular non-CSAPR trading programs, consistent with the intent of the provisions when promulgated. Specifically, general references to part 97 in §§ 78.1(a)(1) and (b)(6) and 78.3(a)(3), (c)(7), and (d) have been replaced by references to either subparts A through J (federal NO_X Budget Trading Program); subparts AA through II, AAA through III, and AAAA through IIII (CAIR); or subparts AAAAA, BBBBB, CCCCC, DDDDD, and EEEEE (CSAPR). In several of these sections the more precise reference lists have been further clarified through reorganization. For the same reason, former appendices A through D to part 97 have been

redesignated as appendices A through D to subpart E of part 97, and the cross-references to those appendices in subpart E of part 97 have been updated.

In § 78.3(a)(10) and (11), the phrase ''and that is appealable under § 78.1(a)'' has been added in order to correct an inadvertent omission and clarify that, like the other paragraphs of § 78.3(a), these paragraphs are subject to the limits set in § 78.1(a). The provisions of § 78.3(a) concern the types of persons who may petition for administrative review, while the provisions of § 78.1 address the subject matter over which administrative review may be sought. The words being added to § 78.3(a)(10) and (11) are present in each of the other parallel provisions in § 78.3(a). The EPA's intent to include the words being added is evident from the fact that, without the added words, these two paragraphs concerning the persons who may petition for administrative review could be misread as expanding the matters for which administrative review may be sought, in conflict with the provisions of § 78.1(a).

X. Statutory and Executive Order Reviews

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

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, which is contained in the ''Regulatory Impact Analysis for the Final Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS'', is available in the docket and is briefly summarized in section VIII of this preamble.

Consistent with Executive Orders 12866 and 13563, the EPA estimated the costs and benefits for three regulatory control alternatives: The final rule EGU NO_X ozone season emission budgets and more and less stringent alternatives. This final action reduces ozone season NO_X emissions from EGUs in 22 eastern states. Actions taken to comply with the EGU NO_X ozone season emission budgets also reduce emissions of other criteria air pollutants, including annual NO_X and associated $PM_{2.5}$ concentrations, and CO_2. The benefits associated with these co-pollutant reductions are referred to as co-benefits, as these reductions are not the primary objective of this rule.

The RIA for this rule analyzed illustrative compliance approaches for implementing the FIPs. This action establishes EGU NO_X ozone season emission budgets for 22 states and implements these budgets via the existing CSAPR NO_X ozone season allowance trading program.

The EPA evaluated the costs, benefits, and impacts of implementing the EGU NO_X ozone season emission budgets developed using uniform control stringency represented by $1,400 per ton. In addition, the EPA also assessed implementation of one more and one less stringent alternative EGU NO_X ozone season emission budgets, developed using uniform control stringency represented by $3,400 per ton and $800 per ton, respectively. The EPA evaluated the impact of implementing these emission budgets to reduce interstate transport for the 2008 ozone NAAQS in 2017. More details for this assessment can be found in the Regulatory Impact Analysis in the docket for this rule.

The EPA notes that its analysis of the regulatory control alternatives (*i.e.,* the final rule and more and less stringent alternatives) is illustrative in nature, in part because the EPA implements the EGU NO_X emission budgets via a regional NO_X ozone season allowance trading program. This implementation approach provides utilities with the flexibility to determine their own compliance path. The EPA's assessment develops and analyzes one possible scenario for implementing the NO_X budgets in this action and one possible scenario for implementing the more and less stringent alternatives. Furthermore, the emission budgets evaluated for the CSAPR Update regulatory control alternative in this benefit and cost analysis are illustrative because they differ somewhat from the budgets finalized in this rule. (The budgets for the more and less stringent alternative also differ somewhat from the budgets represented by $3,400 per ton and $800 per ton reported in Table VI.C–1). However, the RIA also reports the costs and emissions changes associated with the finalized budgets. Further details on the illustrative nature of this analysis can be found in the RIA in the docket for this rule.

The EPA estimates the costs associated with compliance with the illustrative regulatory control alternative to be approximately $68 million (2011$) annually. These costs represent the private compliance cost of reducing NO_X emissions to comply with the final rule.

In this analysis, the EPA monetized the estimated benefits associated with the reduced exposure to ozone and $PM_{2.5}$ and co-benefits of decreased emissions of CO_2, but was unable to quantify or monetize the potential co-benefits associated with reducing exposure to NO_2 as well as ecosystem effects and reduced visibility impairment from reducing NO_X emissions. Specifically, the EPA estimated combinations of health benefits at discount rates of 3 percent and 7 percent (as recommended by the EPA's *Guidelines for Preparing Economic Analyses* [U.S. EPA, 2014] and OMB's *Circular A–4* [OMB, 2003]) and climate co-benefits of CO_2 reductions at discount rates of 5 percent, 3 percent, 2.5 percent, and 3 percent (95th percentile) (as recommended by the interagency working group). The EPA estimates the monetized ozone-related benefits[195] of the final rule to be $370 million to $610 million (2011$) in 2017 and the $PM_{2.5}$-related co-benefits[196] of the rule to be $93 million to $210 million (2011$) using a 3 percent discount rate and $83 million to $190 million (2011$) using a 7 percent discount rate. Further, the EPA estimates CO_2-related co-benefits of $54 to $87 million (2011$). Additional details on this analysis are provided in the RIA for this final rule. Tables X.A–1, X.A–2, and X.A–3 summarize the quantified human health and climate benefits and the costs of the rule and the more and less stringent control alternatives.

[195] The ozone-related health benefits range is based on applying different adult mortality functions (*i.e.,* Smith *et al.* (2009) and Zanobetti and Schwartz (2008)).

[196] The $PM_{2.5}$-related health co-benefits range is based on applying different adult mortality functions (*i.e.,* Krewski *et al.* (2009) and Lepeule *et al.* (2012)).

TABLE X.A–1—ESTIMATED HEALTH BENEFITS OF PROJECTED 2017 EMISSIONS REDUCTIONS FOR THE FINAL RULE AND MORE OR LESS STRINGENT ALTERNATIVES

[Millions of 2011$] [1] [2]

	Final rule	More stringent	Less stringent
NO_X (as ozone)	$370 to $610	$400 to $650	$160 to $270
NO_X (as $PM_{2.5}$):			
3% Discount Rate	$93 to $210	$98 to $220	$34 to $75
7% Discount Rate	$83 to $190	$88 to $200	$30 to $67
Total:			
3% Discount Rate	$460 to $810	$500 to $870	$200 to $340
7% Discount Rate	$450 to $790	$490 to $850	$190 to $330

[1] The health benefits range is based on adult mortality functions (*e.g.,* from Krewski et al. (2009) with Smith *et al.* (2009) to Lepeule *et al.* (2012) with Zanobetti and Schwartz (2008)).
[2] All estimates are rounded to two significant figures.

TABLE X.A–2—ESTIMATED GLOBAL CLIMATE CO-BENEFITS OF CO_2 REDUCTIONS FOR THE FINAL RULE AND MORE OR LESS STRINGENT ALTERNATIVES

[Millions of 2011$] [1]

Discount rate and statistic	Final rule	More stringent	Less stringent
5% (average)	$19	$25	$15
3% (average)	66	87	54
2.5% (average)	100	130	81
3% (95th percentile)	190	250	150

[1] The social cost of carbon ($SC–CO_2$) values are dollar-year and emissions-year specific. $SC–CO_2$ values represent only a partial accounting of climate impacts.

The EPA combined this information to perform a benefit-cost analysis for this action (shown in table VIII.6 and for the more and less stringent alternatives—shown in the RIA in the docket for this rule).

TABLE X.A–3—TOTAL COSTS, TOTAL MONETIZED BENEFITS, AND NET BENEFITS OF THE FINAL RULE IN 2017 FOR U.S.

[Millions of 2011$] [1]

Air Quality Health Benefits	$460 to $810 [2] and $450 to $790.[3]
Total Benefits	$530 to $880 [2] and $520 to $860.[3]
Annualized Costs Compliance Costs	$68 [4]
Net Benefits	$460 to $810 [2] and $450 to $790.[3]
Non-Monetized Benefits	Non-monetized climate benefits. Reductions in exposure to ambient NO_2. Ecosystem benefits and visibility improvement assoc. with reductions in emissions of NO_X.

[1] All estimates are rounded to two significant figures.
[2] 3% discount rate.
[3] 7% discount rate.
[4] These costs do not include monitoring, recordkeeping, and reporting costs, which are reported separately. See Chapter 4 of the RIA for this final rule for details and explanation.

There are additional important benefits that the EPA could not monetize. Due to current data and modeling limitations, the EPA's estimates of the co-benefits from reducing CO_2 emissions do not include important impacts like ocean acidification or potential tipping points in natural or managed ecosystems. Unquantified benefits also include co-benefits from reducing direct exposure to NO_2 as well as from reducing ecosystem effects and visibility impairment from reducing NO_X emissions. Based upon the foregoing discussion, it remains clear that the benefits of this action are substantial, and far exceed the costs. Additional details on benefits, costs, and net benefits estimates are provided in the RIA for this final rule.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2391.05. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information generated by information collection activities under CSAPR is used by the EPA to ensure that affected facilities comply with the emission limits and other requirements. Records and reports are necessary to enable the EPA or states to identify affected facilities that may not be in compliance with the requirements. The recordkeeping requirements require only the specific information needed to determine compliance. These recordkeeping and reporting requirements are established pursuant to CAA sections 110(a)(2)(D) and (c) and 301(a) (42 U.S.C. 7410(a)(2)(D) and (c) and 7601(a)) and are specifically authorized by CAA section 114 (42

U.S.C. 7414). Reported data may also be used for other regulatory and programmatic purposes. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

All of the EGUs that are subject to changed information collection requirements under this rule are already subject to information collection requirements under CSAPR. Most of these EGUs also are already subject to information collection requirements under the Acid Rain Program (ARP) established under Title IV of the 1990 Clean Air Act Amendments. Both CSAPR and the ARP have existing approved ICRs: EPA ICR Number 2391.03/OMB Control Number 2060–0667 (CSAPR) and EPA ICR Number 1633.16/OMB Control Number 2060–0258 (ARP). The burden and costs of the information collection requirements covered under the CSAPR ICR are estimated as incremental to the information collection requirements covered under the ARP ICR. Most of the information used to estimate burden and costs in this ICR was developed for the existing CSAPR and ARP ICRs.

This rule changes the universe of sources subject to certain information collection requirements under CSAPR but does not change the substance of any CSAPR information collection requirements. The burden and costs associated with the changes in the reporting universe are estimated as reductions from the burden and costs under the existing CSAPR ICR. (This rule does not change any source's information collection requirements with respect to the ARP.) The EPA intends to incorporate the burden and costs associated with the changes in the reporting universe under this rulemaking into the next renewal of the CSAPR ICR.

Respondents/affected entities: Entities potentially affected by this action are EGUs in the states of Florida, Kansas, North Carolina, and South Carolina that meet the applicability criteria for the CSAPR NO_X ozone season Group 1 and Group 2 trading programs in 40 CFR 97.504 and 97.804.

Respondent's obligation to respond: Mandatory (sections 110(a), 110(c), and 301(a) of the Clean Air Act).

Estimated number of respondents: 138 sources in Florida, Kansas, North Carolina, and South Carolina with one or more EGUs.

Frequency of response: Quarterly, occasionally.

Total estimated burden: Reduction of 12,879 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Reduction of $1,347,291 (per year), includes reduction of $409,786 operation and maintenance costs.

The burden and cost estimates above reflect the reduction in burden and cost for Florida sources with EGUs that would no longer be required to report NO_X mass emissions and heat input data for the ozone season to the EPA under the rule and that are not subject to similar information collection requirements under the Acid Rain Program. Because these EGUs would no longer need to collect NO_X emissions or heat input data under 40 CFR part 75, the estimates above also reflect the reduction in burden and cost to collect and quality assure these data and to maintain the associated monitoring equipment.

The EPA estimates that the rule causes no change in information collection burden or cost for EGUs in Kansas that would be required to report NO_X mass emissions and heat input data for the ozone season to the EPA or for EGUs in North Carolina or South Carolina that would no longer be required to report NO_X emissions and heat input data for the ozone season to the EPA. The EGUs in Kansas, North Carolina, and South Carolina already are and would remain subject to requirements to report NO_X mass emissions and heat input data for the entire year to the EPA under the CSAPR NO_X Annual Trading Program, and the requirements related to ozone season reporting are a subset of the requirements related to annual reporting. Similarly, the EPA estimates that the rule causes no change in information collection burden or cost for EGUs in Florida that are subject to the Acid Rain Program because of the close similarity between the information collection requirements under CSAPR and under the Acid Rain Program. The EPA also estimates that the rule causes no change in information collection burden or cost for EGUs in the states have been covered by the current CSAPR NO_X Ozone Season Group 1 Trading Program and starting in 2017 will be covered by the new CSAPR NO_X Ozone Season Group 2 Trading Program because the information collection requirements applicable to an individual source under the two programs are identical.

The comments received in response to the proposal included no comments regarding the ICR for this final rule, but did include one comment regarding the existing CSAPR ICR. The comment noted that the existing CSAPR ICR should have been renewed in order to remain valid past July 31, 2014, but that OMB had not acted on the EPA's renewal submission as of that date. The commenter is correct as to those facts, but the commenter's apparent suggestion that the existing CSAPR ICR may have lapsed as of that date is incorrect. The EPA made a timely renewal submission for that ICR, and an agency may continue to collect information pursuant to a previously approved ICR if a timely renewal submission for the ICR has been made, pending OMB action on the submission. 5 CFR 1320.10(e)(2). Further, prior to the date when the comment was submitted, OMB did in fact approve the EPA's renewal submission for the CSAPR ICR.

More information on the ICR analysis is included in the docket for this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

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. The small entities subject to the requirements of this action are small businesses, small organizations, and small governmental jurisdictions.

The EPA has lessened the impacts for small entities by excluding all units 25 MWe or less. This exclusion, in addition to the exemptions for cogeneration units and solid waste incineration units, eliminates the burden of higher costs for a substantial number of small entities located in the 22 states for which the EPA is finalizing FIPs.

Within these states, the EPA identified a total of 365 potentially affected EGUs (*i.e.,* greater than 25 MWe) warranting examination in its RFA analysis. Of these, the EPA identified 30 potentially affected EGUs that are owned by 11 entities that met the Small Business Administration's criteria for identifying small entities. The EPA estimated the annualized net compliance cost to these 11 small entities to be approximately $23.9 million in 2017. Of the 11 small entities

considered in this analysis, 1 entity may experience compliance costs greater than 1 or 3 percent of generation revenues in 2017. The EPA notes that this entity is located in a cost of service market, where the agency typically expects that entities should be able to recover all of their costs of complying with the final rule.

The EPA has concluded that there is no significant economic impact on a substantial number of small entities (no SISNOSE) for this rule. Details of this analysis are presented in the RIA, which is in the public docket.

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 has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. According to the EPA's analysis, the total net economic impact on government owned entities (state- and municipality-owned utilities and subdivisions) is expected to be $20.5 million in 2017. Note that the EPA expects the rule to potentially have an impact on 11 municipality-owned entities and 1 state-owned entity. This analysis does not examine potential indirect economic impacts associated with the rule, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price increases on government entities. For more information on the estimated impact on government entities, refer to the RIA, which is in the public docket.

E. Executive Order 13132: Federalism

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

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

This final action implements EGU NO_X ozone season emissions reductions in 22 eastern states. However, at this time, none of the existing or planned EGUs affected by this rule are owned by tribes or located in Indian country. This action may have tribal implications if a new affected EGU is built in Indian country. Additionally, tribes have a vested interest in how this rule affects air quality.

In developing the original CSAPR, which was published on August 8, 2011 to address interstate transport of ozone pollution under the 1997 ozone NAAQS,[197] the EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing that regulation to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in 76 FR 48346 (August 8, 2011).

The EPA received comments from several tribal commenters regarding the availability of CSAPR allowance allocations to new units in Indian country. The EPA responded to these comments by instituting Indian country new unit set-asides in the final CSAPR. In order to protect tribal sovereignty, these set-asides are managed and distributed by the federal government regardless of whether CSAPR in the adjoining or surrounding state is implemented through a FIP or SIP. While there are no existing affected EGUs in Indian country covered by the CSAPR Update, the Indian country set-asides will ensure that any future new units built in Indian country will be able to obtain the necessary allowances. The CSAPR Update maintains the Indian country new unit set-aside and adjusts the amounts of allowances in each set-aside according to the same methodology of the original CSAPR rule, with one small correction.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The EPA informed tribes of its development of this rule on a regularly scheduled National Tribal Air Association—EPA air policy monthly conference call (January 29, 2015) and gave an overview of the proposed rule on a separate call (November 17, 2015). In December 2015, the EPA offered consultation to tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes to permit them to have meaningful and timely input into the development of the final rule. The EPA sent letters to all 566 federally-recognized tribes informing them of this action, offering consultation and requesting comment on this rulemaking. Letters were also sent via email to tribal air staff. The EPA received no requests for consultation on this rule.

As part of the public comment process, we received one letter from the National Tribal Air Association (NTAA) that highlighted the need for an Indian country new unit set aside for the Poarch Band of Creek Indians in Alabama. EPA made this adjustment in the final rule and addressed the NTAA's other comments in the Response to Comments document, available in the docket, for this final action.

In order to help tribes to better understand this final action and how it could affect their communities, the EPA is providing an interactive map of affected sources and Indian country. This map will be available online. The EPA will continue to engage with tribes as part of the outreach strategy for this final rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. However, the EPA believes that the ozone-related benefits, $PM_{2.5}$-related co-benefits, and CO_2-related co-benefits would further improve children's health.

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

This action, which is a significant regulatory action under Executive Order 12866, is likely to have a significant effect on the supply, distribution, or use of energy. The EPA noted in the proposal that one aspect of this rule that could affect energy supply, disposition, or use was the EPA's proposing and taking comment on a range of options with respect to use of 2015 vintage and 2016 vintage CSAPR NO_X ozone season allowances for compliance with 2017 and later ozone season requirements. The EPA did not finalize actions that could have eliminated the allowance

[197] CSAPR also addressed interstate transport of fine particulate matter ($PM_{2.5}$) under the 1997 and 2006 $PM_{2.5}$ NAAQS.

bank but is converting the 2015 and 2016 vintage CSAPR allowances to a currency that can be used for compliance in 2017 and beyond. The EPA prepared a Statement of Energy Effects for the regulatory control alternative as follows: The agency estimates no change in retail electricity prices on average across the contiguous U.S. in 2017 as a result of this rule, and a much less than 1 percent reduction in coal-fired electricity generation in 2017 as a result of this rule. The EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2017. For more information on the estimated energy effects, refer to the RIA, which is in the public docket.

I. National Technology Transfer and Advancement Act (NTTAA)

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 EPA notes that this action updates CSAPR to reduce interstate ozone transport with respect to the 2008 ozone NAAQS. This rule uses the EPA's authority in CAA section 110(a)(2)(d) to reduce NO_X pollution that significantly contributes to downwind ozone nonattainment or maintenance areas. As a result, the rule will reduce exposures to ozone in the most-contaminated areas (*i.e.,* areas that are not meeting the 2008 ozone NAAQS). In addition, the rule separately identifies both nonattainment areas and maintenance areas. This requirement reduces the likelihood that areas close to the level of the standard will exceed the current health-based standards in the future. The EPA implements these emission reductions using the CSAPR EGU NO_X ozone season emissions trading program with assurance provisions.

The EPA recognizes that some communities have voiced concerns in the past about emission trading and the potential for emission increases in any location from an environmental justice perspective. The EPA believes that CSAPR mitigated these concerns and that this final rule, which applies the CSAPR framework to reduce interstate ozone pollution and implement these reductions, will also alleviate community concerns.

Ozone pollution from power plants has both local and regional components: part of the pollution in a given location—even in locations near emission sources—is due to emissions from nearby sources, and part is due to emissions that travel hundreds of miles and mix with emissions from other sources.

It is important to note that the section of the Clean Air Act providing authority for this rule, section 110(a)(2)(D), unlike some other provisions, does not dictate levels of control for particular facilities. In developing the original CSAPR, the EPA considered several alternative implementation approaches, and found that none of the approaches could ensure that all affected power plants would decrease their emissions. For example, under an alternative approach that required direct emission controls on individual facilities, the emission rate for each facility would have been limited but individual facilities could emit more pollution overall by increasing their power output.[198]

CSAPR allows sources to trade allowances with other sources in the same or different states while firmly limiting any emissions shifting that may occur by requiring a strict emission ceiling in each state (the assurance level). In addition, assurance provisions in the existing CSAPR regulations that will remain in place under this rule outline the allowance surrender penalties for failing to meet the assurance level; there are additional allowance penalties as well as financial penalties for failing to hold an adequate number of allowances to cover emissions.

This approach reduces EGU emissions in each state that significantly contribute to downwind nonattainment or maintenance areas, while allowing power companies to adjust generation as needed and ensure that the country's electricity needs will continue to be met. The EPA maintains that the existence of these assurance provisions, including the penalties imposed when triggered, will ensure that state emissions will stay below the level of the budget plus variability limit.

In addition, all sources must hold enough allowances to cover their emissions. Therefore, if a source emits more than its allocation in a given year, either another source must have used less than its allocation and be willing to sell some of its excess allowances, or the source itself had emitted less than its allocation in one or more previous years (*i.e.,* banked, or saved, allowances for future use).

In summary, the CSAPR addresses community concerns about localized hot spots and reduces ambient concentrations of pollution where they are most needed by sensitive and vulnerable populations by: Considering the science of ozone transport to set strict state emission budgets to reduce significant contributions to ozone nonattainment and maintenance (*i.e.,* the most polluted) areas; implementing air quality-assured trading; requiring any emissions above the level of the allocations to be offset by emission decreases; and imposing strict penalties for sources that contribute to a state's exceedance of its budget plus variability limit. In addition, it is important to note that nothing in this final rule allows sources to violate their title V permit or any other federal, state, or local emissions or air quality requirements.

It is also important to note that CAA section 110(a)(2)(D), which addresses transport of criteria pollutants between states, is only one of many provisions of the CAA that provide the EPA, states, and local governments with authorities to reduce exposure to ozone in communities. These legal authorities work together to reduce exposure to these pollutants in communities, including for minority, low-income, and tribal populations, and provide substantial health benefits to both the general public and sensitive sub-populations.

The EPA informed communities of its development of this rule on an Environmental Justice community call (January 28, 2015) and two National Tribal Air Association—EPA air policy conference calls (January 29, 2015 and November 17, 2015). The EPA will continue to engage with communities and tribes as part of the outreach strategy for this final rule.

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 a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review and Determinations Under Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations

[198] 76 FR 48348 (August 8, 2011).

promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA finds that any final action related to this rulemaking is ''nationally applicable'' and of ''nationwide scope and effect'' within the meaning of section 307(b)(1). Through this rulemaking action, the EPA interprets section 110 of the CAA, a provision which has nationwide applicability. In addition, the rule applies to 22 States. The rule is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states subject to it. For these reasons, the Administrator determines that this final action is of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b) any petitions for review of any final actions regarding the rulemaking would be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date any final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(C) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, to ''the promulgation or revision of an implementation plan by the Administrator under CAA section 110(c).'' 42 U.S.C. 7407(d)(1)(B). Under section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The agency has complied with procedural requirements of CAA section 307(d) during the course of this rulemaking.

List of Subjects

40 CFR Part 52

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

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 7, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, parts 52, 78, and 97 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§§ 52.38, 52.39, 52.54, 52.55, 52.584, 52.585, 52.731, 52.732, 52.789, 52.790, 52.840, 52.841, 52.882, 52.883, 52.940, 52.941, 52.1084, 52.1085, 52.1186, 52.1187, 52.1240, 52.1241, 52.1326, 52.1327, 52.1428, 52.1429, 52.1584, 52.1585, 52.1684, 52.1685, 52.1784, 52.1785, 52.1882, 52.1883, 52.2040, 52.2041, 52.2140, 52.2141, 52.2240, 52.2241, 52.2283, 52.2284, 52.2440, 52.2441, 52.2540, 52.2541, 52.2587, and 52.2588 [Amended]

■ 2. Sections 52.38, 52.39, 52.54, 52.55, 52.584, 52.585, 52.731, 52.732, 52.789, 52.790, 52.840, 52.841, 52.882, 52.883, 52.940, 52.941, 52.1084, 52.1085, 52.1186, 52.1187, 52.1240, 52.1241, 52.1326, 52.1327, 52.1428, 52.1429, 52.1584, 52.1585, 52.1684, 52.1685, 52.1784, 52.1785, 52.1882, 52.1883, 52.2040, 52.2041, 52.2140, 52.2141, 52.2240, 52.2241, 52.2283, 52.2284, 52.2440, 52.2441, 52.2540, 52.2541, 52.2587, and 52.2588 are amended by removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR''.

Subpart A—General Provisions

§ 52.36 [Amended]

■ 3. Section 52.36, paragraph (e)(1)(i) is amended by removing the text ''paragraphs (a) through (e)'' and adding in its place the text ''paragraphs (a) through (c)''.

■ 4. Section 52.38 is amended by:

■ a. Revising the section heading;

■ b. After the text ''NO_X Ozone Season'' wherever it appears adding the text ''Group 1'';

■ c. In paragraph (a)(2), removing the words ''the sources in'' and adding in their place the words ''sources in each of'';

■ d. In paragraph (a)(3)(ii), after the text ''2016, of'' adding the word ''the'';

■ e. In paragraph (a)(3)(v)(A), removing the word ''paragraph'' and adding in its place the word ''paragraphs'';

■ f. In paragraph (a)(4)(i)(B), table heading, removing the word ''annual'' and adding in its place the word ''Annual'', and removing the word ''administrator'' and adding in its place the words ''the Administrator'';

■ g. In paragraph (a)(4)(ii), removing the words ''section for'' and adding in their place the words ''section applicable to'';

■ h. Revising paragraph (a)(5) introductory text;

■ i. In paragraph (a)(5)(i)(B), table heading, removing the word ''annual'' and adding in its place the word ''Annual'', and removing the word ''administrator'' and adding in its place the words ''the Administrator'';

■ j. Revising paragraphs (a)(5)(iv) and (v);

■ k. In paragraph (a)(5)(vi), removing the text ''paragraphs (a)(5)(i) and (ii)'' and adding in its place the text ''paragraph (a)(5)(i)'';

■ l. Revising paragraph (a)(6);

■ m. In paragraph (a)(7), removing the words ''a State'' and adding in their place the words ''the State'';

■ n. Adding paragraph (a)(8);

■ o. Revising paragraphs (b)(1) and (2);

■ p. In paragraph (b)(3) introductory text, removing the text ''paragraph (b)(2)'' and adding in its place the text ''paragraph (b)(2)(i) or (ii)'';

■ q. In paragraph (b)(3)(ii), after the text ''2016, of'' adding the word ''the'';

■ r. In paragraph (b)(3)(v)(A), removing the word ''paragraph'' and adding in its place the word ''paragraphs'';

■ s. In paragraph (b)(4) introductory text, removing the text ''paragraph (b)(2)'' and adding in its place the text ''paragraph (b)(2)(i)'';

■ t. Revising paragraph (b)(4)(i);

■ u. In paragraph (b)(4)(ii) introductory text, after the words ''with regard to'' adding the words ''the State and'';

■ v. In paragraph (b)(4)(ii)(B), table heading, removing the word ''administrator'' and adding in its place the words ''the Administrator'';

■ w. Revising paragraph (b)(5) introductory text, paragraph (b)(5)(i), and paragraph (b)(5)(ii) introductory text;

■ x. In paragraph (b)(5)(ii)(B), removing the words ''auction of'' and adding in their place the words ''auctions of'', and removing from the table heading the word ''administrator'' and adding in its place the words ''the Administrator'';

■ y. In paragraph (b)(5)(ii)(C), removing the words ''any control'' and adding in

their place the words ''any such control'';

■ z. In paragraph (b)(5)(iii), after the words ''May adopt'' adding a comma;

■ aa. Revising paragraphs (b)(5)(v) through (vii), and (b)(6) and (7); and

■ bb. Adding paragraphs (b)(8) through (13).

The revisions and additions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) * * *

(5) Notwithstanding the provisions of paragraph (a)(1) of this section, a State listed in paragraph (a)(2) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Annual Trading Program set forth in §§ 97.402 through 97.435 of this chapter, except that the SIP revision:

* * * * *

(iv) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.402 through 97.435 of this chapter and must not include the provisions in §§ 97.411(b)(2) and (c)(5)(iii), 97.412(b), and 97.421(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(v) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.402 (definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.406(c)(2), and 97.425 of this chapter and the portions of other provisions of subpart AAAAA of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

* * * * *

(6) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section for sources in the State, the provisions of paragraph (a)(2) of this section will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

* * * * *

(8) The following States have SIP revisions approved by the Administrator under paragraph (a)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(3) of this section as replacing the CSAPR NO_X Annual allowance allocation provisions in § 97.411(a) of this chapter with regard to the State and the control period in 2016: Alabama, Kansas, Missouri, and Nebraska.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(4) of this section as replacing the CSAPR NO_X Annual allowance allocation provisions in §§ 97.411(a) and (b)(1) and 97.412(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: Kansas and Missouri.

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1) through (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama.

(b)(1) The CSAPR NO_X Ozone Season Group 1 Trading Program provisions and the CSAPR NO_X Ozone Season Group 2 Trading Program provisions set forth respectively in subparts BBBBB and EEEEE of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of NO_X during the ozone season, defined as May 1 through September 30 of a calendar year.

(2)(i) The provisions of subpart BBBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions in 2015 and each subsequent year: Georgia.

(ii) The provisions of subpart BBBBB of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(iii) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

* * * * *

(4) * * *

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.504(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more''; and

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 1 Trading Program set forth in §§ 97.502 through 97.535 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in § 97.504(a)(1) and (2) of this chapter

with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more''; and

(ii) May adopt, as CSAPR NO_X Ozone Season Group 1 allowance allocation provisions replacing the provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 1 allowances and that—

* * * * *

(v) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.502 through 97.535 of this chapter and must not include the provisions in §§ 97.511(b)(2) and (c)(5)(iii), 97.512(b), and 97.521(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vi) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.502 (definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.506(c)(2), and 97.525 of this chapter and the portions of other provisions of subpart BBBBB of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(vii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(5)(i) through (v) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(5)(ii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(5)(i) or (ii) of this section.

(6) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 2 Trading Program set forth in §§ 97.802 through 97.835 of this chapter, subject to the following requirements and exceptions:

(i) The provisions of paragraphs (b)(9)(i) through (viii) of this section apply to any such SIP revision.

(ii) Following promulgation of an approval by the Administrator of such a SIP revision:

(A) The provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period.

(B) Notwithstanding the provisions of paragraph (b)(6)(ii)(A) of this section, if, at the time of the approval of the SIP revision, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 1 allowances to units in the State for a control period in any year, the Administrator will not record allocations of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for any such control period under the provisions of the SIP revision but instead will allocate and record CSAPR NO_X Ozone Season Group 2 allowances in place of CSAPR NO_X Ozone Season Group 1 allowances under § 97.526(c)(2) of this chapter, unless provided otherwise by such approval of the SIP revision.

(7) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 2 allowance allocation provisions replacing the provisions in § 97.811(a) of this chapter with regard to the State and the control period in 2018, a list of CSAPR NO_X Ozone Season Group 2 units and the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2015;

(ii) The total amount of CSAPR NO_X Ozone Season Group 2 allowance allocations on the list must not exceed the amount, under § 97.810(a) of this chapter for the State and the control period in 2018, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter;

(v) Provided that:

(A) By December 27, 2016, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(7)(i) through (iv) of this section by April 1, 2017; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(7)(v)(A) of this section by April 1, 2017.

(8) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations revising subpart EEEEE of part 97 of this chapter as follows and not making any other substantive revisions of that subpart:

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.804(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) Such a State listed in § 51.121(c) of this chapter may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that

applicability is expanded to include, in addition to all units in the State that would be CSAPR NO_X Ozone Season Group 2 units under § 97.804(a) and (b) of this chapter and any units to which the State elects to expand applicability pursuant to paragraph (b)(8)(i) of this section, all other units that would have been subject to the State's emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter except units to which the State is authorized to expand applicability under paragraph (b)(8)(i) of this section; and

(iii) The State may adopt, as CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions replacing the provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 2 allowances and may adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 2 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(8)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 2 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(8)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(8)(iv) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO_X emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(8)(ii) of this section.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO_X Ozone season group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019	June 1, 2018.
2020	June 1, 2018.
2021	June 1, 2019.
2022	June 1, 2019.
2023	June 1, 2020.
2024	June 1, 2020.
2025 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by §§ 97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(8)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or § 97.526(c) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(8)(i), (ii), or (iii) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(8)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(8)(i), (ii), or (iii) of this section.

(9) Notwithstanding the provisions of paragraph (b)(1) of this section, a State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 2 Trading Program set forth in §§ 97.802 through 97.835 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in § 97.804(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever

such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) In the case of such a State listed in § 51.121(c) of this chapter, may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include, in addition to all units in the State that would be CSAPR NO_X Ozone Season Group 2 units under § 97.804(a) and (b) of this chapter and any units to which the State elects to expand applicability pursuant to paragraph (b)(9)(i) of this section, all other units that would have been subject to the State's emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter except units to which the State is authorized to expand applicability under paragraph (b)(9)(i) of this section; and

(iii) May adopt, as CSAPR NO_X Ozone Season Group 2 allowance allocation provisions replacing the provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 2 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 2 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(9)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 2 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(9)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(9)(viii) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO_X emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121(p) of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(9)(ii) of this section.

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by § 97.811(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the following dates:

Year of the control period for which CSAPR NO_X Ozone season group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2019	June 1, 2018.
2020	June 1, 2018.
2021	June 1, 2019.
2022	June 1, 2019.
2023	June 1, 2020.
2024	June 1, 2020.
2025 and any year thereafter	June 1 of the fourth year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 2 allowances for any such control period to any CSAPR NO_X Ozone Season Group 2 units covered by §§ 97.811(b)(1) and 97.812(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 2 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by July 1 of the year of such control period.

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(9)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart EEEEE of part 97 of this chapter or § 97.526(c) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.802 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 2 allowance allocation or auction provisions adopted under paragraph (b)(9)(iii) of this section;

(v) May substitute the name of the State for the term ''State'' as used in subpart EEEEE of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.802 through 97.835 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.802 through 97.835 of this chapter and must not include the provisions in §§ 97.811(b)(2) and (c)(5)(iii), 97.812(b), and 97.821(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude

the provisions in §§ 97.802 (definitions of ''base CSAPR NO_X Ozone Season Group 2 source'', ''base CSAPR NO_X Ozone Season Group 2 unit'', ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.806(c)(2), and 97.825 of this chapter and the portions of other provisions of subpart EEEEE of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(9)(i) through (vi) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(9)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(9)(i), (ii), or (iii) of this section.

(10) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section for sources in the State—

(i) The provisions of paragraph (b)(2)(i) or (iii) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

(ii) For a State listed in § 51.121(c) of this chapter, the State's adoption of the regulations included in such approved SIP revision will satisfy with regard to the sources subject to such regulations, including any sources made subject to such regulations pursuant to paragraph (b)(9)(ii) of this section, the requirement under § 51.121(r)(2) of this chapter for the State to revise its SIP to adopt control measures with regard to such sources.

(11) Notwithstanding the provisions of paragraph (b)(10)(i) of this section—

(i) If, at the time of such approval of the State's SIP revision, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 1 allowances, or of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances, as applicable, to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision; and

(ii) The provisions of § 97.526(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR NO_X Ozone Season Group 1 allowances from any account where such allowances are held and to allocate and record amounts of CSAPR NO_X Ozone Season Group 2 allowances in place of any CSAPR NO_X Ozone Season Group 1 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.526(c)(7) of this chapter authorizing the use of CSAPR NO_X Ozone Season Group 2 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances, will continue to apply.

(12) The following States have SIP revisions approved by the Administrator under paragraph (b)(3), (4), or (5) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(3) of this section as replacing the CSAPR NO_X Ozone Season Group 1 allowance allocation provisions in § 97.511(a) of this chapter with regard to the State and the control period in 2016: Alabama and Missouri.

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(4) of this section as replacing the CSAPR NO_X Ozone Season Group 1 applicability provisions in § 97.504(a)(1) and (2) of this chapter or the CSAPR NO_X Ozone Season Group 1 allowance allocation provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(13) The following States have SIP revisions approved by the Administrator under paragraph (b)(6), (7), (8), or (9) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(6) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(7) of this section as replacing the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in § 97.811(a) of this chapter with regard to the State and the control period in 2018: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(8) of this section as replacing the CSAPR NO_X Ozone Season Group 2 applicability provisions in § 97.804(a) and (b) or § 97.804(a)(1) and (2) of this chapter or the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with regard to the State and the control period in 2019 or any subsequent year: [none].

(iv) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(9) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

■ 5. Section 52.39 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (d)(2), after the text ''2016, of'' adding the word ''the'';

■ c. In paragraph (d)(5)(i), removing the word ''paragraph'' and adding in its place the word ''paragraphs'';

■ d. In paragraph (e)(1) introductory text, after the words ''with regard to'' adding the words ''the State and'';
■ e. In paragraph (e)(1)(ii), removing the words ''auction of'' and adding in their place the words ''auctions of'', and removing from the table heading the word ''administrator'' and adding in its place the words ''the Administrator'';
■ f. Revising paragraph (f) introductory text;
■ g. In paragraph (f)(1) introductory text, removing the text ''control period in 2017 and'' and adding in its place the text ''State and the control period in 2017 or'';
■ h. In paragraph (f)(1)(i), removing the words ''for such'' and adding in their place the words ''for any such'';
■ i. In paragraph (f)(1)(ii), removing the words ''auction of'' and adding in their place the words ''auctions of'', and removing from the table heading the word ''administrator'' and adding in its place the words ''the Administrator'';
■ j. In paragraph (f)(1)(iv), removing the text ''paragraphs (f)(2)(ii) and (iii)'' and adding in its place the text ''paragraphs (f)(1)(ii) and (iii)'';
■ k. Revising paragraphs (f)(4) and (5);
■ l. In paragraph (f)(6), removing the text ''hold an auction under paragraph (f)(1)(ii) and (iii)'' and adding in its place the text ''hold an auction under paragraph (f)(1)'';
■ m. In paragraph (g) introductory text, after the words ''with regard to'' adding the words ''the State and'';
■ n. In paragraph (g)(2), after the text ''2016, of'' adding the word ''the'';
■ o. In paragraph (g)(5)(i), removing the word ''paragraph'' and adding in its place the word ''paragraphs'';
■ p. In paragraph (h)(1) introductory text, removing the text ''control period in 2017 and'' and adding in its place the text ''State and the control period in 2017 or'';
■ q. In paragraph (h)(1)(ii), removing the words ''auction of'' and adding in their place the words ''auctions of'', and removing from the table heading the word ''administrator'' and adding in its place the words ''the Administrator'';
■ r. In paragraph (h)(2), removing the text ''hold an auction under paragraph (h)(1)(ii) and (iii)'' and adding in its place the text ''hold an auction under paragraph (h)(1)'';
■ s. Revising paragraph (i) introductory text;
■ t. In paragraph (i)(1) introductory text, removing the text ''control period in 2017 and'' and adding in its place the text ''State and the control period in 2017 or'';
■ u. In paragraph (i)(1)(ii), removing the words ''auction of'' and adding in their place the words ''auctions of'', and removing from the table heading the word ''administrator'' and adding in its place the words ''the Administrator'';
■ v. Revising paragraphs (i)(4) and (5);
■ w. In paragraph (i)(6), removing the text ''hold an auction under paragraphs (i)(1)(ii) and (iii)'' and adding in its place the text ''hold an auction under paragraph (i)(1)'';
■ x. Revising paragraph (j);
■ y. In paragraph (k), removing the words ''a State'' and adding in their place the words ''the State''; and
■ z. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(f) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR SO_2 Group 1 Trading Program set forth in §§ 97.602 through 97.635 of this chapter, except that the SIP revision:

* * * * *

(4) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.602 through 97.635 of this chapter and must not include the provisions in §§ 97.611(b)(2) and (c)(5)(iii), 97.612(b), and 97.621(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(5) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.602 (definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.606(c)(2), and 97.625 of this chapter and the portions of other provisions of subpart CCCCC of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

* * * * *

(i) Notwithstanding the provisions of paragraph (a) of this section, a State listed in paragraph (c) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR SO_2 Group 2 Trading Program set forth in §§ 97.702 through 97.735 of this chapter, except that the SIP revision:

* * * * *

(4) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.702 through 97.735 of this chapter and must not include the provisions in §§ 97.711(b)(2) and (c)(5)(iii), 97.712(b), and 97.721(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(5) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.702 (definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.706(c)(2), and 97.725 of this chapter and the portions of other provisions of subpart DDDDD of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions;

* * * * *

(j) Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section or paragraphs (a), (c), (g), and (h) of this section for sources in the State, the provisions of paragraph (b) or (c) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR

Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

* * * * *

(l) The following States have SIP revisions approved by the Administrator under paragraph (d), (e), or (f) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (d) of this section as replacing the CSAPR SO_2 Group 1 allowance allocation provisions in § 97.611(a) of this chapter with regard to the State and the control period in 2016: [none].

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (e) of this section as replacing the CSAPR SO_2 Group 1 allowance allocation provisions in §§ 97.611(a) and (b)(1) and 97.612(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: Missouri.

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (f) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(m) The following States have SIP revisions approved by the Administrator under paragraph (g), (h), or (i) of this section:

(1) For each of the following States, the Administrator has approved a SIP revision under paragraph (g) of this section as replacing the CSAPR SO_2 Group 2 allowance allocation provisions in § 97.711(a) of this chapter with regard to the State and the control period in 2016: Alabama and Nebraska.

(2) For each of the following States, the Administrator has approved a SIP revision under paragraph (h) of this section as replacing the CSAPR SO_2 Group 2 allowance allocation provisions in §§ 97.711(a) and (b)(1) and 97.712(a) of this chapter with regard to the State and the control period in 2017 or any subsequent year: [none].

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (i) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (c), (g), and (h) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama.

Subpart B—Alabama

■ 6. Section 52.54 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing paragraph (a)(3); and
■ c. Revising paragraph (b).

The revisions read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Annual Trading Program in subpart AAAAA of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan under § 52.38(a) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR FIP under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Alabama's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

■ 7. Section 52.55 is amended by:
■ a. Revising paragraph (a); and
■ b. Removing paragraph (c).

The revisions read as follows:

§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

(a) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR SO_2 Group 2 Trading Program in subpart DDDDD of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a

revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan under § 52.39 for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

* * * * *

Subpart E—Arkansas

■ 8. Section 52.184 is revised to read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) The owner and operator of each source and each unit located in the State of Arkansas and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(b) The owner and operator of each source and each unit located in the State of Arkansas and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Arkansas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(c) Notwithstanding the provisions of paragraph (b) of this section, if, at the time of the approval of Arkansas' SIP revision described in paragraph (b) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart K—Florida

■ 9. Section 52.540 is amended by:
■ a. Revising paragraph (a); and
■ b. Removing and reserving paragraph (b).

The revisions read as follows:

§ 52.540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) The owner and operator of each source and each unit located in the State of Florida and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

* * * * *

Subpart L—Georgia

§ 52.584 [Amended]

■ 10. Section 52.584 is amended by:
■ a. In paragraph (b)(1), removing the words ''Ozone Season'' and adding in their place the text ''Ozone Season Group 1''; and
■ b. In paragraph (b)(2), removing the words ''Ozone Season'' two times and adding in their place the text ''Ozone Season Group 1''.

Subpart O—Illinois

■ 11. Section 52.731 is amended by revising paragraph (b) to read as follows:

§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Illinois' SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart P—Indiana

■ 12. Section 52.789 is amended by revising paragraph (b) to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State

of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Indiana's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart Q—Iowa

■ 13. Section 52.840 is amended by:
■ a. In paragraph (a)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Revising paragraph (b).

The revisions read as follows:

§ 52.840 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Iowa and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Iowa and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Iowa's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Iowa's SIP.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Iowa's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.841 [Amended]

■ 14. Section 52.841, paragraph (a) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart R—Kansas

■ 15. Section 52.882 is amended by:
■ a. In paragraph (a)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units'';
■ b. Removing paragraph (a)(3); and
■ c. Adding paragraph (b).

The additions read as follows:

§ 52.882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Kansas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Kansas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Kansas' SIP.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, if, at the time of the approval of Kansas' SIP revision described in paragraph (b)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR

NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.883 [Amended]

■ 16. Section 52.883, paragraph (a) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart S—Kentucky

■ 17. Section 52.940 is amended by revising paragraph (b) to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Kentucky's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart T—Louisiana

■ 18. Section 52.984 is amended by revising paragraph (d) to read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d)(1) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's SIP.

(3) Notwithstanding the provisions of paragraph (d)(2) of this section, if, at the time of the approval of Louisiana's SIP revision described in paragraph (d)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart V—Maryland

■ 19. Section 52.1084 is amended by revising paragraph (b) to read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Maryland's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart X—Michigan

■ 20. Section 52.1186 is amended by:
■ a. In paragraph (d)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Revising paragraph (e).

The revisions read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e)(1) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's SIP.

(3) Notwithstanding the provisions of paragraph (e)(2) of this section, if, at the time of the approval of Michigan's SIP revision described in paragraph (e)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.1187 [Amended]

■ 21. Section 52.1187 is amended by:
■ a. In paragraph (c)(1), removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''; and
■ b. In paragraph (c)(2), removing the word ''Maryland's'' and adding in its place the word ''Michigan's''.

Subpart Y—Minnesota

§ 52.1240 [Amended]

■ 22. Section 52.1240, paragraph (c)(1) is amended by removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''.

§ 52.1241 [Amended]

■ 23. Section 52.1241, paragraph (c)(1) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart Z—Mississippi

■ 24. Section 52.1284 is revised to read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) The owner and operator of each source and each unit located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(b) The owner and operator of each source and each unit located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi's SIP.

(c) Notwithstanding the provisions of paragraph (b) of this section, if, at the time of the approval of Mississippi's SIP revision described in paragraph (b) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such

control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart AA—Missouri

■ 25. Section 52.1326 is amended by:
■ a. Removing paragraph (a)(3); and
■ b. Revising paragraph (b).
The revisions read as follows:

§ 52.1326 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Missouri's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart CC—Nebraska

§ 52.1428 [Amended]

■ 26. Section 52.1428 is amended by:
■ a. In paragraph (a), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Removing paragraph (c).

§ 52.1429 [Amended]

■ 27. Section 52.1429 is amended by:
■ a. In paragraph (a), removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''; and
■ b. Removing paragraph (c).

Subpart FF—New Jersey

■ 28. Section 52.1584 is amended by revising paragraph (e) to read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e)(1) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (e)(2) of this section, if, at the time of the approval of New Jersey's SIP revision described in paragraph (e)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart HH—New York

■ 29. Section 52.1684 is amended by:
■ a. In paragraph (a)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Revising paragraph (b).
The revisions read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an

obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York's SIP.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of New York's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.1685 [Amended]

■ 30. Section 52.1685, paragraph (a) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart II—North Carolina

■ 31. Section 52.1784 is amended by:
■ a. In paragraph (a)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units'';
■ b. Revising paragraph (b)(1); and
■ c. Removing and reserving paragraph (b)(2).

The revisions read as follows:

§ 52.1784 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of North Carolina and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

* * * * *

§ 52.1785 [Amended]

■ 32. Section 52.1785, paragraph (a) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart KK—Ohio

■ 33. Section 52.1882 is amended by revising paragraph (b) to read as follows:

§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Ohio's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart LL—Oklahoma

■ 34. Section 52.1930 is revised to read as follows:

§ 52.1930 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) The owner and operator of each source and each unit located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(b) The owner and operator of each source and each unit located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's SIP.

(c) Notwithstanding the provisions of paragraph (b) of this section, if, at the time of the approval of Oklahoma's SIP revision described in paragraph (b) of this section, the Administrator has already started recording any allocations

of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart NN—Pennsylvania

■ 35. Section 52.2040 is amended by revising paragraph (b) to read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Pennsylvania's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart PP—South Carolina

■ 36. Section 52.2140 is amended by:
■ a. In paragraph (a)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units'';
■ b. Revising paragraph (b)(1); and
■ c. Removing and reserving paragraph (b)(2).

The revisions read as follows:

§ 52.2140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of South Carolina and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

* * * * *

§ 52.2141 [Amended]

■ 37. Section 52.2141, paragraph (a) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart RR—Tennessee

■ 38. Section 52.2240 is amended by:
■ a. In paragraph (d)(1), removing the last sentence; and
■ b. Revising paragraph (e).

The revisions read as follows:

§ 52.2240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e)(1) The owner and operator of each source and each unit located in the State of Tennessee and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Tennessee and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Tennessee's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan under § 52.38(b), except to the extent the Administrator's approval is partial or conditional.

(3) Notwithstanding the provisions of paragraph (e)(2) of this section, if, at the time of the approval of Tennessee's SIP revision described in paragraph (e)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.2241 [Amended]

■ 39. Section 52.2241, paragraph (c)(1) is amended by removing the last sentence.

Subpart SS—Texas

■ 40. Section 52.2283 is amended by:
■ a. In paragraph (c)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Revising paragraph (d).

The revisions read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Texas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Texas' SIP.

(3) Notwithstanding the provisions of paragraph (d)(2) of this section, if, at the time of the approval of Texas' SIP revision described in paragraph (d)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.2284 [Amended]

■ 41. Section 52.2284, paragraph (c)(1) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

Subpart VV—Virginia

■ 42. Section 52.2440 is amended by revising paragraph (b) to read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of Virginia's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart XX—West Virginia

■ 43. Section 52.2540 is amended by revising paragraph (b) to read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b)(1) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, if, at the time of the approval of West Virginia's SIP revision described in paragraph (b)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart YY—Wisconsin

■ 44. Section 52.2587 is amended by:
■ a. In paragraph (d)(1), removing the words ''in part'', and after the text ''§ 52.38(a)'' adding the words ''for those sources and units''; and
■ b. Revising paragraph (e).

The revisions read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e)(1) The owner and operator of each source and each unit located in the State of Wisconsin and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 1 Trading Program in subpart BBBBB of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) The owner and operator of each source and each unit located in the State of Wisconsin and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's SIP.

(3) Notwithstanding the provisions of paragraph (e)(2) of this section, if, at the time of the approval of Wisconsin's SIP revision described in paragraph (e)(2) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart EEEEE of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_X Ozone Season Group 2 allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

§ 52.2588 [Amended]

■ 45. Section 52.2588, paragraph (c)(1) is amended by removing the words ''in part'', and after the text ''§ 52.39'' adding the words ''for those sources and units''.

PART 78—APPEAL PROCEDURES

■ 46. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, and 7651, *et seq.*

■ 47. Section 78.1 is amended by:
■ a. Removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR'';
■ b. Revising paragraphs (a)(1) and (b)(2)(iv) and (v);
■ c. In paragraph (b)(3)(iii), after the semicolon adding the word ''and'';
■ d. In paragraph (b)(3)(iv), removing the semicolon and adding in its place a period;
■ e. Revising paragraph (b)(6) introductory text;
■ f. In paragraph (b)(9)(iv), after the text ''§ 96.361'' adding the words ''of this chapter'';
■ g. In paragraph (b)(12)(iv), after the text ''§ 97.361'' adding the words ''of this chapter'';
■ h. In paragraph (b)(13)(i), after the words ''decision on'' adding the word ''the'';
■ i. Revising paragraph (b)(14)(i);
■ j. In paragraphs (b)(14)(ii), (iii) and (v), after the words ''Ozone Season'' adding the text ''Group 1'';
■ k. Adding paragraph (b)(14)(viii);
■ l. In paragraphs (b)(15)(i) and (b)(16)(i), after the words ''decision on'' adding the word ''the'';
■ m. In paragraphs (b)(16)(ii), (iii), and (v), removing the text ''Group 1'' and adding in its place the text ''Group 2''; and
■ n. Redesignating paragraph (b)(17) as paragraph (b)(18) and adding a new paragraph (b)(17).

The revisions and additions read as follows:

§ 78.1 Purpose and scope.

(a)(1)(i) This part shall govern appeals of any final decision of the Administrator under:

(A) Part 72, 73, 74, 75, 76, or 77 of this chapter.

(B) Subparts A through J of part 97 of this chapter.

(C) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or State regulations approved under § 51.123(o)(1) or (2) or (aa)(1) or (2) of this chapter or § 51.124(o)(1) or (2) of this chapter.

(D) Subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter.

(E) Subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter or State regulations approved under § 52.38(a)(4) or (5) or (b)(4), (5), (6), (8), or (9) of this chapter or § 52.39(e), (f), (h), or (i) of this chapter.

(F) Subpart RR of part 98 of this chapter.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, matters listed in § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed.

(iii) All references in paragraph (b) of this section and in § 78.3 to subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, and subparts AAAA through IIII of part 96 of this chapter shall be read to include the comparable provisions in State regulations approved under § 51.123(o)(1) or (2) of this chapter, § 51.124(o)(1) or (2) of this chapter, and § 51.123(aa)(1) or (2) of this chapter, respectively.

(iv) All references in paragraph (b) of this section and in § 78.3 to subpart AAAAA of part 97 of this chapter, subpart BBBBB of part 97 of this chapter, subpart CCCCC of part 97 of this chapter, subpart DDDDD of part 97 of this chapter, and subpart EEEEE of part 97 of this chapter shall be read to include the comparable provisions in State regulations approved under § 52.38(a)(4) or (5) of this chapter, § 52.38(b)(4) or (5) of this chapter, § 52.39(e) or (f) of this chapter, § 52.39(h) or (i) of this chapter, and § 52.38(b)(6), (8), or (9) of this chapter, respectively.

* * * * *

(b) * * *

(2) * * *

(iv) The decision on the allocation of allowances under subpart F of part 73 of this chapter;

(v) The decision on the sale or return of allowances and transfer of proceeds

under subpart E of part 73 of this chapter; and

* * * * *

(6) Under subparts A through J of part 97 of this chapter,

* * * * *

(14) * * *

(i) The decision on the allocation of CSAPR NO_X Ozone Season Group 1 allowances under § 97.511(a)(2) and (b) of this chapter.

* * * * *

(viii) The decision on the removal of CSAPR NO_X Ozone Season Group 1 allowances from an Allowance Management System account and the allocation to such account or another account of CSAPR NO_X Ozone Season Group 2 allowances under § 97.526(c) of this chapter.

* * * * *

(17) Under subpart EEEEE of part 97 of this chapter,

(i) The decision on the allocation of CSAPR NO_X Ozone Season Group 2 allowances under § 97.811(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of CSAPR NO_X Ozone Season Group 2 allowances under § 97.823 of this chapter.

(iii) The decision on the deduction of CSAPR NO_X Ozone Season Group 2 allowances under §§ 97.824 and 97.825 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.827 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR NO_X Ozone Season Group 2 allowances based on the information as adjusted under § 97.828 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.835 of this chapter.

* * * * *

■ 48. Section 78.3 is amended by:

■ a. In paragraph (a)(1) introductory text, removing the words ''of this part'';

■ b. Revising paragraph (a)(3) introductory text;

■ c. In paragraph (a)(8) introductory text and paragraph (a)(9) introductory text, after the text ''part 97'' adding the words ''of this chapter'';

■ d. Revising paragraph (a)(10) introductory text and paragraph (a)(11) introductory text;

■ e. In paragraph (b)(1), removing the words ''of this part'' two times; and

■ f. Revising paragraphs (b)(3)(i), (c)(7), and (d).

The revisions read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts A through J of part 97 of this chapter and that is appealable under § 78.1(a):

* * * * *

(10) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter and that is appealable under § 78.1(a):

* * * * *

(11) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart RR of part 98 of this chapter and that is appealable under § 78.1(a):

* * * * *

(b) * * *

(3) * * *

(i) Serve a copy of the petition on the Administrator and the following person (unless such person is the petitioner):

(A) The designated representative or authorized account representative, for a petition under paragraph (a)(1), (2), (10), or (11) of this section.

(B) The NO_X authorized account representative, for a petition under paragraph (a)(3) of this section.

(C) The CAIR designated representative or CAIR authorized account representative, for a petition under paragraph (a)(4), (5), (6), (7), (8), or (9) of this section.

* * * * *

(c) * * *

(7) Any revised or alternative action of the Administrator sought by the petitioner as necessary to implement the requirements, purposes, or policies of, as appropriate:

(i) Title IV of the Act.

(ii) Subparts A through J of part 97 of this chapter.

(iii) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter.

(iv) Subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter.

(v) Subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter.

(d) In no event shall a petition for administrative review be filed, or review be available under this part, with regard to:

(1) Actions of the Administrator under sections 112(r), 113, 114, 120, 301, and 303 of the Act.

(2) The reliance by the Administrator on:

(i) A certificate of representation submitted by a designated representative or an application for a general account submitted by an authorized account representative under the Acid Rain Program or subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter.

(ii) An account certificate of representation or an application for a general account submitted by a NO_X authorized account representative under the NO_X Budget Trading Program.

(iii) A certificate of representation submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter.

(3) Any provision or requirement of part 72, 73, 74, 75, 76, or 77 of this chapter, including the standard requirements under § 72.9 of this chapter and any emission monitoring or reporting requirements.

(4) Any provision or requirement of subparts A through J of part 97 of this chapter, including the standard requirements under § 97.6 of this chapter and any emission monitoring or reporting requirements.

(5) Any provision or requirement of subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter, including the standard requirements under § 96.106, § 96.206, or § 96.306 of this chapter, respectively, and any emission monitoring or reporting requirements.

(6) Any provision or requirement of subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter, including the standard requirements under § 97.106, § 97.206, or § 97.306 of this chapter, respectively, and any emission monitoring or reporting requirements.

(7) Any provision or requirement of subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter, including the standard requirements under § 97.406, § 97.506, § 97.606, § 97.706, or § 97.806 of this chapter, respectively, and any emission monitoring or reporting requirements.

(8) Any provision or requirement of subpart RR of part 98 of this chapter.

■ 49. Section 78.4 is amended by:

■ a. Revising paragraph (a)(1)(i);

■ b. In paragraph (a)(1)(ii), removing the word ''filing'' and adding in its place the word ''filings'';

■ c. Revising paragraph (a)(1)(iii); and

■ d. In paragraphs (d), (e)(1), and (g), removing the words ''of this part''.

The revisions read as follows:

§ 78.4 Filings.

(a)(1) * * *

(i) Any filings on behalf of owners and operators of an affected unit or affected source, CSAPR NO_X Annual unit or CSAPR NO_X Annual source, CSAPR NO_X Ozone Season Group 1 unit or CSAPR NO_X Ozone Season Group 1 source, CSAPR NO_X Ozone Season Group 2 unit or CSAPR NO_X Ozone Season Group 2 source, CSAPR SO_2 Group 1 unit or CSAPR SO_2 Group 1 source, or CSAPR SO_2 Group 2 unit or CSAPR SO_2 Group 2 source shall be signed by the designated representative. Any filings on behalf of persons with an ownership interest with respect to allowances, CSAPR NO_X Annual allowances, CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Group 2 allowances, CSAPR SO_2 Group 1 allowances, or CSAPR SO_2 Group 2 allowances in a general account shall be signed by the authorized account representative.

* * * * *

(iii) Any filings on behalf of owners and operators of a CAIR NO_X unit or CAIR NO_X source, CAIR SO_2 unit or CAIR SO_2 source, or CAIR NO_X Ozone Season unit or CAIR NO_X Ozone Season source shall be signed by the CAIR designated representative. Any filings on behalf of persons with an ownership interest with respect to CAIR NO_X allowances, CAIR SO_2 allowances, or CAIR NO_X Ozone Season allowances in a general account shall be signed by the CAIR authorized account representative.

* * * * *

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM, CAIR NO_X AND SO_2 TRADING PROGRAMS, AND CSAPR NO_X AND SO_2 TRADING PROGRAMS

■ 50. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 51. The heading of part 97 is revised to read as set forth above.

Subpart E—NO_X Allowance Allocations

§ 97.40 [Amended]

■ 52. Section 97.40 is amended by removing the text ''appendix C of this part'' and adding in its place the text ''appendix C to this subpart''.

§ 97.41 [Amended]

■ 53. Section 97.41, paragraph (a) is amended by removing the text ''appendices A and B of this part'' and adding in its place the text ''appendices A and B to this subpart''.

§ 97.43 [Amended]

■ 54. Section 97.43 is amended by:

■ a. In paragraph (c)(3), removing the text ''appendix D of this part'' and adding in its place the text ''appendix D to this subpart''; and

■ b. In paragraph (c)(4), removing the text ''appendix D of this part'' two times and adding in its place the text ''appendix D to this subpart''.

Subpart AAAAA—CSAPR NO_X Annual Trading Program

■ 55. The heading of subpart AAAAA of part 97 is revised to read as set forth above.

§ 97.401 [Amended]

■ 56. Section 97.401 is amended by removing the text ''Transport Rule (TR) NO_X Annual Trading Program'' and adding in its place the text ''Cross-State Air Pollution Rule (CSAPR) NO_X Annual Trading Program''.

§§ 97.402 through 97.435 [Amended]

■ 57. Sections 97.402 through 97.435 are amended by removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR''.

■ 58. Section 97.402 is amended by:

■ a. Revising the introductory text and the definitions ''Allowable NO_X emission rate'' and ''Allowance Management System'';

■ b. In the definition ''Allowance Management System account'', removing the word ''holding'' and adding in its place the text ''auction, holding'';

■ c. Revising the definition ''Alternate designated representative'';

■ d. Adding in alphabetical order the definition ''Auction'';

■ e. In the definition ''Cogeneration system'', removing the words ''steam turbine'';

■ f. In the definition ''Commence commercial operation'', paragraph (2) introductory text, after the words ''defined in'' adding the word ''the'';

■ g. In the definition ''Common designated representative's share'', paragraph (2), removing the words ''and of the total'' and adding in their place the words ''and the total'';

■ h. Placing the newly amended definitions ''CSAPR NO_X Annual allowance'', ''CSAPR NO_X Annual allowance deduction or deduct CSAPR NO_X Annual allowances'', ''CSAPR NO_X Annual allowances held or hold CSAPR NO_4 Annual allowances'', ''CSAPR NO_X Annual emissions limitation'', ''CSAPR NO_X Annual source'', ''CSAPR NO_X Annual Trading Program'', ''CSAPR NO_X Annual unit'', ''CSAPR NO_X Ozone Season Trading Program'', ''CSAPR SO_2 Group 1 Trading Program'', and ''CSAPR SO_2 Group 2 Trading Program'' in alphabetical order in the section;

■ i. In the newly amended definition heading ''CSAPR NO_X Annual allowances held or hold CSAPR NO_4 Annual allowances'', removing the text ''NO_4'' and adding in its place the text ''NO_X'';

■ j. Removing the newly amended definition ''CSAPR NO_X Ozone Season Trading Program'';

■ k. Adding in alphabetical order the definitions ''CSAPR NO_X Ozone Season Group 1 Trading Program'' and ''CSAPR NO_X Ozone Season Group 2 Trading Program'';

■ l. Revising the newly amended definitions ''CSAPR SO_2 Group 1 Trading Program'' and ''CSAPR SO_2 Group 2 Trading Program'' and the definition ''Designated representative'';

■ m. In the definition ''Fossil fuel'', paragraph (2), removing the text ''§§ '' and adding in its place the text ''§ '';

■ n. Removing the definition ''Gross electrical output'';

■ o. Revising the definitions ''Heat input'', ''Heat input rate'', and ''Heat rate'';

■ p. In the definition heading ''Maximum design heat input'', after the words ''heat input'' adding the word ''rate'';

■ q. Italicizing the words ''Annual unit'' in the newly amended definition heading ''Newly affected CSAPR NO_X Annual unit'';

■ r. Revising the definition ''Potential electrical output capacity''; and

■ s. In the definition ''Sequential use of energy'', paragraph (2), after the word ''from'' adding the word ''a''.

The revisions and additions read as follows:

§ 97.402 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

* * * * *

Allowable NO_X emission rate means, for a unit, the most stringent State or

federal NO_X emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR NO_X Annual allowances under the CSAPR NO_X Annual Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

* * * * *

Alternate designated representative means, for a CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR NO_X Annual Trading Program. If the CSAPR NO_X Annual source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

* * * * *

Auction means, with regard to CSAPR NO_X Annual allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, of such CSAPR NO_X Annual allowances to be initially recorded in an Allowance Management System account.

* * * * *

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

CSAPR SO_2 Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

Designated representative means, for a CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR NO_X Annual Trading Program. If the CSAPR NO_X Annual source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

* * * * *

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

* * * * *

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

* * * * *

§ 97.403 [Amended]

■ 59. Section 97.403 is amended by:
■ a. Adding in alphabetical order the list entry ''CSAPR—Cross-State Air Pollution Rule'';
■ b. Removing the list entry ''kW—kilowatt electrical'';
■ c. Removing the list entry ''kWh—kilowatt hour'' and adding in its place the entry ''kWh—kilowatt-hour'';
■ d. Removing the list entry ''MWh—megawatt hour'' and adding in its place the entry ''MWh—megawatt-hour''; and
■ e. Adding in alphabetical order the list entries ''SIP—State implementation plan'' and ''TR—Transport Rule''.

§ 97.404 [Amended]

■ 60. Section 97.404 is amended by:
■ a. In paragraph (b)(1)(i)(B), removing the word ''electric'' and adding in its place the word ''electrical'';
■ b. In paragraph (b)(2)(ii), removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(2)(i)''; and
■ c. Italicizing the headings of paragraphs (c)(1) and (2).

§ 97.405 [Amended]

■ 61. Section 97.405, paragraph (b) is amended by italicizing the heading.

§ 97.406 [Amended]

■ 62. Section 97.406 is amended by:
■ a. Italicizing the headings of paragraphs (c)(1) and (2) and (c)(4) through (7);
■ b. In paragraph (c)(2)(ii), after the words ''immediately after'' adding the words ''the year of'';
■ c. In paragraph (c)(4) heading, after the words ''Vintage of'' adding the text ''CSAPR NO_X Annual''; and
■ d. In paragraphs (c)(4)(i) and (ii), after the word ''allocated'' adding the words ''or auctioned''.

■ 63. Section 97.410 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a) introductory text, removing the text ''unit-set asides'' and adding in its place the text ''unit set-asides'';
■ c. In paragraphs (a)(1) through (23):
■ i. Removing the words ''annual trading'' wherever they appear and adding in their place the words ''Annual trading'';
■ ii. Removing the text ''NO_X annual new'' wherever it appears and adding in its place the word ''new''; and
■ iii. Removing the text ''NO_X annual Indian'' wherever it appears and adding in its place the word ''Indian'';
■ d. Adding and reserving paragraphs (a)(11)(vi) and (a)(16)(vi);
■ e. In paragraphs (b)(1) through (23), removing the text ''NO_X annual''; and
■ f. Revising paragraph (c).

The revisions read as follows:

§ 97.410 State NO_X Annual trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

* * * * *

(c) Each State NO_X Annual trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

■ 64. Section 97.411 is amended by:
■ a. Revising the section heading;
■ b. Italicizing the headings of paragraphs (b)(1) and (2);
■ c. In paragraph (b)(1)(iii), after the text ''November 30 of'' adding the word ''the'';
■ d. In paragraph (b)(1)(iv)(B), removing the words ''the each'' and adding in their place the word ''each'';
■ e. In paragraph (b)(2)(iii), after the text ''November 30 of'' adding the word ''the'';
■ f. In paragraph (b)(2)(iv)(B), removing the words ''the each'' and adding in their place the word ''each'';
■ g. In paragraph (c)(1)(ii), removing the text ''§ 52.38(a)(3), (4), or (5)'' and adding in its place the text ''§ 52.38(a)(4) or (5)'';
■ h. In paragraph (c)(5)(i)(B), after the text ''§ 52.38(a)(4) or (5)'' adding the words ''of this chapter'';
■ i. In paragraph (c)(5)(ii) introductory text, removing the words ''this paragraph'' and adding in their place the words ''this section'';
■ j. In paragraph (c)(5)(ii)(B), after the text ''§ 52.38(a)(4) or (5)'' adding the words ''of this chapter''; and
■ k. In paragraph (c)(5)(iii), removing the words ''this paragraph'' and adding in their place the words ''this section''.

The revision reads as follows:

§ 97.411 Timing requirements for CSAPR NO_X Annual allowance allocations.

* * * * *

■ 65. Section 97.412 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(2), removing the text ''§§'' and adding in its place the text ''§'';
■ c. In paragraph (a)(4)(i), removing the text ''paragraph (a)(1)(i) through (iii)'' and adding in its place the text ''paragraphs (a)(1)(i) through (iii)'';
■ d. In paragraph (a)(4)(ii), after the text ''paragraph (a)(4)(i)'' adding the words ''of this section'';
■ e. In paragraph (a)(9)(i), after the text ''November 30 of'' adding the word ''the'';
■ f. In paragraph (b)(4)(ii), after the text ''paragraph (b)(4)(i)'' adding the words ''of this section'';
■ g. In paragraph (b)(9)(i), after the text ''November 30 of'' adding the word ''the''; and
■ h. In paragraph (b)(10)(ii), after the text ''§ 52.38(a)(4) or (5)'' adding the words ''of this chapter''.

The revision reads as follows:

§ 97.412 CSAPR NO_X Annual allowance allocations to new units.

* * * * *

■ 66. Section 97.416 is amended by:
■ a. In paragraph (a)(1), removing the word ''Country'' and adding in its place the word ''country''; and
■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.416 Certificate of representation.

* * * * *

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

■ 67. Section 97.420 is amended by:
■ a. Italicizing the headings of paragraphs (c)(1) through (6);
■ b. Adding paragraph (c)(1)(iv);
■ c. In paragraph (c)(2)(i) introductory text, removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';
■ d. Adding paragraph (c)(2)(iv):
■ e. In paragraph (c)(4)(i), removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';
■ f. In paragraph (c)(5)(iii)(D), removing the words ''authorized representative'' and adding in their place the words ''authorized account representative''; and
■ g. In paragraph (c)(5)(v), removing the word ''designated'' two times and adding in its place the words ''authorized account''.

The additions read as follows:

§ 97.420 Establishment of compliance accounts, assurance accounts, and general accounts.

* * * * *

(c) * * *

(1) * * *

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) * * *

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

* * * * *

■ 68. Section 97.421 is amended by:
■ a. Revising the section heading;
■ b. In paragraphs (c), (d), and (e), removing the word ''period'' and adding in its place the word ''periods'';
■ c. In paragraph (i), after the text ''through (12)'' removing the comma;
■ d. Revising paragraph (j); and
■ e. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The revisions and additions read as follows:

§ 97.421 Recordation of CSAPR NO_X Annual allowance allocations and auction results.

* * * * *

(j) By February 15, 2016 and February 15 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR NO_X Annual allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.411 or § 97.412 or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

* * * * *

■ 69. Section 97.422 is amended by revising the section heading to read as follows:

§ 97.422 Submission of CSAPR NO_X Annual allowance transfers.

* * * * *

■ 70. Section 97.423 is amended by:
■ a. Revising the section heading; and
■ b. In paragraph (b), after the word ''allocated'' adding the words ''or auctioned''.

The revision reads as follows:

§ 97.423 Recordation of CSAPR NO_X Annual allowance transfers.

* * * * *

■ 71. Section 97.424 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. Revising paragraphs (c)(2)(i) and (ii); and
■ d. In paragraph (d), after the word ''allocated'' adding the words ''or auctioned''.

The revisions read as follows:

§ 97.424 Compliance with CSAPR NO_X Annual emissions limitation.

* * * * *

(c) * * *

(2) * * *

(i) Any CSAPR NO_X Annual allowances that were recorded in the compliance account pursuant to § 97.421 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Annual allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

* * * * *

■ 72. Section 97.425 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. In paragraph (b)(2)(iii) introductory text, removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(1)(ii)'';
■ d. In paragraph (b)(2)(iii)(B), after the words ''availability of'' adding the words ''the calculations incorporating'';
■ e. In paragraph (b)(4)(i), after the words ''established for'' removing the word ''the''; and
■ f. In paragraph (b)(6)(iii)(B), after the word ''appropriate'' removing the word ''at''.

The revision reads as follows:

§ 97.425 Compliance with CSAPR NO_X Annual assurance provisions.

* * * * *

§ 97.426 [Amended]

■ 73. Section 97.426, paragraph (b) is amended by removing the text ''97.427, or 97.428'' and adding in its place the text ''§ 97.427, or § 97.428''.

§ 97.428 [Amended]

■ 74. Section 97.428, paragraph (b) is amended by removing the text ''paragraph (a)(1)'' and adding in its place the text ''paragraph (a)''.

■ 75. Section 97.430 is amended by:
■ a. Revising paragraph (b) introductory text and paragraphs (b)(1) and (2);
■ b. In paragraph (b)(3) introductory text, removing the text ''§§ 75.4(e)(1) through (e)(4)'' and adding in its place the text ''§ 75.4(e)(1) through (4)''; and
■ c. In paragraph (b)(3)(iii), after the text ''§ 75.66'' adding the words ''of this chapter''.

The revisions read as follows:

§ 97.430 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR NO_X Annual unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

* * * * *

§ 97.431 [Amended]

■ 76. Section 97.431 is amended by:
■ a. Italicizing the headings of paragraphs (d)(1) through (3), (d)(3)(i) through (iv), (d)(3)(iv)(A) through (D), and (d)(3)(v); and
■ b. In paragraph (d)(3) introductory text, removing the text ''§§ '' and adding in its place the text ''§ ''.

■ 77. Section 97.434 is amended by:
■ a. In paragraph (b), after the words ''comply with'' adding the word ''the''; and
■ b. Revising paragraphs (d)(1) and (3).

The revisions read as follows:

§ 97.434 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Annual unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.430(b).

* * * * *

(3) For CSAPR NO_X Annual units that are also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

* * * * *

§ 97.435 [Amended]

■ 78. Section 97.435 is amended by redesignating paragraphs (b)(i) through (v) as paragraphs (b)(1) through (5).

Subpart BBBBB—CSAPR NO_X Ozone Season Group 1 Trading Program

■ 79. The heading of subpart BBBBB of part 97 is revised to read as set forth above.

§ 97.501 [Amended]

■ 80. Section 97.501 is amended by removing the text ''Transport Rule (TR) NO_X Ozone Season Trading Program'' and adding in its place the text ''Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Season Group 1 Trading Program''.

§§ 97.502 through 97.508 and 97.511 through 97.535 [Amended]

■ 81. Sections 97.502 through 97.508 and 97.511 through 97.535 are amended by:

■ a. Removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR''; and

■ b. After the words ''Ozone Season'' wherever they appear adding the text ''Group 1''.

■ 82. Section 97.502 is amended by:

■ a. Revising the introductory text and the definitions ''Allowable NO_X emission rate'' and ''Allowance Management System'';

■ b. In the definition ''Allowance Management System account'', removing the word ''holding'' and adding in its place the text ''auction, holding'';

■ c. Revising the definition ''Allowance transfer deadline'';

■ d. In the definition ''Alternate designated representative'', after the words ''the alternate designated representative'' removing the comma;

■ e. Adding in alphabetical order the definition ''Auction'';

■ f. In the definition ''Cogeneration system'', removing the words ''steam turbine'';

■ g. In the definition ''Commence commercial operation'', paragraph (2) introductory text, after the words ''defined in'' adding the word ''the'';

■ h. In the definition ''Common designated representative's share'', paragraph (2), removing the words ''and of the total'' and adding in their place the words ''and the total'';

■ i. Placing the newly amended definitions ''CSAPR NO_X Annual Trading Program'', ''CSAPR NO_X Ozone Season allowance'', ''CSAPR NO_X Ozone Season allowance deduction or deduct CSAPR NO_X Ozone Season allowances'', ''CSAPR NO_X Ozone Season allowances held or hold CSAPR NO_X Ozone Season allowances'', ''CSAPR NO_X Ozone Season emissions limitation'', ''CSAPR NO_X Ozone Season source'', ''CSAPR NO_X Ozone Season Trading Program'', ''CSAPR NO_X Ozone Season unit'', ''CSAPR SO_2 Group 1 Trading Program'', and ''CSAPR SO_2 Group 2 Trading Program'' in alphabetical order in the section;

■ j. Revising the newly amended definition ''CSAPR NO_X Ozone Season Group 1 Trading Program'';

■ k. Adding in alphabetical order the definitions ''CSAPR NO_X Ozone Season Group 2 allowance'' and ''CSAPR NO_X Ozone Season Group 2 Trading Program'';

■ l. Revising the newly amended definitions ''CSAPR SO_2 Group 1 Trading Program'' and ''CSAPR SO_2 Group 2 Trading Program'';

■ m. In the definition ''Designated representative'', after the words ''the designated representative'' removing the comma;

■ n. In the definition ''Fossil fuel'', paragraph (2), removing the text ''§§ '' and adding in its place the text ''§ '';

■ o. Removing the definition ''Gross electrical output'';

■ p. Revising the definitions ''Heat input'', ''Heat input rate'', and ''Heat rate'';

■ q. In the definition heading ''Maximum design heat input'', after the words ''heat input'' adding the word ''rate'';

■ r. Revising the definition ''Potential electrical output capacity'';

■ s. In the definition ''Sequential use of energy'', paragraph (2), after the word ''from'' adding the word ''a''; and

■ t. Revising the definition ''State''.

The revisions and additions read as follows:

§ 97.502 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

* * * * *

Allowable NO_X emission rate means, for a unit, the most stringent State or federal NO_X emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR NO_X Ozone Season Group 1 allowances under the CSAPR NO_X Ozone Season Group 1 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

* * * * *

Allowance transfer deadline means, for a control period in 2015 or 2016, midnight of December 1, 2015 or December 1, 2016, respectively, or for a control period in any other given year, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately after such control period and is the deadline by which a CSAPR NO_X Ozone Season Group 1 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 1 emissions limitation for such control period in accordance with §§ 97.506 and 97.524.

* * * * *

Auction means, with regard to CSAPR NO_X Ozone Season Group 1 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, of such CSAPR NO_X Ozone Season Group 1 allowances to be initially recorded in an Allowance Management System account.

* * * * *

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

CSAPR NO_X Ozone Season Group 2 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or § 97.526(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 2 Trading Program.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

CSAPR SO_2 Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

* * * * *

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

* * * * *

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

* * * * *

State means one of the States that is subject to the CSAPR NO_X Ozone Season Group 1 Trading Program pursuant to § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter.

* * * * *

§ 97.503 [Amended]

■ 83. Section 97.503 is amended by:
■ a. Adding in alphabetical order the list entry ''CSAPR—Cross-State Air Pollution Rule'';
■ b. Removing the list entry ''kW—kilowatt electrical'';
■ c. Removing the list entry ''kWh—kilowatt hour'' and adding in its place the entry ''kWh—kilowatt-hour'';
■ d. Removing the list entry ''MWh—megawatt hour'' and adding in its place the entry ''MWh—megawatt-hour''; and
■ e. Adding in alphabetical order the list entries ''SIP—State implementation plan'' and ''TR—Transport Rule''.

§ 97.504 [Amended]

■ 84. Section 97.504 is amended by:
■ a. In paragraph (b)(1)(i)(B), removing the word ''electric'' and adding in its place the word ''electrical'';
■ b. In paragraph (b)(2)(ii), removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(2)(i)'', and removing the text ''NO_X'' and adding in its place the text ''NO_X''; and
■ c. Italicizing the headings of paragraphs (c)(1) and (2).

§ 97.505 [Amended]

■ 85. Section 97.505, paragraph (b) is amended by italicizing the heading.

§ 97.506 [Amended]

■ 86. Section 97.506 is amended by:
■ a. Italicizing the headings of paragraphs (c), (c)(1) and (2), and (c)(4) through (7);
■ b. In paragraph (c)(2)(ii), after the words ''immediately after'' adding the words ''the year of'';
■ c. In paragraph (c)(3)(i), after the paragraph designation ''(i)'' adding a space;
■ d. In paragraph (c)(4) heading, after the words ''Vintage of'' adding the text ''CSAPR NO_X Ozone Season Group 1''; and
■ e. In paragraphs (c)(4)(i) and (ii), after the word ''allocated'' adding the words ''or auctioned''.

■ 87. Section 97.510 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a) introductory text;
■ c. In paragraphs (a)(1) through (25):
■ i. Removing the words ''ozone season trading'' wherever they appear and adding in their place the text ''Ozone Season Group 1 trading'';
■ ii. Removing the text ''NO_X ozone season new'' wherever it appears and adding in its place the word ''new''; and
■ iii. Removing the text ''NO_X ozone season Indian'' wherever it appears and adding in its place the word ''Indian'';
■ d. Adding and reserving paragraphs (a)(2)(vi), (a)(13)(vi), (a)(17)(vi), and (a)(18)(vi);
■ e. Revising paragraph (b) introductory text;
■ f. In paragraphs (b)(1) through (25), removing the text ''NO_X ozone season''; and
■ g. Revising paragraph (c).

The revisions read as follows:

§ 97.510 State NO_X Ozone Season Group 1 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State NO_X Ozone Season Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR NO_X Ozone Season Group 1 allowances for the control periods in 2015 and thereafter are as follows:

* * * * *

(b) The States' variability limits for the State NO_X Ozone Season Group 1 trading budgets for the control periods in 2017 and thereafter are as follows:

* * * * *

(c) Each State NO_X Ozone Season Group 1 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

■ 88. Section 97.511 is amended by:
■ a. Revising the section heading;
■ b. Italicizing the headings of paragraphs (b)(1) and (2);
■ c. Revising paragraph (b)(1)(iii);
■ d. In paragraph (b)(1)(iv)(B), removing the words ''the each'' and adding in their place the word ''each'', and revising the second sentence;
■ e. Revising paragraph (b)(2)(iii);
■ f. In paragraph (b)(2)(iv)(B), removing the words ''the each'' and adding in

their place the word ''each'', revising the second sentence, and after the newly revised second sentence adding a paragraph break before the paragraph designation ''(v)'' for the following paragraph (b)(2)(v);

■ g. In paragraph (c)(1)(ii), removing the text ''§ 52.38(b)(3), (4), or (5)'' and adding in its place the text ''§ 52.38(b)(4) or (5)'', and removing the text ''January 1'' and adding in its place the text ''May 1'';

■ h. In paragraph (c)(5)(i)(B), after the text ''§ 52.38(b)(4) or (5)'' adding the words ''of this chapter'', and removing the word ''Annual'' and adding in its place the text ''Ozone Season Group 1'';

■ i. In paragraph (c)(5)(ii) introductory text, removing the words ''this paragraph'' and adding in their place the words ''this section'';

■ j. In paragraph (c)(5)(ii)(B), after the text ''§ 52.38(b)(4) or (5)'' adding the words ''of this chapter''; and

■ k. In paragraph (c)(5)(iii), removing the words ''this paragraph'' and adding in their place the words ''this section''.

The revisions read as follows:

§ 97.511 Timing requirements for CSAPR NO_X Ozone Season Group 1 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(iii)(A) If the new unit set-aside for the control period in 2015 or 2016 contains any CSAPR NO_X Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 1 units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period.

(B) If the new unit set-aside for the control period in 2017 or any subsequent year contains any CSAPR NO_X Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) * * *

(B) * * * By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii)(A) of this section, or by February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii)(B) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

* * * * *

(2) * * *

(iii)(A) If the Indian country new unit set-aside for the control period in 2015 or 2016 contains any CSAPR NO_X Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 1 units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period.

(B) If the Indian country new unit set-aside for the control period in 2017 or any subsequent year contains any CSAPR NO_X Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) * * *

(B) * * * By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(A) of this section, or by February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

* * * * *

■ 89. Section 97.512 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (a)(2), removing the text ''§§ '' and adding in its place the text ''§ '';

■ c. In paragraph (a)(4)(i), removing the text ''paragraph (a)(1)(i) through (iii)'' and adding in its place the text ''paragraphs (a)(1)(i) through (iii)'';

■ d. In paragraph (a)(4)(ii), after the text ''paragraph (a)(4)(i)'' adding the words ''of this section'';

■ e. Revising paragraph (a)(9)(i);

■ f. In paragraph (b)(4)(ii), after the text ''paragraph (b)(4)(i)'' adding the words ''of this section'';

■ g. Revising paragraph (b)(9)(i); and

■ h. In paragraph (b)(10)(ii), after the text ''§ 52.38(b)(4) or (5)'' adding the words ''of this chapter''.

The revisions read as follows:

§ 97.512 CSAPR NO_X Ozone Season Group 1 allowance allocations to new units.

(a) * * *

(9) * * *

(i)(A) For the control period in 2015 or 2016, the Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(1)(ii) for the unit for such control period;

(B) For the control period in 2017 or any subsequent year, the Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(1)(ii) for the unit for such control period;

* * * * *

(b) * * *

(9) * * *

(i)(A) For the control period in 2015 or 2016, the Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(2)(ii) for the unit for such control period;

(B) For the control period in 2017 or any subsequent year, the Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(2)(ii) for the unit for such control period;

* * * * *

■ 90. Section 97.516 is amended by:

■ a. In paragraph (a)(1), removing the word ''Country'' and adding in its place the word ''country''; and

■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.516 Certificate of representation.

* * * * *

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR NO_X Ozone Season'' in place of the phrase ''CSAPR NO_X Ozone Season Group 1'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 1'' appeared in place of the phrase ''TR NO_X Ozone Season''.

■ 91. Section 97.520 is amended by:

■ a. Italicizing the headings of paragraphs (c)(1) through (6);

■ b. Adding paragraph (c)(1)(iv);

■ c. In paragraph (c)(2)(i) introductory text, removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ d. Adding paragraph (c)(2)(iv);

■ e. In paragraph (c)(4)(i), removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ f. In paragraph (c)(5)(iii)(D), removing the words ''authorized representative'' and adding in their place the words ''authorized account representative''; and

■ g. In paragraph (c)(5)(v), removing the word ''designated'' two times and adding in its place the words ''authorized account''.

The additions read as follows:

§ 97.520 Establishment of compliance accounts, assurance accounts, and general accounts.

* * * * *

(c) * * *

(1) * * *

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the phrase ''TR NO_X Ozone Season'' in place of the phrase ''CSAPR NO_X Ozone Season Group 1'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 1'' appeared in place of the phrase ''TR NO_X Ozone Season''.

(2) * * *

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR NO_X Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 1'' appeared in place of the phrase ''TR NO_X Ozone Season''.

* * * * *

■ 92. Section 97.521 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (c);

■ c. In paragraphs (d) and (e), removing the word ''period'' and adding in its place the word ''periods'';

■ d. Revising paragraphs (i) and (j); and

■ e. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The revisions and additions read as follows:

§ 97.521 Recordation of CSAPR NO_X Ozone Season Group 1 allowance allocations and auction results.

* * * * *

(c) By January 9, 2017, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 1 allowances auctioned to CSAPR NO_X Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control periods in 2017 and 2018.

* * * * *

(i)(1) By November 15, 2015 and November 15, 2016, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(a)(9) through (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By February 15, 2018 and February 15 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j)(1) By November 15, 2015 and November 15, 2016, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(b)(9) through (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By February 15, 2018 and February 15 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR NO_X Ozone Season Group 1 allowances

to a recipient is made by or are submitted to the Administrator in accordance with § 97.511 or § 97.512 or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

* * * * *

■ 93. Section 97.522 is amended by revising the section heading to read as follows:

§ 97.522 Submission of CSAPR NO_X Ozone Season Group 1 allowance transfers.

* * * * *

■ 94. Section 97.523 is amended by:
■ a. Revising the section heading; and
■ b. In paragraph (b), after the word ''allocated'' adding the words ''or auctioned''.

The revision reads as follows:

§ 97.523 Recordation of CSAPR NO_X Ozone Season Group 1 allowance transfers.

* * * * *

■ 95. Section 97.524 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. Revising paragraphs (c)(2)(i) and (ii); and
■ d. In paragraph (d), after the word ''allocated'' adding the words ''or auctioned''.

The revisions read as follows:

§ 97.524 Compliance with CSAPR NO_X Ozone Season Group 1 emissions limitation.

* * * * *

(c) * * *

(2) * * *

(i) Any CSAPR NO_X Ozone Season Group 1 allowances that were recorded in the compliance account pursuant to § 97.521 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Ozone Season Group 1 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

* * * * *

■ 96. Section 97.525 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. In paragraph (b)(2)(iii) introductory text, removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(1)(ii)'';
■ d. In paragraph (b)(2)(iii)(B), after the words ''availability of'' adding the words ''the calculations incorporating'';
■ e. In paragraph (b)(4)(i), after the words ''established for'' removing the word ''the''; and
■ f. In paragraph (b)(6)(iii)(B), after the word ''appropriate'' removing the word ''at''.

The revision reads as follows:

§ 97.525 Compliance with CSAPR NO_X Ozone Season Group 1 assurance provisions.

* * * * *

■ 97. Section 97.526 is amended by:
■ a. In paragraph (b), removing the text ''§ 97.528'' and adding in its place the text ''§ 97.528 or removed under paragraph (c) of this section''; and
■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.526 Banking.

* * * * *

(c) *Replacement of CSAPR NO_X Ozone Season Group 1 allowances with CSAPR NO_X Ozone Season Group 2 allowances.* Notwithstanding any other provision of this subpart or any provision of a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will remove CSAPR NO_X Ozone Season Group 1 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR NO_X Ozone Season Group 2 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR NO_X Ozone Season Group 2 allowances in lieu of initially recording CSAPR NO_X Ozone Season Group 1 allowances as provided in paragraph (c)(6) of this section.

(1) As soon as practicable after the completion of deductions under § 97.524 for the control period in 2016, but not later than March 1, 2018, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO_X Ozone Season Group 1 source located in a State listed in § 52.38(b)(2)(i) of this chapter or Indian country within the borders of such a State:

(i) The Administrator will remove all CSAPR NO_X Ozone Season Group 1 allowances allocated for the control periods in 2015 and 2016 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_X Ozone Season Group 1 allowances removed from all such accounts under paragraph (c)(1)(i) of this section divided by the product of 1.5 times the sum of the variability limits for the control period in 2017 set forth in § 97.810(b) for all States except a State listed in § 52.38(b)(2)(i) of this chapter.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017, where such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 1 allowances removed from such account under paragraph (c)(1)(i) of this section divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(2) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not later than the allowance transfer deadline defined under § 97.802 for the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account, unless otherwise provided in such approval of the SIP revision:

(i) The Administrator will remove from each such account all CSAPR NO_X Ozone Season Group 1 allowances for such initial control period and each subsequent control period that were allocated to units located in such State under this subpart or that were allocated or auctioned to any entity under a SIP revision for such State approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, whether such CSAPR NO_X Ozone Season Group 1 allowances were initially recorded in such account or were transferred to such account from another account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the NO_X Ozone Season Group 1 trading budget set forth for such State in § 97.510(a) divided by the NO_X Ozone Season Group 2 trading budget set forth for such State in § 97.810(a).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances for each control

period for which CSAPR NO_X Ozone Season Group 1 allowances were removed from such account, where each such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 1 allowances for such control period removed from such account under paragraph (c)(2)(i) of this section divided by the conversion factor determined under paragraph (c)(2)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(3) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not before the completion of deductions under § 97.524 for the control period before the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter and not later than the allowance transfer deadline defined under § 97.802 for such initial control period, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every compliance account for a CSAPR NO_X Ozone Season Group 1 source located in such State, provided that if the provisions of § 52.38(b)(2)(i) of this chapter or a SIP revision approved under § 52.38(b)(5) of this chapter will no longer apply to any source in any State or Indian country within the borders of any State with regard to emissions occurring in such initial control period or any subsequent control period, the Administrator instead will permanently end acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and will take the following actions with regard to every general account and every compliance account:

(i) The Administrator will remove from each such account all CSAPR NO_X Ozone Season Group 1 allowances allocated for all control periods before such initial control period.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_X Ozone Season Group 1 allowances removed from all such accounts under paragraph (c)(3)(i) of this section divided by the product of 1.5 times the variability limit for such initial control period set forth for such State in § 97.810(b).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances for such initial control period, where such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 1 allowances removed from such account under paragraph (c)(3)(i) of this section divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(4) Where, pursuant to paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator removes CSAPR NO_X Ozone Season Group 1 allowances from the compliance account for a source located in a State not listed in § 52.38(b)(2)(iii) of this chapter or Indian country within the borders of such a State, the Administrator will not record CSAPR NO_X Ozone Season Group 2 allowances in that account but instead will allocate to and record in another compliance account or general account CSAPR NO_X Ozone Season Group 2 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, provided that the designated representative for such source identifies such other account in a submission to the Administrator and further provided that any compliance account identified in such a submission is for a source located in a State listed in § 52.38(b)(2)(iii) of this chapter or Indian country within the borders of such a State.

(5)(i) In computing any amounts of CSAPR NO_X Ozone Season Group 2 allowances to be allocated to and recorded in general accounts under paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(ii) Following a computation for a group of general accounts in accordance with paragraph (c)(5)(i) of this section, the Administrator will allocate to and record in each individual account in such group a proportional share of the quantity of CSAPR NO_X Ozone Season Group 2 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_X Ozone Season Group 1 allowances removed from such individual accounts under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, as applicable.

(iii) In determining the proportional shares under paragraph (c)(5)(ii) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_X Ozone Season Group 2 allowances computed for such group of accounts in accordance with paragraph (c)(5)(i) of this section, even where such adjustments cause the numbers of CSAPR NO_X Ozone Season Group 2 allowances allocated to some individual accounts to equal zero.

(6) After the Administrator has carried out the procedures set forth in paragraph (c)(1), (2), or (3) of this section, upon any determination that would otherwise result in the initial recordation of any CSAPR NO_X Ozone Season Group 1 allowances in any account, where if such allowances had been recorded before the Administrator had carried out such procedures the allowances would have been removed from such account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, respectively, the Administrator will not record such CSAPR NO_X Ozone Season Group 1 allowances but instead will record CSAPR NO_X Ozone Season Group 2 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, in such account or another account identified in accordance with paragraph (c)(4) of this section.

(7) Notwithstanding any other provision of this subpart or subpart EEEEE of this part, CSAPR NO_X Ozone Season Group 2 allowances may be used to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(i) After the Administrator has carried out the procedures set forth in paragraph (c)(1) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 1 unit in a State listed in § 52.38(b)(2)(iii) of this chapter or Indian country within the borders of such a State may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017, where such amount of CSAPR NO_X Ozone Season Group 2 allowances is computed as the quotient of such given number of CSAPR NO_X

Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance.

(ii) After the Administrator has carried out the procedures set forth in paragraph (c)(3) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 1 unit in a State listed in § 52.38(b)(2)(i) of this chapter may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 1 allowances for a control period before the initial control period described with regard to the State's SIP revision in § 52.38(b)(6)(ii)(A) of this chapter by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 2 allowances for such initial control period or any previous control period, where such amount of CSAPR NO_X Ozone Season Group 2 allowances is computed as the quotient of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance.

§ 97.528 [Amended]

■ 98. Section 97.528, paragraph (b) is amended by removing the text ''paragraph (a)(1)'' and adding in its place the text ''paragraph (a)''.

■ 99. Section 97.530 is amended by:

■ a. Revising paragraph (b) introductory text and paragraphs (b)(1) through (3);

■ b. In paragraph (b)(4) introductory text, removing the text ''§§ 75.4 (e)(1) through (e)(4)'' and adding in its place the text ''§ 75.4 (e)(1) through (4)''; and

■ c. In paragraph (b)(4)(iii), after the text ''§ 75.66'' adding the words ''of this chapter''.

The revisions read as follows:

§ 97.530 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 1 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2015;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.534(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

* * * * *

§ 97.531 [Amended]

■ 100. Section 97.531 is amended by:

■ a. Italicizing the headings of paragraphs (d)(1) through (3), (d)(3)(i) through (iv), (d)(3)(iv)(A) through (D), and (d)(3)(v);

■ b. In paragraph (d)(3) introductory text, removing the text ''§§ '' and adding in its place the text ''§ ''; and

■ c. Redesignating paragraphs (d)(3)(v)(A)(1) through (5) as paragraphs (d)(3)(v)(A)(*1*) through (*5*).

■ 101. Section 97.534 is amended by:

■ a. In paragraph (b), after the words ''comply with'' adding the word ''the'';

■ b. Revising paragraphs (d)(1) and (2);

■ c. Redesignating paragraph (d)(6) as paragraph (d)(5)(ii); and

■ d. In paragraph (e)(3), removing the text ''paragraph (d)(2)(ii)'' and adding in its place the text ''paragraph (d)(1)(ii)(B)''.

The revisions read as follows:

§ 97.534 Recordkeeping and reporting.

* * * * *

(d) * * *

(1)(i) If a CSAPR NO_X Ozone Season Group 1 unit is subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR NO_X Ozone Season Group 1 unit is not subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year.

(2) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Ozone Season Group 1 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2015 through June 30, 2015;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.530(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

* * * * *

§ 97.535 [Amended]

■ 102. Section 97.535 is amended by:

■ a. Redesignating paragraphs (b)(i) through (v) as paragraphs (b)(1) through (5); and

■ b. In the newly redesignated paragraph (b)(4), removing the colon and adding in its place a semicolon.

Subpart CCCCC—CSAPR SO_2 Group 1 Trading Program

■ 103. The heading of subpart CCCCC of part 97 is revised to read as set forth above.

§ 97.601 [Amended]

■ 104. Section 97.601 is amended by removing the text ''Transport Rule (TR) SO_2 Group 1 Trading Program'' and adding in its place the text ''Cross-State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program''.

§§ 97.602 through 97.635 [Amended]

■ 105. Sections 97.602 through 97.635 are amended by removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR''.

■ 106. Section 97.602 is amended by:

■ a. Revising the introductory text and the definitions ''Allowable SO_2 emission rate'' and ''Allowance Management System'';

■ b. In the definition ''Allowance Management System account'',

removing the word ''holding'' and adding in its place the text ''auction, holding'';
■ c. Revising the definition ''Alternate designated representative'';
■ d. Adding in alphabetical order the definition ''Auction'';
■ e. In the definition ''Cogeneration system'', removing the words ''steam turbine'';
■ f. In the definition ''Commence commercial operation'', paragraph (2) introductory text, after the words ''defined in'' adding the word ''the'';
■ g. In the definition ''Common designated representative's share'', paragraph (2), removing the words ''and of the total'' and adding in their place the words ''and the total'';
■ h. Placing the newly amended definitions ''CSAPR NO_X Annual Trading Program'', ''CSAPR NO_X Ozone Season Trading Program'', ''CSAPR SO_2 Group 1 allowance'', ''CSAPR SO_2 Group 1 allowance deduction or deduct CSAPR SO_2 Group 1 allowances'', ''CSAPR SO_2 Group 1 allowances held or hold CSAPR SO_2 Group 1 allowances'', ''CSAPR SO_2 Group 1 emissions limitation'', ''CSAPR SO_2 Group 1 source'', ''CSAPR SO_2 Group 1 Trading Program'', and ''CSAPR SO_2 Group 1 unit'' in alphabetical order in the section;
■ i. Removing the newly amended definition ''CSAPR NO_X Ozone Season Trading Program'';
■ j. Adding in alphabetical order the definitions ''CSAPR NO_X Ozone Season Group 1 Trading Program'' and ''CSAPR NO_X Ozone Season Group 2 Trading Program'';
■ k. Revising the newly amended definition ''CSAPR SO_2 Group 1 Trading Program'' and the definition ''Designated representative'';
■ l. In the definition ''Fossil fuel'', paragraph (2), removing the text ''§§'' and adding in its place the text ''§'';
■ m. Removing the definition ''Gross electrical output'';
■ n. Revising the definitions ''Heat input'', ''Heat input rate'', and ''Heat rate'';
■ o. In the definition heading ''Maximum design heat input'', after the words ''heat input'' adding the word ''rate'';
■ p. Revising the definition ''Potential electrical output capacity'';
■ q. In the definition ''Sequential use of energy'', paragraph (2), after the word ''from'' adding the word ''a''; and
■ r. Revising the definition ''State''.

The revisions and additions read as follows:

§ 97.602 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

* * * * *

Allowable SO_2 emission rate means, for a unit, the most stringent State or federal SO_2 emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR SO_2 Group 1 allowances under the CSAPR SO_2 Group 1 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

* * * * *

Alternate designated representative means, for a CSAPR SO_2 Group 1 source and each CSAPR SO_2 Group 1 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR SO_2 Group 1 Trading Program. If the CSAPR SO_2 Group 1 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

* * * * *

Auction means, with regard to CSAPR SO_2 Group 1 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.39(e) or (f) of this chapter, of such CSAPR SO_2 Group 1 allowances to be initially recorded in an Allowance Management System account.

* * * * *

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with this subpart and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

* * * * *

Designated representative means, for a CSAPR SO_2 Group 1 source and each CSAPR SO_2 Group 1 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR SO_2 Group 1 Trading Program. If the CSAPR SO_2 Group 1 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

* * * * *

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit

operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

* * * * *

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

* * * * *

State means one of the States that is subject to the CSAPR SO_2 Group 1 Trading Program pursuant to § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter.

* * * * *

§ 97.603 [Amended]

■ 107. Section 97.603 is amended by:
■ a. Adding in alphabetical order the list entry ''CSAPR—Cross-State Air Pollution Rule'';
■ b. Removing the list entry ''kW—kilowatt electrical'';
■ c. Removing the list entry ''kWh—kilowatt hour'' and adding in its place the entry ''kWh—kilowatt-hour'';
■ d. Removing the list entry ''MWh—megawatt hour'' and adding in its place the entry ''MWh—megawatt-hour''; and
■ e. Adding in alphabetical order the list entries ''SIP—State implementation plan'' and ''TR—Transport Rule''.

§ 97.604 [Amended]

■ 108. Section 97.604 is amended by:
■ a. In paragraph (b)(1)(i)(B), removing the word ''electric'' and adding in its place the word ''electrical'';
■ b. In paragraph (b)(2)(ii), removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(2)(i)''; and
■ c. Italicizing the headings of paragraphs (c)(1) and (2).

§ 97.605 [Amended]

■ 109. Section 97.605, paragraph (b) is amended by italicizing the heading.

§ 97.606 [Amended]

■ 110. Section 97.606 is amended by:
■ a. Italicizing the headings of paragraphs (c)(1) and (2) and (c)(4) through (7);
■ b. In paragraph (c)(2)(ii), after the words ''immediately after'' adding the words ''the year of'';
■ c. In paragraph (c)(4) heading, after the words ''Vintage of'' adding the text ''CSAPR SO_2 Group 1'';
■ d. In paragraphs (c)(4)(i) and (ii), after the word ''allocated'' adding the words ''or auctioned''; and
■ e. In paragraph (d)(2), removing the text ''subpart H'' and adding in its place the text ''subpart B''.
■ 111. Section 97.610 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a) introductory text;
■ c. In paragraphs (a)(1) through (16):
■ i. Removing the word ''trading'' wherever it appears and adding in its place the text ''Group 1 trading'';
■ ii. Removing the text ''SO_2 new'' wherever it appears and adding in its place the word ''new''; and
■ iii. Removing the text ''SO_2 Indian'' wherever it appears and adding in its place the word ''Indian'';
■ d. Adding and reserving paragraphs (a)(2)(vi) and (a)(11)(vi);
■ e. In paragraphs (b)(1) through (16), removing the text ''SO_2''; and
■ f. Revising paragraph (c).

The revisions read as follows:

§ 97.610 State SO_2 Group 1 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State SO_2 Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR SO_2 Group 1 allowances for the control periods in 2015 and thereafter are as follows:

* * * * *

(c) Each State SO_2 Group 1 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.
■ 112. Section 97.611 is amended by:
■ a. Revising the section heading;
■ b. Italicizing the headings of paragraphs (b)(1) and (2);
■ c. In paragraphs (b)(1)(iii) and (b)(2)(iii), after the text ''November 30 of'' adding the word ''the'';
■ d. In paragraph (b)(2)(v), removing the text ''NO_X Annual'' and adding in its place the text ''SO_2 Group 1'';
■ e. In paragraph (c)(1)(ii), removing the text ''§ 52.39(d), (e), or (f)'' and adding in its place the text ''§ 52.39(e) or (f)'';
■ f. In paragraph (c)(5)(i)(B), after the text ''§ 52.39(e) or (f)'' adding the words ''of this chapter'';
■ g. In paragraph (c)(5)(ii) introductory text, removing the words ''this paragraph'' and adding in their place the words ''this section'';
■ h. In paragraph (c)(5)(ii)(B), after the text ''§ 52.39(e) or (f)'' adding the words ''of this chapter''; and
■ i. In paragraph (c)(5)(iii), removing the words ''this paragraph'' and adding in their place the words ''this section''.

The revision reads as follows:

§ 97.611 Timing requirements for CSAPR SO_2 Group 1 allowance allocations.

* * * * *

■ 113. Section 97.612 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(2), removing the text ''§§ '' and adding in its place the text ''§ '';
■ c. In paragraph (a)(4)(i), removing the text ''paragraph (a)(1)(i) through (iii)'' and adding in its place the text ''paragraphs (a)(1)(i) through (iii)'';
■ d. In paragraph (a)(4)(ii), after the text ''paragraph (a)(4)(i)'' adding the words ''of this section'';
■ e. In paragraph (a)(9)(i), after the text ''November 30 of'' adding the word ''the'';
■ f. In paragraph (b)(4)(ii), after the text ''paragraph (b)(4)(i)'' adding the words ''of this section'';
■ g. In paragraph (b)(9)(i), after the text ''November 30 of'' adding the word ''the'';
■ h. In paragraph (b)(10)(ii), removing the text ''§ 52.39(d), (e), or (f)'' and adding in its place the text ''§ 52.39(e) or (f)''; and
■ i. In paragraph (b)(11), after the text ''paragraphs (b)(9), (10) and (12)'' adding the words ''of this section''.

The revision reads as follows:

§ 97.612 CSAPR SO_2 Group 1 allowance allocations to new units.

* * * * *

■ 114. Section 97.616 is amended by:
■ a. In paragraph (a)(1), removing the word ''Country'' and adding in its place the word ''country''; and
■ b. Adding paragraph (c).

The additions read as follows:

§ 97.616 Certificate of representation.

* * * * *

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification

statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

■ 115. Section 97.620 is amended by:

■ a. Italicizing the headings of paragraphs (c)(1) through (6);

■ b. Adding paragraph (c)(1)(iv);

■ c. In paragraph (c)(2)(i) introductory text, removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ d. Adding paragraph (c)(2)(iv);

■ e. In paragraph (c)(4)(i), removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ f. In paragraph (c)(5)(iii)(D), removing the words ''authorized representative'' and adding in their place the words ''authorized account representative''; and

■ g. In paragraph (c)(5)(v), removing the word ''designated'' two times and adding in its place the words ''authorized account''.

The additions read as follows:

§ 97.620 Establishment of compliance accounts, assurance accounts, and general accounts.

* * * * *

(c) * * *

(1) * * *

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) * * *

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

* * * * *

■ 116. Section 97.621 is amended by:

■ a. Revising the section heading;

■ b. In paragraphs (c), (d), and (e), removing the word ''period'' and adding in its place the word ''periods'';

■ c. In paragraphs (f) and (g), removing the text ''§ 52.39(e) and (f)'' and adding in its place the text ''§ 52.39(e) or (f)'';

■ d. In paragraph (i), after the text ''through (12)'' removing the comma;

■ e. Revising paragraph (j); and

■ f. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The revisions and additions read as follows:

§ 97.621 Recordation of CSAPR SO_2 Group 1 allowance allocations and auction results.

* * * * *

(j) By February 15, 2016 and February 15 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source in accordance with § 97.612(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR SO_2 Group 1 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.611 or § 97.612 or with a SIP revision approved under § 52.39(e) or (f) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

* * * * *

■ 117. Section 97.622 is amended by revising the section heading to read as follows:

§ 97.622 Submission of CSAPR SO_2 Group 1 allowance transfers.

* * * * *

■ 118. Section 97.623 is amended by:

■ a. Revising the section heading; and

■ b. In paragraph (b), after the word ''allocated'' adding the words ''or auctioned''.

The revision reads as follows:

§ 97.623 Recordation of CSAPR SO_2 Group 1 allowance transfers.

* * * * *

■ 119. Section 97.624 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';

■ c. Revising paragraphs (c)(2)(i) and (ii); and

■ d. In paragraph (d), after the word ''allocated'' adding the words ''or auctioned''.

The revisions read as follows:

§ 97.624 Compliance with CSAPR SO_2 Group 1 emissions limitation.

* * * * *

(c) * * *

(2) * * *

(i) Any CSAPR SO_2 Group 1 allowances that were recorded in the compliance account pursuant to § 97.621 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR SO_2 Group 1 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

* * * * *

■ 120. Section 97.625 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';

■ c. In paragraph (b)(2)(iii) introductory text, removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(1)(ii)''; and

■ d. In paragraph (b)(2)(iii)(B), after the words ''availability of'' adding the words ''the calculations incorporating''.

The revision reads as follows:

§ 97.625 Compliance with CSAPR SO_2 Group 1 assurance provisions.

* * * * *

§ 97.628 [Amended]

■ 121. Section 97.628, paragraph (b) is amended by removing the text ''paragraph (a)(1)'' and adding in its place the text ''paragraph (a)''.

■ 122. Section 97.630 is amended by:

■ a. Revising paragraph (b) introductory text and paragraphs (b)(1) and (2);

■ b. In paragraph (b)(3) introductory text, removing the text ''§§ 75.4(e)(1) through (e)(4)'' and adding in its place the text ''§ 75.4(e)(1) through (4)''; and

■ c. In paragraph (b)(3)(iii), after the text ''§ 75.66'' adding the words ''of this chapter''.

The revisions read as follows:

§ 97.630 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR SO_2 Group 1 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

* * * * *

§ 97.631 [Amended]

■ 123. Section 97.631 is amended by:
■ a. Italicizing the headings of paragraphs (d)(1) through (3), (d)(3)(i) through (iv), (d)(3)(iv)(A) through (D), and (d)(3)(v);
■ b. In paragraph (d)(3) introductory text, removing the text ''§§ '' and adding in its place the text ''§ ''; and
■ c. Redesignating paragraphs (d)(3)(v)(A)(1) through (3) as paragraphs (d)(3)(v)(A)(*1*) through (*3*).
■ 124. Section 97.634 is amended by:
■ a. In paragraph (b), after the words ''comply with'' adding the word ''the''; and
■ b. Revising paragraphs (d)(1) and (3).

The revisions read as follows:

§ 97.634 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) The designated representative shall report the SO_2 mass emissions data and heat input data for a CSAPR SO_2 Group 1 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.630(b).

* * * * *

(3) For CSAPR SO_2 Group 1 units that are also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

* * * * *

§ 97.635 [Amended]

■ 125. Section 97.635 is amended by redesignating paragraphs (b)(i) through (v) as paragraphs (b)(1) through (5).

Subpart DDDDD—CSAPR SO_2 Group 2 Trading Program

■ 126. The heading of subpart DDDDD of part 97 is revised to read as set forth above.

§ 97.701 [Amended]

■ 127. Section 97.701 is amended by removing the text ''Transport Rule (TR) SO_2 Group 2 Trading Program'' and adding in its place the text ''Cross-State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program''.

§§ 97.702 through 97.735 [Amended]

■ 128. Sections 97.702 through 97.735 are amended by removing the text ''TR'' wherever it appears and adding in its place the text ''CSAPR''.
■ 129. Section 97.702 is amended by:
■ a. Revising the introductory text and the definitions ''Allowable SO_2 emission rate'' and ''Allowance Management System'';
■ b. In the definition ''Allowance Management System account'', removing the word ''holding'' and adding in its place the text ''auction, holding'';
■ c. Revising the definition ''Alternate designated representative'';
■ d. Adding in alphabetical order the definition ''Auction'';
■ e. In the definition ''Cogeneration system'', removing the words ''steam turbine'';
■ f. In the definition ''Commence commercial operation'', paragraph (2) introductory text, after the words ''defined in'' adding the word ''the'';
■ g. In the definition ''Common designated representative's share'', paragraph (2), removing the words ''and of the total'' and adding in their place the words ''and the total'';
■ h. Placing the newly amended definitions ''CSAPR NO_X Annual Trading Program'', ''CSAPR NO_X Ozone Season Trading Program'', ''CSAPR SO_2 Group 2 allowance'', ''CSAPR SO_2 Group 2 allowance deduction or deduct CSAPR SO_2 Group 2 allowances'', ''CSAPR SO_2 Group 2 allowances held or hold CSAPR SO_2 Group 2 allowances'', ''CSAPR SO_2 Group 2 emissions limitation'', ''CSAPR SO_2 Group 2 source'', ''CSAPR SO_2 Group 2 Trading Program'', and ''CSAPR SO_2 Group 2 unit'' in alphabetical order in the section;
■ i. Removing the newly amended definition ''CSAPR NO_X Ozone Season Trading Program'';
■ j. Adding in alphabetical order the definitions ''CSAPR NO_X Ozone Season Group 1 Trading Program'' and ''CSAPR NO_X Ozone Season Group 2 Trading Program'';
■ k. Italicizing the newly amended definition headings ''CSAPR SO_2 Group 2 allowance deduction or deduct CSAPR SO_2 Group 2 allowances'' and ''CSAPR SO_2 Group 2 allowances held or hold CSAPR SO_2 Group 2 allowances'';
■ l. Revising the newly amended definition ''CSAPR SO_2 Group 2 Trading Program'' and the definition ''Designated representative'';
■ m. In the definition ''Fossil fuel'', paragraph (2), removing the text ''§§ '' and adding in its place the text ''§ '';
■ n. Removing the definition ''Gross electrical output'';
■ o. Revising the definitions ''Heat input'', ''Heat input rate'', and ''Heat rate'';
■ p. In the definition heading ''Maximum design heat input'', after the words ''heat input'' adding the word ''rate'';
■ q. Revising the definition ''Potential electrical output capacity'';
■ r. In the definition ''Sequential use of energy'', paragraph (2), after the word ''from'' adding the word ''a''; and
■ s. Revising the definition ''State''.

The revisions and additions read as follows:

§ 97.702 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

* * * * *

Allowable SO_2 emission rate means, for a unit, the most stringent State or federal SO_2 emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR SO_2 Group 2 allowances under the CSAPR SO_2 Group 2 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

* * * * *

Alternate designated representative means, for a CSAPR SO_2 Group 2 source and each CSAPR SO_2 Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR SO_2 Group 2 Trading Program. If the CSAPR SO_2 Group 2 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season

Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

* * * * *

Auction means, with regard to CSAPR SO_2 Group 2 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.39(h) or (i) of this chapter, of such CSAPR SO_2 Group 2 allowances to be initially recorded in an Allowance Management System account.

* * * * *

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

CSAPR SO_2 Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with this subpart and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

* * * * *

Designated representative means, for a CSAPR SO_2 Group 2 source and each CSAPR SO_2 Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR SO_2 Group 2 Trading Program. If the CSAPR SO_2 Group 2 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

* * * * *

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

* * * * *

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

* * * * *

State means one of the States that is subject to the CSAPR SO_2 Group 2 Trading Program pursuant to § 52.39(a), (c), (g) through (k), and (m) of this chapter.

* * * * *

§ 97.703 [Amended]

■ 130. Section 97.703 is amended by:

■ a. Adding in alphabetical order the list entry ''CSAPR—Cross-State Air Pollution Rule'';

■ b. Removing the list entry ''kW—kilowatt electrical'';

■ c. Removing the list entry ''kWh—kilowatt hour'' and adding in its place the entry ''kWh—kilowatt-hour'';

■ d. Removing the list entry ''MWh—megawatt hour'' and adding in its place the entry ''MWh—megawatt-hour''; and

■ e. Adding in alphabetical order the list entries ''SIP—State implementation plan'' and ''TR—Transport Rule''.

§ 97.704 [Amended]

■ 131. Section 97.704 is amended by:

■ a. In paragraph (b)(1)(i)(B), removing the word ''electric'' and adding in its place the word ''electrical'';

■ b. In paragraph (b)(2)(ii), removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(2)(i)''; and

■ c. Italicizing the headings of paragraphs (c)(1) and (2).

§ 97.705 [Amended]

■ 132. Section 97.705, paragraph (b) is amended by italicizing the heading.

§ 97.706 [Amended]

■ 133. Section 97.706 is amended by:

■ a. Italicizing the headings of paragraphs (c)(1) and (2) and (c)(4) through (7);

■ b. In paragraph (c)(2)(ii), after the words ''immediately after'' adding the words ''the year of'';

■ c. In paragraph (c)(4) heading, after the words ''Vintage of'' adding the text ''CSAPR SO_2 Group 2'';

■ d. In paragraphs (c)(4)(i) and (ii), after the word ''allocated'' adding the words ''or auctioned''; and

■ e. In paragraph (d)(2), removing the text ''subpart H'' and adding in its place the text ''subpart B''.

■ 134. Section 97.710 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a) introductory text;

■ c. In paragraphs (a)(1) through (7):

■ i. Removing the word ''trading'' wherever it appears and adding in its place the text ''Group 2 trading'';

■ ii. Removing the text ''SO_2 new'' wherever it appears and adding in its place the word ''new''; and

■ iii. Removing the text ''SO_2 Indian'' wherever it appears and adding in its place the word ''Indian'';

■ d. In paragraphs (b)(1) through (7), removing the text ''SO_2''; and

■ e. Revising paragraph (c).

The revisions read as follows:

§ 97.710 State SO_2 Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State SO_2 Group 2 trading budgets, new unit set-asides, and Indian

country new unit set-asides for allocations of CSAPR SO_2 Group 1 allowances for the control periods in 2015 and thereafter are as follows:

* * * * *

(c) Each State SO_2 Group 2 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

■ 135. Section 97.711 is amended by:

■ a. Revising the section heading;

■ b. Italicizing the headings of paragraphs (b)(1) and (2);

■ c. In paragraph (b)(1)(iii), after the text ''November 30 of'' adding the word ''the'';

■ d. In paragraph (b)(1)(iv)(B), removing the words ''the each'' and adding in their place the word ''each'';

■ e. In paragraph (b)(2)(iii), after the text ''November 30 of'' adding the word ''the'';

■ f. In paragraph (b)(2)(iv)(B), removing the words ''the each'' and adding in their place the word ''each'';

■ g. In paragraph (c)(1) introductory text, removing the word ''approved'' two times and adding in its place the words ''approved under'';

■ h. In paragraph (c)(1)(ii), removing the text ''§ 52.39(g), (h), or (i)'' and adding in its place the text ''§ 52.39(h) or (i)'';

■ i. In paragraph (c)(5)(i)(B), after the text ''§ 52.39(h) or (i)'' adding the words ''of this chapter'';

■ j. In paragraph (c)(5)(ii) introductory text, removing the words ''this paragraph'' and adding in their place the words ''this section'';

■ k. In paragraph (c)(5)(ii)(B), after the text ''§ 52.39(h) or (i)'' adding the words ''of this chapter''; and

■ l. In paragraph (c)(5)(iii), removing the words ''this paragraph'' and adding in their place the words ''this section''.

The revision reads as follows:

§ 97.711 Timing requirements for CSAPR SO_2 Group 2 allowance allocations.

* * * * *

■ 136. Section 97.712 is amended by:

■ a. Revising the section heading;

■ b. In paragraph (a)(2), removing the text ''§§ '' and adding in its place the text ''§ '';

■ c. In paragraph (a)(4)(i), removing the text ''paragraph (a)(1)(i) through (iii)'' and adding in its place the text ''paragraphs (a)(1)(i) through (iii)'';

■ d. In paragraph (a)(4)(ii), after the text ''paragraph (a)(4)(i)'' adding the words ''of this section'';

■ e. In paragraph (a)(9)(i), after the text ''November 30 of'' adding the word ''the'';

■ f. In paragraph (b)(4)(ii), after the text ''paragraph (b)(4)(i)'' adding the words ''of this section'';

■ g. In paragraph (b)(9)(i), after the text ''November 30 of'' adding the word ''the''; and

■ h. In paragraph (b)(10)(ii), removing the text ''§ 52.39(g), (h), or (i)'' and adding in its place the text ''§ 52.39(h) or (i)''.

The revision reads as follows:

§ 97.712 CSAPR SO_2 Group 2 allowance allocations to new units.

* * * * *

■ 137. Section 97.716 is amended by:

■ a. In paragraph (a)(1), removing the word ''Country'' and adding in its place the word ''country''; and

■ b. Adding paragraph (c).

The additions read as follows:

§ 97.716 Certificate of representation.

* * * * *

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

■ 138. Section 97.720 is amended by:

■ a. Italicizing the headings of paragraphs (c)(1) through (6);

■ b. Adding paragraph (c)(1)(iv);

■ c. In paragraph (c)(2)(i) introductory text, removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ d. Adding paragraph (c)(2)(iv);

■ e. In paragraph (c)(4)(i), removing the text ''paragraph (b)(1)'' and adding in its place the text ''paragraph (c)(1)'';

■ f. In paragraph (c)(5)(iii)(D), removing the words ''authorized representative'' and adding in their place the words ''authorized account representative''; and

■ g. In paragraph (c)(5)(v), removing the word ''designated'' two times and adding in its place the words ''authorized account''.

The additions read as follows:

§ 97.720 Establishment of compliance accounts, assurance accounts, and general accounts.

* * * * *

(c) * * *

(1) * * *

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) * * *

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

* * * * *

■ 139. Section 97.721 is amended by:

■ a. Revising the section heading;

■ b. In paragraphs (c), (d), and (e), removing the word ''period'' and adding in its place the word ''periods'';

■ c. In paragraphs (f) and (g), removing the text ''§ 52.39(h) and (i)'' and adding in its place the text ''§ 52.39(h) or (i)'';

■ d. In paragraph (i), after the text ''through (12)'' removing the comma;

■ e. Revising paragraph (j); and

■ f. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The revisions and additions read as follows:

§ 97.721 Recordation of CSAPR SO_2 Group 2 allowance allocations and auction results.

* * * * *

(j) By February 15, 2016 and February 15 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source in accordance with § 97.712(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR SO_2 Group 2 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.711 or § 97.712 or with a SIP revision approved under § 52.39(h) or (i) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

* * * * *

■ 140. Section 97.722 is amended by revising the section heading to read as follows:

§ 97.722 Submission of CSAPR SO_2 Group 2 allowance transfers.

* * * * *

■ 141. Section 97.723 is amended by:
■ a. Revising the section heading; and
■ b. In paragraph (b), after the word ''allocated'' adding the words ''or auctioned''.

The revision reads as follows:

§ 97.723 Recordation of CSAPR SO_2 Group 2 allowance transfers.

* * * * *

■ 142. Section 97.724 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. Revising paragraphs (c)(2)(i) and (ii); and
■ d. In paragraph (d), after the word ''allocated'' adding the words ''or auctioned''.

The revisions read as follows:

§ 97.724 Compliance with CSAPR SO_2 Group 2 emissions limitation.

* * * * *

(c) * * *

(2) * * *

(i) Any CSAPR SO_2 Group 2 allowances that were recorded in the compliance account pursuant to § 97.721 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR SO_2 Group 2 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

* * * * *

■ 143. Section 97.725 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a)(1), after the word ''allocated'' adding the words ''or auctioned'';
■ c. In paragraph (b)(2)(iii) introductory text, removing the text ''paragraph (b)(1)(i)'' and adding in its place the text ''paragraph (b)(1)(ii)'';
■ d. In paragraph (b)(2)(iii)(B), after the words ''availability of'' adding the words ''the calculations incorporating''; and
■ e. In paragraph (b)(6)(iii)(B), after the word ''appropriate'' removing the word ''at''.

The revision reads as follows:

§ 97.725 Compliance with CSAPR SO_2 Group 2 assurance provisions.

* * * * *

§ 97.728 [Amended]

■ 144. Section 97.728, paragraph (b) is amended by removing the text ''paragraph (a)(1)'' and adding in its place the text ''paragraph (a)''.
■ 145. Section 97.730 is amended by:
■ a. Italicizing the heading of paragraph (a);
■ b. Revising paragraph (b) introductory text and paragraphs (b)(1) and (2);
■ c. In paragraph (b)(3) introductory text, removing the text ''§§ 75.4(e)(1) through (e)(4)'' and adding in its place the text ''§ 75.4(e)(1) through (4)''; and
■ d. In paragraph (b)(3)(iii), after the text ''§ 75.66'' adding the words ''of this chapter''.

The revisions read as follows:

§ 97.730 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR SO_2 Group 2 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

* * * * *

§ 97.731 [Amended]

■ 146. Section 97.731 is amended by:
■ a. Italicizing the headings of paragraphs (d)(1) through (3), (d)(3)(i) through (iv), (d)(3)(iv)(A) through (D), and (d)(3)(v);
■ b. In paragraph (d)(3) introductory text, removing the text ''§§ '' and adding in its place the text ''§ ''; and
■ c. Redesignating paragraphs (d)(3)(v)(A)(1) through (3) as paragraphs (d)(3)(v)(A)(*1*) through (*3*).
■ 147. Section 97.734 is amended by:
■ a. In paragraph (b), after the words ''comply with'' adding the word ''the''; and
■ b. Revising paragraphs (d)(1) and (3).

The revisions read as follows:

§ 97.734 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) The designated representative shall report the SO_2 mass emissions data and heat input data for a CSAPR SO_2 Group 2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.730(b).

* * * * *

(3) For CSAPR SO_2 Group 2 units that are also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 1 Trading Program, or CSAPR NO_X Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

* * * * *

§ 97.735 [Amended]

■ 148. Section 97.735 is amended by redesignating paragraphs (b)(i) through (v) as paragraphs (b)(1) through (5).
■ 149. Part 97 is amended by adding subpart EEEEE, consisting of §§ 97.801 through 97.835, to read as follows:

Subpart EEEEE—CSAPR NO_X Ozone Season Group 2 Trading Program

Sec.

97.801 Purpose.
97.802 Definitions.
97.803 Measurements, abbreviations, and acronyms.
97.804 Applicability.
97.805 Retired unit exemption.
97.806 Standard requirements.
97.807 Computation of time.
97.808 Administrative appeal procedures.
97.809 [Reserved]
97.810 State NO_X Ozone Season Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.
97.811 Timing requirements for CSAPR NO_X Ozone Season Group 2 allowance allocations.
97.812 CSAPR NO_X Ozone Season Group 2 allowance allocations to new units.
97.813 Authorization of designated representative and alternate designated representative.
97.814 Responsibilities of designated representative and alternate designated representative.
97.815 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.
97.816 Certificate of representation.
97.817 Objections concerning designated representative and alternate designated representative.
97.818 Delegation by designated representative and alternate designated representative.
97.819 [Reserved]
97.820 Establishment of compliance accounts, assurance accounts, and general accounts.
97.821 Recordation of CSAPR NO_X Ozone Season Group 2 allowance allocations and auction results.
97.822 Submission of CSAPR NO_X Ozone Season Group 2 allowance transfers.
97.823 Recordation of CSAPR NO_X Ozone Season Group 2 allowance transfers.
97.824 Compliance with CSAPR NO_X Ozone Season Group 2 emissions limitation.

97.825 Compliance with CSAPR NO_X Ozone Season Group 2 assurance provisions.
97.826 Banking.
97.827 Account error.
97.828 Administrator's action on submissions.
97.829 [Reserved]
97.830 General monitoring, recordkeeping, and reporting requirements.
97.831 Initial monitoring system certification and recertification procedures.
97.832 Monitoring system out-of-control periods.
97.833 Notifications concerning monitoring.
97.834 Recordkeeping and reporting.
97.835 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

Subpart EEEEE—CSAPR NO_X Ozone Season Group 2 Trading Program

§ 97.801 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Season Group 2 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.802 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

Acid Rain Program means a multi-state SO_2 and NO_X air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or *allocation* means, with regard to CSAPR NO_X Ozone Season Group 2 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(c), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, of the amount of such CSAPR NO_X Ozone Season Group 2 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR NO_X Ozone Season Group 2 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR NO_X Ozone Season Group 2 unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_X Ozone Season Group 2 allowances, the CSAPR NO_X Ozone Season Group 2 unit will be treated as being allocated an amount (*i.e.,* zero) of CSAPR NO_X Ozone Season Group 2 allowances.

Allowable NO_X emission rate means, for a unit, the most stringent State or federal NO_X emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR NO_X Ozone Season Group 2 allowances under the CSAPR NO_X Ozone Season Group 2 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR NO_X Ozone Season Group 2 allowances.

Allowance transfer deadline means, for a control period in a given year, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately after such control period and is the deadline by which a CSAPR NO_X Ozone Season Group 2 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

Alternate designated representative means, for a CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR NO_X Ozone Season Group 2 Trading Program. If the CSAPR NO_X Ozone Season Group 2 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.825(b)(3) for certain owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR NO_X Ozone Season Group 2 allowances available for use for a control period in a given year in complying with the CSAPR NO_X Ozone Season Group 2 assurance provisions in accordance with §§ 97.806 and 97.825.

Auction means, with regard to CSAPR NO_X Ozone Season Group 2 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, of such CSAPR NO_X Ozone Season Group 2 allowances to be initially recorded in an Allowance Management System account.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR NO_X Ozone Season Group 2 allowances held in the general account and, for a CSAPR NO_X Ozone Season Group 2 source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured

parameters in the measurement units required by this subpart.

Base CSAPR NO_X Ozone Season Group 2 source means a source that includes one or more base CSAPR NO_X Ozone Season Group 2 units.

Base CSAPR NO_X Ozone Season Group 2 unit means a CSAPR NO_X Ozone Season Group 2 unit, provided that any unit that would not be a CSAPR NO_X Ozone Season Group 2 unit under § 97.804(a) and (b) is not a base CSAPR NO_X Ozone Season Group 2 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter.

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle unit means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Business day means a day that does not fall on a weekend or a federal holiday.

Certifying official means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means ''coal'' as defined in § 72.2 of this chapter.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Cogeneration system means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle unit, useful power not less than 45 percent of total energy input;

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

Combustion turbine means an enclosed device comprising:

(1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.805.

(i) For a unit that is a CSAPR NO_X Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CSAPR NO_X Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.805, for a unit that is not a CSAPR NO_X Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR NO_X Ozone Season Group 2 unit under § 97.804.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or source, such date shall remain the date of commencement of commercial operation of the unit,

which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common designated representative means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such control period, the same natural person is authorized under §§ 97.813(a) and 97.815(a) as the designated representative for a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units located in a State (and Indian country within the borders of such State).

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.806(c)(2)(iii), the common designated representative's share of the State NO_X Ozone Season Group 2 trading budget with the variability limit for the State for such control period.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year:

(1) With regard to a total amount of NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from a group of one or more base CSAPR NO_X Ozone Season Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period;

(2) With regard to a State NO_X Ozone Season Group 2 trading budget with the variability limit for such control period, the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period to a group of one or more base CSAPR NO_X Ozone Season Group 2 units located in the State (and Indian country within the borders of such State) and having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 2 allowances purchased by an owner or operator of such base CSAPR NO_X Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR NO_X Ozone Season Group 2 units in accordance with the CSAPR NO_X Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b) for such control period and divided by the greater of such State NO_X Ozone Season Group 2 trading budget or the sum of all amounts of CSAPR NO_X Ozone Season Group 2 allowances for such control period treated for purposes of this definition as having been allocated to or purchased in the State's auction for all such base CSAPR NO_X Ozone Season Group 2 units, provided that—

(i) The allocations of CSAPR NO_X Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition exclude any CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period under § 97.526(c)(1) or (3), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(1) or (3);

(ii) In the case of the base CSAPR NO_X Ozone Season Group 2 units at a base CSAPR NO_X Ozone Season Group 2 source in a State with regard to which CSAPR NO_X Ozone Season Group 2 allowances have been allocated under § 97.526(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.526(c)(2), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(2), an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control period equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 1 allowances allocated for such control period to such units and the total amount of CSAPR NO_X Ozone Season Group 1 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR NO_X Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, divided by the conversion factor determined under § 97.526(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(6) of this chapter, and rounded up to the nearest whole allowance; and

(iii) In the case of a base CSAPR NO_X Ozone Season Group 2 unit that operates during, but has no amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under §§ 97.811 and 97.812 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR NO_X Ozone Season Group 2 allowances for such control period equal to the unit's allowable NO_X emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple combustion turbine during such control period), 0.71 (if the unit is a combined cycle turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means an Allowance Management System account, established by the Administrator for a CSAPR NO_X Ozone Season Group 2 source under this subpart, in which any CSAPR NO_X Ozone Season Group 2 allowance allocations to the CSAPR NO_X Ozone Season Group 2 units at the source are recorded and in which are held any CSAPR NO_X Ozone Season Group 2 allowances available for use for a control period in a given year in complying with the source's CSAPR NO_X Ozone Season Group 2 emissions limitation in accordance with §§ 97.806 and 97.824.

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

content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.830 through 97.835. The following systems are the principal types of continuous emission monitoring systems:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A NO_X concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A NO_X emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period starting May 1 of a calendar year, except as provided in § 97.806(c)(3), and ending on September 30 of the same year, inclusive.

CSAPR NO_X Annual Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and NO_X.

CSAPR NO_X Ozone Season Group 1 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart BBBBB of this part, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(3), (4), or (5) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 1 Trading Program.

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), (b)(3) through (5), and (b)(10) through (12) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 allowance means a limited authorization issued and allocated or auctioned by the Administrator under this subpart or § 97.526(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 2 Trading Program.

CSAPR NO_X Ozone Season Group 2 allowance deduction or *deduct CSAPR NO_X Ozone Season Group 2 allowances* means the permanent withdrawal of CSAPR NO_X Ozone Season Group 2 allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the CSAPR NO_X Ozone Season Group 2 emissions limitation) or from an assurance account (*e.g.,* in order to account for compliance with the assurance provisions under §§ 97.806 and 97.825).

CSAPR NO_X Ozone Season Group 2 allowances held or *hold CSAPR NO_X Ozone Season Group 2 allowances* means the CSAPR NO_X Ozone Season Group 2 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 2 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 2 allowance transfer in accordance with this subpart.

CSAPR NO_X Ozone Season Group 2 emissions limitation means, for a CSAPR NO_X Ozone Season Group 2 source, the tonnage of NO_X emissions authorized in a control period in a given year by the CSAPR NO_X Ozone Season Group 2 allowances available for deduction for the source under § 97.824(a) for such control period.

CSAPR NO_X Ozone Season Group 2 source means a source that includes one or more CSAPR NO_X Ozone Season Group 2 units.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 unit means a unit that is subject to the CSAPR NO_X Ozone Season Group 2 Trading Program.

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39 (a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

CSAPR SO_2 Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by

the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

Designated representative means, for a CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR NO_X Ozone Season Group 2 Trading Program. If the CSAPR NO_X Ozone Season Group 2 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

Excess emissions means any ton of emissions from the CSAPR NO_X Ozone Season Group 2 units at a CSAPR NO_X Ozone Season Group 2 source during a control period in a given year that exceeds the CSAPR NO_X Ozone Season Group 2 emissions limitation for the source for such control period.

Fossil fuel means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.804(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

General account means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

Generator means a device that produces electricity.

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

Indian country means ''Indian country'' as defined in 18 U.S.C. 1151.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input rate means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means ''natural gas'' as defined in § 72.2 of this chapter.

Newly affected CSAPR NO_X Ozone Season Group 2 unit means a unit that was not a CSAPR NO_X Ozone Season Group 2 unit when it began operating but that thereafter becomes a CSAPR NO_X Ozone Season Group 2 unit.

Operate or *operation* means, with regard to a unit, to combust fuel.

Operator means, for a CSAPR NO_X Ozone Season Group 2 source or a CSAPR NO_X Ozone Season Group 2 unit at a source respectively, any person who operates, controls, or supervises a CSAPR NO_X Ozone Season Group 2 unit at the source or the CSAPR NO_X Ozone Season Group 2 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

Owner means, for a CSAPR NO_X Ozone Season Group 2 source or a CSAPR NO_X Ozone Season Group 2 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR NO_X Ozone Season Group 2 unit at the source or the CSAPR NO_X Ozone Season Group 2 unit;

(2) Any holder of a leasehold interest in a CSAPR NO_X Ozone Season Group 2 unit at the source or the CSAPR NO_X Ozone Season Group 2 unit, provided that, unless expressly provided for in a leasehold agreement, ''owner'' shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly)

on the revenues or income from such CSAPR NO_X Ozone Season Group 2 unit; and

(3) Any purchaser of power from a CSAPR NO_X Ozone Season Group 2 unit at the source or the CSAPR NO_X Ozone Season Group 2 unit under a life-of-the-unit, firm power contractual arrangement.

Permanently retired means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

Permitting authority means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CSAPR NO_X Ozone Season Group 2 allowances, the moving of CSAPR NO_X Ozone Season Group 2 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

Sequential use of energy means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

Serial number means, for a CSAPR NO_X Ozone Season Group 2 allowance, the unique identification number assigned to each CSAPR NO_X Ozone Season Group 2 allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

State means one of the States that is subject to the CSAPR NO_X Ozone Season Group 2 Trading Program pursuant to § 52.38(b)(1), (2)(i) and (iii), (6) through (11), and (13) of this chapter.

Submit or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Topping-cycle unit means a unit in which the energy input to the unit is first used to produce useful power, including electricity, where at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55 (W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

Total energy output means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

Unit means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

Unit operating day means, with regard to a unit, a calendar day in which the unit combusts any fuel.

Unit operating hour or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

Useful power means, with regard to a unit, electricity or mechanical energy that the unit makes available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* in an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.803 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
H_2O—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
SO_2—sulfur dioxide
TR—Transport Rule
yr—year

§ 97.804 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR NO_X Ozone Season Group 2 units, and any source that includes one or more such units shall be a CSAPR NO_X Ozone Season Group 2 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR NO_X Ozone Season Group 2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR NO_X Ozone Season Group 2 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR NO_X Ozone Season Group 2 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR NO_X Ozone Season Group 2 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR NO_X Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 2 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR NO_X Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, of the CSAPR NO_X Ozone Season Group 2 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR NO_X Ozone Season Group 2 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

§ 97.805 Retired unit exemption.

(a)(1) Any CSAPR NO_X Ozone Season Group 2 unit that is permanently retired shall be exempt from § 97.806(b) and (c)(1), § 97.824, and §§ 97.830 through 97.835.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR NO_X Ozone Season Group 2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any NO_X, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall

comply with the requirements of the CSAPR NO_X Ozone Season Group 2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.806 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.813 through 97.818.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.830 through 97.835.

(2) The emissions data determined in accordance with §§ 97.830 through 97.835 shall be used to calculate allocations of CSAPR NO_X Ozone Season Group 2 allowances under §§ 97.811(a)(2) and (b) and 97.812 and to determine compliance with the CSAPR NO_X Ozone Season Group 2 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.830 through 97.835 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *NO_X emissions requirements*—(1) *CSAPR NO_X Ozone Season Group 2 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall hold, in the source's compliance account, CSAPR NO_X Ozone Season Group 2 allowances available for deduction for such control period under § 97.824(a) in an amount not less than the tons of total NO_X emissions for such control period from all CSAPR NO_X Ozone Season Group 2 units at the source.

(ii) If total NO_X emissions during a control period in a given year from the CSAPR NO_X Ozone Season Group 2 units at a CSAPR NO_X Ozone Season Group 2 source are in excess of the CSAPR NO_X Ozone Season Group 2 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall hold the CSAPR NO_X Ozone Season Group 2 allowances required for deduction under § 97.824(d); and

(B) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR NO_X Ozone Season Group 2 assurance provisions.* (i) If total NO_X emissions during a control period in a given year from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such NO_X emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR NO_X Ozone Season Group 2 allowances available for deduction for such control period under § 97.825(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.825(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such NO_X emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such NO_X emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR NO_X Ozone Season Group 2 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_X emissions exceed the sum, for such control period, of the State NO_X Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total NO_X emissions from the base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR NO_X Ozone Season Group 2 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR NO_X Ozone Season Group 2 allowance that the owners and operators fail to hold for such control

period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR NO_X Ozone Season Group 2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.830(b) and for each control period thereafter.

(ii) A base CSAPR NO_X Ozone Season Group 2 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.830(b) and for each control period thereafter.

(4) *Vintage of CSAPR NO_X Ozone Season Group 2 allowances held for compliance.* (i) A CSAPR NO_X Ozone Season Group 2 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 2 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR NO_X Ozone Season Group 2 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 2 allowance that was allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each CSAPR NO_X Ozone Season Group 2 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR NO_X Ozone Season Group 2 allowance is a limited authorization to emit one ton of NO_X during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR NO_X Ozone Season Group 2 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR NO_X Ozone Season Group 2 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR NO_X Ozone Season Group 2 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report NO_X emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.830 through 97.835 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.816 for the designated representative for the source and each CSAPR NO_X Ozone Season Group 2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.816 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR NO_X Ozone Season Group 2 Trading Program.

(2) The designated representative of a CSAPR NO_X Ozone Season Group 2 source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall make all submissions required under the CSAPR NO_X Ozone Season Group 2 Trading Program, except as provided in § 97.818. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR NO_X Ozone Season Group 2 Trading Program that applies to a CSAPR NO_X Ozone Season Group 2 source or the designated representative of a CSAPR NO_X Ozone Season Group 2 source shall also apply to the owners and operators of such source and of the CSAPR NO_X Ozone Season Group 2 units at the source.

(2) Any provision of the CSAPR NO_X Ozone Season Group 2 Trading Program that applies to a CSAPR NO_X Ozone Season Group 2 unit or the designated representative of a CSAPR NO_X Ozone Season Group 2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR NO_X Ozone Season Group 2 Trading Program or exemption under § 97.805 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR NO_X Ozone Season Group 2 source or CSAPR NO_X Ozone Season Group 2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.807 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the

CSAPR NO_X Ozone Season Group 2 Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.808 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR NO_X Ozone Season Group 2 Trading Program are set forth in part 78 of this chapter.

§ 97.809 [Reserved]

§ 97.810 State NO_X Ozone Season Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State NO_X Ozone Season Group 2 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR NO_X Ozone Season Group 2 allowances for the control periods in 2017 and thereafter are as follows:

(1) *Alabama.* (i) The NO_X Ozone Season Group 2 trading budget is 13,211 tons.

(ii) The new unit set-aside is 255 tons.

(iii) The Indian country new unit set-aside is 13 tons.

(2) *Arkansas.* (i) The NO_X Ozone Season Group 2 trading budget for 2017 is 12,048 tons and for 2018 and thereafter is 9,210 tons.

(ii) The new unit set-aside for 2017 is 240 tons and for 2018 and thereafter is 185 tons.

(iii) [Reserved]

(3) *Georgia.* (i) The NO_X Ozone Season Group 2 trading budget is 8,481 tons.

(ii) The new unit set-aside is 168 tons.

(iii) [Reserved]

(4) *Illinois.* (i) The NO_X Ozone Season Group 2 trading budget is 14,601 tons.

(ii) The new unit set-aside is 302 tons.

(iii) [Reserved]

(5) *Indiana.* (i) The NO_X Ozone Season Group 2 trading budget is 23,303 tons.

(ii) The new unit set-aside is 468 tons.

(iii) [Reserved]

(6) *Iowa.* (i) The NO_X Ozone Season Group 2 trading budget is 11,272 tons.

(ii) The new unit set-aside is 324 tons.

(iii) The Indian country new unit set-aside is 11 tons.

(7) *Kansas.* (i) The NO_X Ozone Season Group 2 trading budget is 8,027 tons.

(ii) The new unit set-aside is 148 tons.

(iii) The Indian country new unit set-aside is 8 tons.

(8) *Kentucky.* (i) The NO_X Ozone Season Group 2 trading budget is 21,115 tons.

(ii) The new unit set-aside is 426 tons.

(iii) [Reserved]

(9) *Louisiana.* (i) The NO_X Ozone Season Group 2 trading budget is 18,639 tons.

(ii) The new unit set-aside is 352 tons.

(iii) The Indian country new unit set-aside is 19 tons.

(10) *Maryland.* (i) The NO_X Ozone Season Group 2 trading budget is 3,828 tons.

(ii) The new unit set-aside is 152 tons.

(iii) [Reserved]

(11) *Michigan.* (i) The NO_X Ozone Season Group 2 trading budget is 17,023 tons.

(ii) The new unit set-aside is 665 tons.

(iii) The Indian country new unit set-aside is 17 tons.

(12) *Mississippi.* (i) The NO_X Ozone Season Group 2 trading budget is 6,315 tons.

(ii) The new unit set-aside is 120 tons.

(iii) The Indian country new unit set-aside is 6 tons.

(13) *Missouri.* (i) The NO_X Ozone Season Group 2 trading budget is 15,780 tons.

(ii) The new unit set-aside is 324 tons.

(iii) [Reserved]

(14) *New Jersey.* (i) The NO_X Ozone Season Group 2 trading budget is 2,062 tons.

(ii) The new unit set-aside is 192 tons.

(iii) [Reserved]

(15) *New York.* (i) The NO_X Ozone Season Group 2 trading budget is 5,135 tons.

(ii) The new unit set-aside is 252 tons.

(iii) The Indian country new unit set-aside is 5 tons.

(16) *Ohio.* (i) The NO_X Ozone Season Group 2 trading budget is 19,522 tons.

(ii) The new unit set-aside is 401 tons.

(iii) [Reserved]

(17) *Oklahoma.* (i) The NO_X Ozone Season Group 2 trading budget is 11,641 tons.

(ii) The new unit set-aside is 221 tons.

(iii) The Indian country new unit set-aside is 12 tons.

(18) *Pennsylvania.* (i) The NO_X Ozone Season Group 2 trading budget is 17,952 tons.

(ii) The new unit set-aside is 541 tons.

(iii) [Reserved]

(19) *Tennessee.* (i) The NO_X Ozone Season Group 2 trading budget is 7,736 tons.

(ii) The new unit set-aside is 156 tons.

(iii) [Reserved]

(20) *Texas.* (i) The NO_X Ozone Season Group 2 trading budget is 52,301 tons.

(ii) The new unit set-aside is 998 tons.

(iii) The Indian country new unit set-aside is 52 tons.

(21) *Virginia.* (i) The NO_X Ozone Season Group 2 trading budget is 9,223 tons.

(ii) The new unit set-aside is 562 tons.

(iii) [Reserved]

(22) *West Virginia.* (i) The NO_X Ozone Season Group 2 trading budget is 17,815 tons.

(ii) The new unit set-aside is 356 tons.

(iii) [Reserved]

(23) *Wisconsin.* (i) The NO_X Ozone Season Group 2 trading budget is 7,915 tons.

(ii) The new unit set-aside is 151 tons.

(iii) The Indian country new unit set-aside is 8 tons.

(b) The States' variability limits for the State NO_X Ozone Season Group 2 trading budgets for the control periods in 2017 and thereafter are as follows:

(1) The variability limit for Alabama is 2,774 tons.

(2) The variability limit for Arkansas for 2017 is 2,530 tons and for 2018 and thereafter is 1,934 tons.

(3) The variability limit for Georgia is 1,781 tons.

(4) The variability limit for Illinois is 3,066 tons.

(5) The variability limit for Indiana is 4,894 tons.

(6) The variability limit for Iowa is 2,367 tons.

(7) The variability limit for Kansas is 1,686 tons.

(8) The variability limit for Kentucky is 4,434 tons.

(9) The variability limit for Louisiana is 3,914 tons.

(10) The variability limit for Maryland is 804 tons.

(11) The variability limit for Michigan is 3,575 tons.

(12) The variability limit for Mississippi is 1,326 tons.

(13) The variability limit for Missouri is 3,314 tons.

(14) The variability limit for New Jersey is 433 tons.

(15) The variability limit for New York is 1,078 tons.

(16) The variability limit for Ohio is 4,100 tons.

(17) The variability limit for Oklahoma is 2,445 tons.

(18) The variability limit for Pennsylvania is 3,770 tons.

(19) The variability limit for Tennessee is 1,625 tons.

(20) The variability limit for Texas is 10,983 tons.

(21) The variability limit for Virginia is 1,937 tons.

(22) The variability limit for West Virginia is 3,741 tons.

(23) The variability limit for Wisconsin is 1,662 tons.

(c) Each State NO_X Ozone Season Group 2 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

§ 97.811 Timing requirements for CSAPR NO_X Ozone Season Group 2 allowance allocations.

(a) *Existing units.* (1) CSAPR NO_X Ozone Season Group 2 allowances are

allocated, for the control periods in 2017 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR NO_X Ozone Season Group 2 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR NO_X Ozone Season Group 2 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2016, during the control period in two consecutive years, such unit will not be allocated the CSAPR NO_X Ozone Season Group 2 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR NO_X Ozone Season Group 2 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR NO_X Ozone Season Group 2 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i) By June 1, 2017 and June 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 2 units) are in accordance with § 97.812(a)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under § 97.812(a)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for such control period contains any CSAPR NO_X Ozone Season Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Ozone Season Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Ozone Season Group 2 units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Ozone Season Group 2 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in accordance with § 97.812(a)(9), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Ozone Season Group 2 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 2 allowances in accordance with § 97.812(a)(10).

(2) *Indian country new unit set-asides.* (i) By June 1, 2017 and June 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in Indian country within the borders of a State, in accordance with § 97.812(b)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 2 units) are in accordance with § 97.812(b)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under § 97.812(b)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for such control period contains any CSAPR NO_X Ozone Season

Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Ozone Season Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Ozone Season Group 2 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Ozone Season Group 2 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in accordance with § 97.812(b)(9), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Ozone Season Group 2 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 2 allowances in accordance with § 97.812(b)(10).

(c) *Units incorrectly allocated CSAPR NO_X Ozone Season Group 2 allowances.* (1) For each control period in 2017 and thereafter, if the Administrator determines that CSAPR NO_X Ozone Season Group 2 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(6), (7), (8), or (9) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.812(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR NO_X Ozone Season Group 2 unit under § 97.804 as of May 1, 2017 and is allocated CSAPR NO_X Ozone Season Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(6), (7), (8), or (9) of this chapter, the recipient is not actually a CSAPR NO_X Ozone Season Group 2 unit as of May 1, 2017 and is allocated CSAPR NO_X Ozone Season Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 2 units as of May 1, 2017; or

(B) The recipient is not located as of May 1 of the control period in the State from whose NO_X Ozone Season Group 2 trading budget the CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(6), (7), (8), or (9) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR NO_X Ozone Season Group 2 unit under § 97.804 as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, the recipient is not actually a CSAPR NO_X Ozone Season Group 2 unit as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 2 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_X Ozone Season Group 2 allowances under § 97.821.

(3) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 2 allowances under § 97.821 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.824(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_X Ozone Season Group 2 allowances were recorded an amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_X Ozone Season Group 2 allowances. The authorized account representative shall ensure that there are sufficient CSAPR NO_X Ozone Season Group 2 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 2 allowances under § 97.821 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.824(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_X Ozone Season Group 2 allowances.

(5)(i) With regard to the CSAPR NO_X Ozone Season Group 2 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 2 allowances to the new unit set-aside for such control period for the State from whose NO_X Ozone Season Group 2 trading budget the CSAPR NO_X Ozone Season Group 2 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 2 allowances in the portion of the State NO_X Ozone Season Group 2 trading budget that may

be allocated for such control period in accordance with such SIP revision.

(ii) With regard to the CSAPR NO_X Ozone Season Group 2 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 2 allowances to the new unit set-aside for such control period; or

(B) If the State has a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 2 allowances in the portion of the State NO_X Ozone Season Group 2 trading budget that may be allocated for such control period in accordance with such SIP revision.

(iii) With regard to the CSAPR NO_X Ozone Season Group 2 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR NO_X Ozone Season Group 2 allowances to the Indian country new unit set-aside for such control period.

§ 97.812 CSAPR NO_X Ozone Season Group 2 allowance allocations to new units.

(a) For each control period in 2017 and thereafter and for the CSAPR NO_X Ozone Season Group 2 units in each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 2 allowances to the CSAPR NO_X Ozone Season Group 2 units as follows:

(1) The CSAPR NO_X Ozone Season Group 2 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 2 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 2 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 2 allowances in the notice of data availability issued under § 97.811(a)(1);

(ii) CSAPR NO_X Ozone Season Group 2 units whose allocation of an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(a)(1) is covered by § 97.811(c)(2) or (3);

(iii) CSAPR NO_X Ozone Season Group 2 units that are allocated an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(a)(1), which allocation is terminated for such control period pursuant to § 97.811(a)(2), and that operate during the control period immediately preceding such control period; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR NO_X Ozone Season Group 2 units under § 97.811(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(b)(1)(ii)(B) is covered by § 97.811(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 2 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.810(a) and will be allocated additional CSAPR NO_X Ozone Season Group 2 allowances (if any) in accordance with § 97.811(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 2 unit described in paragraph (a)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 2 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2017;

(ii) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 2 unit commences commercial operation;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_X Ozone Season Group 2 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR NO_X Ozone Season Group 2 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation.

(4)(i) The allocation to each CSAPR NO_X Ozone Season Group 2 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the CSAPR NO_X Ozone Season Group 2 allowances determined for all such CSAPR NO_X Ozone Season Group 2 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 2 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 2 allowances determined for each such CSAPR NO_X Ozone Season Group 2 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 2 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 2 unit the amount of the CSAPR NO_X Ozone Season Group 2 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 2 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i) and (ii), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(9) If, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Ozone Season Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 2 allowances referenced in the notice of data availability required under

§ 97.811(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 2 allowances determined for each such CSAPR NO_X Ozone Season Group 2 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 2 unit the amount of the CSAPR NO_X Ozone Season Group 2 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_X Ozone Season Group 2 unit that is in the State, is allocated an amount of CSAPR NO_X Ozone Season Group 2 allowances in the notice of data availability issued under § 97.811(a)(1), and continues to be allocated CSAPR NO_X Ozone Season Group 2 allowances for such control period in accordance with § 97.811(a)(2), an amount of CSAPR NO_X Ozone Season Group 2 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_X Ozone Season Group 2 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.811(a) for such control period, divided by the remainder of the amount of tons in the applicable State NO_X Ozone Season Group 2 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(iii), (iv), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(12)(i) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations of a new unit set-aside for a control period in a given year under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section would otherwise result in total allocations of such new unit set-aside exceeding the total amount of such new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on the amount of such units' allocations under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will reduce each unit's allocation under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed and will repeat this reduction process as necessary, until the total allocations of such new unit set-aside equal the total amount of such new unit set-aside.

(ii) Notwithstanding the requirements of paragraphs (a)(10) and (11) of this section, if the calculations of allocations of a new unit set-aside for a control period in a given year under paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section would otherwise result in a total allocations of such new unit set-aside less than the total amount of such new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (a)(10) of this section, as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on the amount of such units' allocations under paragraph (a)(10) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will increase each unit's allocation under paragraph (a)(10) of this section by one CSAPR NO_X Ozone Season Group 2 allowance in the order in which the units are listed and will repeat this increase process as necessary, until the total allocations of such new unit set-aside equal the total amount of such new unit set-aside.

(b) For each control period in 2017 and thereafter and for the CSAPR NO_X Ozone Season Group 2 units located in Indian country within the borders of each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 2 allowances to the CSAPR NO_X Ozone Season Group 2 units as follows:

(1) The CSAPR NO_X Ozone Season Group 2 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 2 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 2 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 2 allowances in the notice of data availability issued under § 97.811(a)(1); or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR NO_X Ozone Season Group 2 units under § 97.811(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(b)(2)(ii)(B) is covered by § 97.811(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 2 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.810(a) and will be allocated additional CSAPR NO_X Ozone Season Group 2 allowances (if any) in accordance with § 97.811(c)(5).

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 2 unit described in paragraph (b)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 2 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2017; and

(ii) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 2 unit commences commercial operation.

(4)(i) The allocation to each CSAPR NO_X Ozone Season Group 2 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this

section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the CSAPR NO_X Ozone Season Group 2 allowances determined for all such CSAPR NO_X Ozone Season Group 2 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 2 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 2 allowances determined for each such CSAPR NO_X Ozone Season Group 2 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 2 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 2 unit the amount of the CSAPR NO_X Ozone Season Group 2 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 2 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(i) and (ii), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(9) If, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Ozone Season Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 2 allowances referenced in the notice of data availability required under § 97.811(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 2 allowances determined for each such CSAPR NO_X Ozone Season Group 2 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 2 unit the amount of the CSAPR NO_X Ozone Season Group 2 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR NO_X Ozone Season Group 2 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter covering such control period, include such unallocated CSAPR NO_X Ozone Season Group 2 allowances in the portion of the State NO_X Ozone Season Group 2 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(iii), (iv), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(12)(i) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations of an Indian country new unit set-aside for a control period in a given year under paragraph (b)(7) of this section, paragraphs (b)(6) and (b)(9)(iv) of this section, or paragraphs (b)(6), (b)(9)(iii), and (b)(10) of this section would otherwise result in total allocations of such Indian country new unit set-aside exceeding the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (b)(7), (b)(9)(iv), or (b)(10) of this section, as applicable, as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on the amount of such units' allocations under paragraph (b)(7), (b)(9)(iv), or (b)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will reduce each unit's allocation under paragraph (b)(7), (b)(9)(iv), or (b)(10) of this section, as applicable, by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed and will repeat this reduction process as necessary, until the total allocations of such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

(ii) Notwithstanding the requirements of paragraphs (b)(10) and (11) of this section, if the calculations of allocations of an Indian country new unit set-aside for a control period in a given year under paragraphs (b)(6), (b)(9)(iii), and (b)(10) of this section would otherwise result in a total allocations of such Indian country new unit set-aside less than the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (b)(10) of this section, as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on the amount of such units' allocations under

paragraph (b)(10) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will increase each unit's allocation under paragraph (b)(10) of this section by one CSAPR NO_X Ozone Season Group 2 allowance in the order in which the units are listed and will repeat this increase process as necessary, until the total allocations of such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.813 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.815, each CSAPR NO_X Ozone Season Group 2 source, including all CSAPR NO_X Ozone Season Group 2 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR NO_X Ozone Season Group 2 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 2 units at the source and shall act in accordance with the certification statement in § 97.816(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.816:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source in all matters pertaining to the CSAPR NO_X Ozone Season Group 2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.815, each CSAPR NO_X Ozone Season Group 2 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 2 units at the source and shall act in accordance with the certification statement in § 97.816(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.816,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.802, and §§ 97.814 through 97.818, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

§ 97.814 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.818 concerning delegation of authority to make submissions, each submission under the CSAPR NO_X Ozone Season Group 2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR NO_X Ozone Season Group 2 source and CSAPR NO_X Ozone Season Group 2 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(b) The Administrator will accept or act on a submission made for a CSAPR NO_X Ozone Season Group 2 source or a CSAPR NO_X Ozone Season Group 2 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.818.

§ 97.815 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.816. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR NO_X Ozone Season Group 2 source and the CSAPR NO_X Ozone Season Group 2 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.816. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR NO_X Ozone Season Group 2 source and the CSAPR NO_X Ozone Season Group 2 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR NO_X Ozone Season Group 2 source or a CSAPR NO_X Ozone Season Group 2 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.816, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of

the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR NO_X Ozone Season Group 2 source or a CSAPR NO_X Ozone Season Group 2 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.816 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR NO_X Ozone Season Group 2 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.816 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

§ 97.816 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR NO_X Ozone Season Group 2 source, and each CSAPR NO_X Ozone Season Group 2 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the CSAPR NO_X Ozone Season Group 2 source and of each CSAPR NO_X Ozone Season Group 2 unit at the source.

(4) The following certification statements by the designated representative and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR NO_X Ozone Season Group 2 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 2 Trading Program on behalf of the owners and operators of the source and of each CSAPR NO_X Ozone Season Group 2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR NO_X Ozone Season Group 2 unit, or where a utility or industrial customer purchases power from a CSAPR NO_X Ozone Season Group 2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR NO_X Ozone Season Group 2 unit at the source; and CSAPR NO_X Ozone Season Group 2 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR NO_X Ozone Season Group 2 allowances by contract, CSAPR NO_X Ozone Season Group 2 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 2 allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section or § 97.516 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR NO_X Ozone Season'' in place of the phrase ''CSAPR NO_X Ozone Season Group 2'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 2'' appeared in place of the phrase ''TR NO_X Ozone Season''.

§ 97.817 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.816 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.816 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 2 allowance transfers.

§ 97.818 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.818(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.818(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.818 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section or § 97.518(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' in place of the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'', respectively.

§ 97.819 [Reserved]

§ 97.820 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.816, the Administrator will establish a compliance account for the CSAPR NO_X Ozone Season Group 2 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.825(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR NO_X Ozone Season Group 2 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR NO_X Ozone Season Group 2 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account

representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''

(E) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section or § 97.520(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR NO_X Ozone Season'' in place of the phrase ''CSAPR NO_X Ozone Season Group 2'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 2'' appeared in place of the phrase ''TR NO_X Ozone Season''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances held in the general account in all matters pertaining to the CSAPR NO_X Ozone Season Group 2 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

(B) Any alternate authorized account representative shall be authorized, and any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.

(C) Each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR NO_X Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 2'' appeared in place of the phrase ''TR NO_X Ozone Season''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 2 allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 2 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR NO_X Ozone Season Group 2 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to NO_X Ozone Season Group 2 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall

submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 2 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 2 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.820(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.820(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.820(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section or § 97.520(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' in place of the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR NO_X Ozone Season Group 2 allowance transfer under § 97.822 for any CSAPR NO_X Ozone Season Group 2 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR NO_X Ozone Season Group 2 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR NO_X Ozone Season Group 2 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR NO_X Ozone Season Group 2 allowance transfer under § 97.822 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(d) *Account identification.* The Administrator will assign a unique identifying number to each account

established under paragraph (a), (b), or (c) of this section.

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR NO_X Ozone Season Group 2 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.814(a) and 97.818 or paragraphs (c)(2)(ii) and (c)(5) of this section.

§ 97.821 Recordation of CSAPR NO_X Ozone Season Group 2 allowance allocations and auction results.

(a) By January 9, 2017, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2017.

(b) By January 9, 2017, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018, unless the State in which the source is located notifies the Administrator in writing by December 27, 2016 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2017 meeting the requirements of § 52.38(b)(7)(i) through (iv) of this chapter.

(1) If, by April 1, 2017 the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2017 in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018.

(2) If the State submits to the Administrator by April 1, 2017 and the Administrator approves by October 1, 2017 such complete SIP revision, the Administrator will record by October 1, 2017 in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source as provided in such approved, complete SIP revision for the control period in 2018.

(3) If the State submits to the Administrator by April 1, 2017 and the Administrator does not approve by October 1, 2017 such complete SIP revision, the Administrator will record by October 1, 2017 in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018.

(c) By July 1, 2018, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control periods in 2019 and 2020.

(d) By July 1, 2019, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control periods in 2021 and 2022.

(e) By July 1, 2020, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control periods in 2023 and 2024.

(f) By July 1, 2021 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph.

(g) By August 1, 2017 and August 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.812(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(h) By August 1, 2017 and August 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.812(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(i) By February 15, 2018 and February 15 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.812(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15, 2018 and February 15 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.812(b)(9) through (12) for the control period in the year before the year of the applicable

recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR NO_X Ozone Season Group 2 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.811 or § 97.812 or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR NO_X Ozone Season Group 2 allowances to a CSAPR NO_X Ozone Season Group 2 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR NO_X Ozone Season Group 2 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR NO_X Ozone Season Group 2 allowance is allocated or auctioned.

§ 97.822 Submission of CSAPR NO_X Ozone Season Group 2 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR NO_X Ozone Season Group 2 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR NO_X Ozone Season Group 2 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR NO_X Ozone Season Group 2 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR NO_X Ozone Season Group 2 allowance identified by serial number in the transfer.

§ 97.823 Recordation of CSAPR NO_X Ozone Season Group 2 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR NO_X Ozone Season Group 2 allowance transfer that is correctly submitted under § 97.822, the Administrator will record a CSAPR NO_X Ozone Season Group 2 allowance transfer by moving each CSAPR NO_X Ozone Season Group 2 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR NO_X Ozone Season Group 2 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR NO_X Ozone Season Group 2 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.824 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR NO_X Ozone Season Group 2 allowance transfer is not correctly submitted under § 97.822, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR NO_X Ozone Season Group 2 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR NO_X Ozone Season Group 2 allowance transfer that is not correctly submitted under § 97.822, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

§ 97.824 Compliance with CSAPR NO_X Ozone Season Group 2 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR NO_X Ozone Season Group 2 allowances are available to be deducted for compliance with a source's CSAPR NO_X Ozone Season Group 2 emissions limitation for a control period in a given year only if the CSAPR NO_X Ozone Season Group 2 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.823, of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR NO_X Ozone Season Group 2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR NO_X Ozone Season Group 2 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR NO_X Ozone Season Group 2 allowances deducted equals the number of tons of total NO_X emissions from all CSAPR NO_X Ozone Season Group 2 units at the source for such control period; or

(2) If there are insufficient CSAPR NO_X Ozone Season Group 2 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR NO_X Ozone Season Group 2 allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CSAPR NO_X Ozone Season Group 2 allowances by serial number.* The authorized account representative for a source's compliance account may request that specific CSAPR NO_X Ozone Season Group 2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 2 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR NO_X Ozone Season Group 2 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR NO_X Ozone Season Group 2 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR NO_X Ozone Season Group 2 allowances that were recorded in the compliance account pursuant to § 97.821 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Ozone Season Group 2 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the

compliance account pursuant to § 97.526(c), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR NO_X Ozone Season Group 2 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR NO_X Ozone Season Group 2 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

§ 97.825 Compliance with CSAPR NO_X Ozone Season Group 2 assurance provisions.

(a) *Availability for deduction.* CSAPR NO_X Ozone Season Group 2 allowances are available to be deducted for compliance with the CSAPR NO_X Ozone Season Group 2 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO_X Ozone Season Group 2 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of base CSAPR NO_X Ozone Season Group 2 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO_X Ozone Season Group 2 allowances available under paragraph (a) of this section for compliance with the CSAPR NO_X Ozone Season Group 2 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2018 and June 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO_X emissions exceed the State assurance level as described in § 97.806(c)(2)(iii); and

(ii) Promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO_X emissions from each base CSAPR NO_X Ozone Season Group 2 source.

(2) For each notice of data availability required in paragraph (b)(1)(ii) of this section and for any State (and Indian country within the borders of such State) identified in such notice as having base CSAPR NO_X Ozone Season Group 2 units with total NO_X emissions exceeding the State assurance level for a control period in a given year, as described in § 97.806(c)(2)(iii):

(i) By July 1 immediately after the promulgation of such notice, the designated representative of each base CSAPR NO_X Ozone Season Group 2 source in each such State (and Indian country within the borders of such State) shall submit a statement, in a format prescribed by the Administrator, providing for each base CSAPR NO_X Ozone Season Group 2 unit (if any) at the source that operates during, but is not allocated an amount of CSAPR NO_X Ozone Season Group 2 allowances for, such control period, the unit's allowable NO_X emission rate for such control period and, if such rate is expressed in lb per mmBtu, the unit's heat rate.

(ii) By August 1 immediately after the promulgation of such notice, the Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i) and will promulgate a notice of data availability of the results of these calculations.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice of data availability required in paragraph (b)(1)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section are in accordance with § 97.806(c)(2)(iii), §§ 97.806(b) and 97.830 through 97.835, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.802, and the calculation formula in § 97.806(c)(2)(i).

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(iii)(A) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iii)(A) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(iii)(B) of this section as having base CSAPR NO_X Ozone Season Group 2 units with total NO_X emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(iii)(B) of this section, as all of the owners and operators of a group of base CSAPR NO_X Ozone Season Group 2 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO_X Ozone Season Group 2 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the owners and operators described in

paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO_X Ozone Season Group 2 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph (b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section and after the recordation, in accordance with § 97.823, of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO_X Ozone Season Group 2 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(iii)(B) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(iii)(B) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators are required to hold in accordance with § 97.806(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(iii)(B) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Ozone Season Group 2 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.806(c)(2)(i) for such control period with regard to the base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(ii) If any such data are revised by the owners and operators of a base CSAPR NO_X Ozone Season Group 2 source and base CSAPR NO_X Ozone Season Group 2 unit whose designated representative submitted such data under paragraph (b)(2)(i) of this section, as a result of a decision in or settlement of litigation concerning such submission, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Ozone Season Group 2 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.806(c)(2)(i) for such control period with regard to the base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved, provided that such litigation was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) and (ii) of this section, the amount of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO_X Ozone Season Group 2 allowances in the assurance account established by the Administrator for the appropriate base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO_X Ozone Season Group 2 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO_X Ozone Season Group 2 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO_X Ozone Season Group 2 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR NO_X Ozone Season Group 2 sources, base CSAPR NO_X Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO_X Ozone Season Group 2 allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO_X Ozone Season Group 2 allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO_X Ozone Season Group 2 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO_X Ozone Season Group 2 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR NO_X Ozone Season Group 2 allowance held under

paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO_X Ozone Season Group 2 assurance provisions for such control period must be a CSAPR NO_X Ozone Season Group 2 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

§ 97.826 Banking.

(a) A CSAPR NO_X Ozone Season Group 2 allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO_X Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_X Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828.

§ 97.827 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 97.828 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR NO_X Ozone Season Group 2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR NO_X Ozone Season Group 2 allowances from or transfer CSAPR NO_X Ozone Season Group 2 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

§ 97.829 [Reserved]

§ 97.830 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR NO_X Ozone Season Group 2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.802 and in § 72.2 of this chapter shall apply, the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CSAPR NO_X Ozone Season Group 2 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.802, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR NO_X Ozone Season Group 2 unit''. The owner or operator of a unit that is not a CSAPR NO_X Ozone Season Group 2 unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR NO_X Ozone Season Group 2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR NO_X Ozone Season Group 2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.831 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2017;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.834(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR NO_X Ozone Season Group 2 unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), or (3) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.830 through § 97.835, rather than the monitoring systems required under part 75 of this chapter;

(ii) NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas volumetric flow rate, and O_2 or CO_2 concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.835, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR NO_X Ozone Season Group 2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.835.

(2) No owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall operate the unit so as to discharge, or allow to be discharged, NO_X to the atmosphere without accounting for all such NO_X in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission

monitoring method, and thereby avoid monitoring and recording NO_X mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.805 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.831(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR NO_X Ozone Season Group 2 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

§ 97.831 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.830(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.830(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the designated representative shall resubmit the petition to the Administrator under § 97.835 to determine whether the approval applies under the CSAPR NO_X Ozone Season Group 2 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.830(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.830(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.830(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.830(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.830(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.830(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by with the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.833.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR NO_X Ozone Season Group 2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of

provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR NO_X Ozone Season Group 2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.832(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.,* NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.832 Monitoring system out-of-control periods.

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.831 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification

procedures in § 97.831 for each disapproved monitoring system.

§ 97.833 Notifications concerning monitoring.

The designated representative of a CSAPR NO_X Ozone Season Group 2 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.834 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.814(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR NO_X Ozone Season Group 2 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.831, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR NO_X Ozone Season Group 2 unit is subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR NO_X Ozone Season Group 2 unit is not subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year.

(2) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Ozone Season Group 2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2017 through June 30, 2017;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.830(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CSAPR NO_X Ozone Season Group 2 units that are also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification.* The designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(1)(ii)(B) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 97.835 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR NO_X Ozone Season Group 2 unit may submit a petition under § 75.66 of

this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.830 through 97.834.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

Appendices A through D to Part 97 [Redesignated]

■ 150. Appendices A, B, C, and D to part 97 are redesignated as appendices A, B, C, and D to subpart E of part 97.

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Part III

The President

Proclamation 9527—National Historically Black Colleges and Universities Week, 2016
Proclamation 9528—United Nations Day, 2016

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Title 3—

The President

Proclamation 9527 of October 26, 2016

National Historically Black Colleges and Universities Week, 2016

By the President of the United States of America

A Proclamation

America's Historically Black Colleges and Universities (HBCUs) are living monuments to the cause that has driven each generation of our citizens in the task of perfecting our Union—helping ensure that all people can experience the fullest measure of equality, justice, and possibility. Embodying the notion that the ability to pursue a higher education should be an opportunity available to all, rather than a privilege for a few, these campuses were built from a determination to widely and profoundly expand the reach of our country's promise. During National Historically Black Colleges and Universities Week, we celebrate this aspiration and reaffirm our support for HBCUs.

Rendered possible by the extraordinary sacrifices and commitment of women and men who resolved to make real and enduring the new birth of freedom that echoed across our country following the end of the Civil War, the rise of these proud institutions marked the beginning of a new chapter in our national narrative. With each generation, HBCUs have shaped America for the better in indelible ways. From a pastor who would give voice to equality's cause to the great-grandson of a slave who would reach the bench of our highest court; from pioneers of medical and scientific breakthroughs to creators of innovative and prosperous businesses; from artists who expand the boundaries of expression to historians who illuminate our past and help us write our future, so much of the progress that has come to define America has been carried forward by graduates, academics, and leaders of these colleges and universities.

Since I took office, my Administration has focused on expanding opportunity and opening doors of higher education for more people. We have increased Pell Grants, expanded student loan assistance going directly to students, cut taxes for those paying tuition, allowed students to cap their Federal loan payments at 10 percent of their income, and created the College Scorecard to assist prospective students in understanding their options for pursuing a higher education. Today, more Americans are earning a degree in postsecondary education than ever before, and HBCUs are playing an important role. In the 6 years since I signed an Executive Order bolstering the White House Initiative on HBCUs, we have helped ensure that more students have greater opportunities and that these institutions can benefit from a fuller range of Federal programs and assistance. HBCUs and community colleges help build our Nation's economy and strengthen the middle class, which is why I am working to make 2 years of community college free for hardworking students across our country through America's College Promise—a proposal that also helps 4-year HBCUs provide more low-income students with up to 2 years of college for free or at reduced tuition.

This week, we recognize the ways in which HBCUs are central to our experience as a Nation and recommit ourselves to the work that lies ahead. Let us honor the spirit in which these institutions were constructed by reaffirming the enduring truths at their core, and let us continue endeavoring

to ensure all people have the chance to access higher education and secure ever greater opportunity.

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 23 through October 29, 2016, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, 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. 2016–26070
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Presidential Documents

Proclamation 9528 of October 21, 2016

United Nations Day, 2016

By the President of the United States of America

A Proclamation

Seventy-one years ago, after rolling back a tide of tyranny that threatened Europe and the world, members of the international community came together to sign the United Nations Charter—advancing a promise to replace the ravages of war with the possibilities of diplomacy. On United Nations Day, we reflect on the progress we have made in the time since, resolve to carry this progress forward, and reaffirm our commitment to international cooperation rooted in the rights and responsibilities of nations across the globe.

Today, because of the international order the United Nations has helped anchor for more than seven decades, we live in a global community that, together, has overcome the greatest financial crisis of our time, lifted billions of people out of poverty, promoted the emergence of more democracies, and taken meaningful steps toward leaving our children with a world that is safer, cleaner, and more stable. Yet the same forces of integration that have helped forge closer ties and stronger partnerships among the world's nations also have exposed deep fault lines that we must address. In too many places around the world, perpetrators of atrocities go unpunished and those who violate international law face no consequences. Climate change remains a serious threat—even after we officially crossed the threshold for the Paris Agreement to take effect earlier this month. Too many governments still silence journalists, quash dissent, and censor vital flows of information. And in camps and cities around the world, families live as refugees, surviving on aid and the compassion of others. These issues present crises of our shared security and challenges to our international system in which all nations must share in our collective responsibilities. Our world is too small, and our destinies too intertwined, for us not to see ourselves in one another. By upholding the values upon which the United Nations was founded—pluralism, diversity, human rights, and togetherness—we can ensure we pass these tests of our common humanity. And by continuing to build a more capable and effective United Nations, we strengthen the world's capacity to respond to global crises, keep peace in fragile societies, and tackle unprecedented humanitarian challenges.

The international community relies on the United Nations today more than ever before. Now in its eighth decade, this institution—and those selfless individuals who devote their lives to sustaining it—is vital to our mission of shaping a better world: one defined by cooperation over confrontation, a shared sense of purpose, and the understanding that the future of a child in America is inextricably linked to that of a child in Afghanistan. On this day, let us pay tribute to the staff of the United Nations, particularly the more than 100,000 uniformed personnel serving in peacekeeping missions, for their selfless service to the cause of promoting international peace and prosperity, and as citizens of the world, let us renew our shared commitment to forging a brighter tomorrow for all.

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 24, 2016,

as United Nations Day. I urge the Governors of the 50 States, and the officials of all other areas under the flag of the United States, to observe United Nations Day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, 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.

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